

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

MICHAEL LOCONTO,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-19-583

DECISION

The petitioner-appellant Michael Loconto appeals from a decision of the Division of Administrative Law Appeals (DALA) affirming the respondent State Board of Retirement's decision declining to adjust his retirement date. The magistrate admitted nine exhibits into evidence and issued a decision on the papers pursuant to 801 CMR 1.01(10)(b) on September 3, 2021. Mr. Loconto filed a timely appeal to us.

After reviewing the evidence in the record and the arguments presented by both parties, we adopt the magistrate's Findings of Fact as our own, with modifications to Finding of Fact #2, and we incorporate the DALA decision by reference.¹ For the reasons discussed below, we affirm the magistrate's decision.

¹ The first sentence of Finding of Fact #2 states, citing Exhibit 7, that "[q]uestions arose at some point about Mr. Loconto's physical ability to perform his job." However, Exhibit 7 says nothing about Mr. Loconto's physical ability to perform his

Background. Mr. Loconto worked as a social worker for the Department of Transitional Assistance (DTA).² In February 2018, he was placed on leave.³ Beginning on March 16, 2019, Mr. Loconto's leave was deemed unauthorized.⁴ On April 26, 2019, DTA informed Mr. Loconto by letter that he would be "permanently separated from [his] position" as of that date.⁵

On May 17, 2019, Mr. Loconto submitted an application for a termination retirement allowance pursuant to M.G.L. c. 32, § 10(2)(a).⁶ The State Board of Retirement ("the Board") approved Mr. Loconto's application and identified June 4, 2019 as his effective retirement date.⁷ Mr. Loconto then asked the Board to adjust

job, nor is there any such reference in the other exhibits or the Board's submissions. Finding of Fact #2 also states, again citing Exhibit 7, that "[i]n February 2018, the DTA granted [Mr. Loconto] a paid leave of absence of a limited duration," but neither Exhibit 7 nor any other exhibit explicitly supports this statement. Exhibit 9 appears to show that Mr. Loconto received earnings until July 21, 2018, but the document does not state that Mr. Loconto was on a paid leave of absence of limited duration, and it is possible that from February 2018 to July 21, 2018, Mr. Loconto used accrued paid time off (e.g., vacation time, sick time) and that his leave of absence was otherwise unpaid. The Board's written submissions to DALA also do not make the nature of Mr. Loconto's leave clear. Citing Exhibit 9, the Board simply states, both in its initial written submission and in its response to Mr. Loconto's objections: "Payment records provided to the Board indicate that Mr. Loconto was contributing to the retirement system on some kind of paid leave through July 21, 2018." Given these ambiguities, we amend Finding of Fact #2 to state as follows:

"Questions arose at some point regarding Mr. Loconto's ability to perform his job, and he was placed on leave in February 2018. Beginning on March 16, 2019, Mr. Loconto was on an unauthorized leave of absence. (Ex. 7)."

² Finding of Fact #1; Ex. 3.

³ Finding of Fact #2.

⁴ Finding of Fact #2.

⁵ Findings of Fact # 3-4; Ex. 7.

⁶ Finding of Fact # 4; Ex. 3.

⁷ Finding of Fact # 4; Ex. 1.

his retirement date to February 2018, which he characterized as the date on which he was put on leave.⁸ The Board changed Mr. Loconto's retirement date to April 26, 2019 but denied his request for a February 2018 retirement date.⁹

Mr. Loconto appealed the Board's decision to DALA, arguing that his retirement date should be February 27, 2018 because he was removed from his job on that date. The Board argued that there was no support for Mr. Loconto having a February 2018 retirement date because Mr. Loconto remained a DTA employee until his employment was terminated effective April 26, 2019.

The magistrate affirmed the Board's decision declining to adjust Mr. Loconto's retirement date to February 27, 2018. The magistrate found that the Board had reasonably concluded that Mr. Loconto had been terminated on April 26, 2019, the date that DTA informed him of his separation from employment, and that his retirement date was therefore April 26, 2019. The magistrate also reasoned that even if Mr. Loconto's employment had been terminated on February 27, 2018, under G.L. c. 32, § 10(3), his retirement date could not be February 27, 2018 unless he had filed his retirement application within 60 days of his termination, which he did not do.

Mr. Loconto timely appealed the DALA decision. Mr. Loconto did not address the magistrate's legal rationales in the DALA decision. Rather, Mr. Loconto specifically objected to statements in Finding of Fact #2 that questions had arisen

⁸ Finding of Fact # 5; Exs. 1-2.

