

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

**MASSACHUSETTS WATER RESOURCE AUTHORITY
EMPLOYEES' RETIREMENT SYSTEM,**

Petitioner-Appellant

v.

PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION,

Respondent-Appellee.

CR-19-320

DECISION

Petitioner Massachusetts Water Resource Authority (MWRA) Employee Retirement System appeals from a decision of an Administrative Magistrate of the Division of Administrative Law Appeals (DALA) affirming the decision of the Respondent Public Employee Retirement Administration Commission (PERAC) determining that Mr. Richard Capozzi was properly retired prior to his death and that Option C retirement benefits must be paid to his widow. The magistrate determined that this appeal could properly be decided on the papers pursuant to 801 CMR 1.01(10)(c). The magistrate admitted ten exhibits into evidence. The DALA decision is dated August 14, 2020. The MRWA Employee Retirement System filed a timely appeal to us.

After considering the evidence in the record and the arguments presented by the parties, we adopt the magistrate's Findings of Fact 1 – 10 as our own and incorporate the DALA decision by reference. For the reasons stated in the Conclusion and Order, we affirm adding the following comments. Mr. Capozzi's retirement was effective as of the date specified on his application for retirement. G.L. c. 32, § 5(1)(a). A retirement option election cannot be changed after the member has retired.

Discussion. Mr. Capozzi began working for the MWRA on May 26, 1987.¹ He married Debra (Ragucci) Capozzi on June 4, 1989.² He submitted a Change of Beneficiary form naming his wife as the sole beneficiary on January 17, 2000.³ On May 1, 2019, Mr. Capozzi filed his retirement application with an effective date of retirement of May 26, 2019.⁴ He completed a Choice of Retirement Option Form on May 1, 2019 electing Option C at retirement. Mrs. Debra Capozzi acknowledged this election on the same day.⁵ The MWRA Employee Retirement System received Mr. Capozzi's retirement papers on May 4, 2019.⁶ On June 13, 2019, Mr. Capozzi passed away from a terminal illness. He is survived by his wife.⁷

The MWRA Employee Retirement System was unaware that Mr. Capozzi had a terminal illness. Wanting to provide Option D benefits to Mr. Capozzi's widow, it explained to PERAC that had it known Mr. Capozzi was suffering from a terminal illness, it would have advised him of the more beneficial benefit of Option D for his wife and taking sick leave rather than retiring.⁸ PERAC, however, advised the MWRA Employee Retirement System that Option D was available only if the member died prior to being retired. In this matter, PERAC determined that Mr. Capozzi was retired as of the date specified on his retirement application – May 26, 2019. Since he elected Option C naming his wife as his beneficiary at retirement, Mrs. Capozzi would only be eligible for Option C retirement benefits.⁹

The magistrate agreed with PERAC and determined that Mr. Capozzi was retired as of the date specified on his retirement application and that a spouse meeting certain criteria may elect to receive benefits under Option D if there was no eligible nominated Option C beneficiary. Because Mr. Capozzi retired on May 26, 2019 and Mrs. Capozzi was an eligible nominated Option C beneficiary, the magistrate concluded that the Option D benefits were not available to Mrs. Capozzi.

¹ Exhibit 1; Finding of Fact 1.

² Ex. 1; FF 2.

³ Ex. 3, FF 3.

⁴ Ex. 4; FF 4.

⁵ Ex. 3, 5; FF 5.

⁶ Ex. 4, FF 6.

⁷ Ex. 6, 7; FF 7.

⁸ Ex. 7; FF 8.

⁹ Ex. 8; FF 9.

The MWRA Employee Retirement System disagreed, explaining that while he had ceased working due to his serious medical condition, Mr. Capozzi had only submitted an application for retirement with an “anticipated” retirement date reflected on his application. The System argues that the “anticipated” retirement date was not sufficient to determine that Mr. Capozzi had “actually” retired. In furtherance of its position, the System advances the argument that since a contractual