⁹ Finding of Fact #5; Ex. 1.

about his physical ability to perform his job and that DTA had granted him a paid leave of absence in February 2018. Mr. Loconto stated that his leave of absence was unpaid and that it was inaccurate to say that there were questions about his physical ability to perform his job. In addition, Mr. Loconto alleged that he had been illegally terminated, retaliated against, and gaslighted.

Discussion. Because Mr. Loconto applied for a termination retirement allowance pursuant to G.L. c. 32, § 10(2)(a), the effective date of his retirement is governed by G.L. c. 32, § 10(3), which provides in relevant part:

The retirement allowance of any member entitled thereto under the provisions of subdivision (1), (2) or (2)(A) of this section shall become effective on the date of his termination of service if his written application therefor is filed with the board not more than sixty days after such date; otherwise his retirement allowance shall be deferred. Any such member may, at any time thereafter and before attaining the maximum age for his group, file with the board his written application for such retirement allowance, and thereupon such retirement allowance shall become effective on the date which shall be specified in such application and shall be not less than fifteen days nor more than four months after the filing of such application but in no event later than the maximum age for his group.

Put simply, under G.L. c. 32, § 10(3), the retirement date for a member entitled to a termination allowance will be the same as the member's termination date if the member files a retirement application no later than 60 days after their termination. If a member files a retirement application more than 60 days from their termination (but before attaining the maximum age for their group), then their retirement date will be the date specified in their application and such date shall be between fifteen days and four months from the date of filing their retirement application.

We agree with the magistrate's conclusion that the Board reasonably concluded that Mr. Loconto's termination date was April 26, 2019, as the record shows that DTA informed Mr. Loconto that his separation from employment would be effective on that date. Because Mr. Loconto filed his retirement application within 60 days of April 26, 2019 (he filed on May 17, 2019), it follows that under G.L. c. 32, § 10(3), his correct retirement date was his April 26, 2019 termination date. We further agree with the magistrate that even assuming, *arguendo*, that Mr. Loconto's employment was terminated on February 27, 2018, he would not be entitled to a February 27, 2018 retirement date because he filed his retirement application more than 60 days after February 27, 2018.

Mr. Loconto did not raise any legal objections to the magistrate's decision but instead disputed the statements in Finding of Fact #2 that questions were raised about his physical ability to perform his job and that DTA initially placed him on a paid leave of absence. As explained in footnote 1, we find that the record is unclear on these points, and we have modified Finding of Fact #2 accordingly. However, to the extent that the original Finding of Fact #2 contained inaccuracies about the nature of Mr. Loconto's leave (i.e., paid or unpaid) or the nature of the questions about his ability to perform his job, any such inaccuracies were immaterial to the magistrate's ultimate legal conclusion that, under G.L. c. 32, § 10(3), Mr. Loconto was not entitled to a February 27, 2018 retirement date.

Finally, CRAB and DALA have no jurisdiction over Mr. Loconto's allegations concerning illegal termination, retaliation, and gaslighting, and as a result, we do not address them here.

Conclusion. We affirm the DALA decision concluding that Mr. Loconto's correct retirement date is April 26, 2019 and that he is not entitled to a February 27, 2018 retirement date. ***Affirm.***

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD¹⁰

Did Not Participate

Melinda E. Troy, Esq.
Assistant Attorney General
Chair
Attorney General's Appointee

Did Not Participate

Nicolle M. Allen, Esq.
Governor's Appointee

Patrick M. Charles

Patrick M. Charles, Esq.
Public Employee Retirement Administration
Commission Appointee

Date: December 15, 2025

¹⁰ CRAB Standing Order 2008-1 is silent as to whether a majority vote requires a majority of the members, a majority of the quorum, or a majority of the votes cast. The traditional rule, quoted from Judith A. Roberts, Robert's Rule of Order 110 (1978), is that "[a] majority vote... is a majority of the votes cast, ignoring blanks." A member of a body may be present for purposes of achieving a quorum, but may choose not to vote, in which case the body may take action based on a majority of the votes cast even if the majority of the quorum does not vote in the affirmative. See generally *In re Opinion of the Justices*, 98 N.H. 530, 532-533 (1953); cf. *Cashman v. Entwistle*, 213 Mass. 153, 155 (1912) (action is taken on a majority of votes cast; blank ballots "cannot stop the machinery of government").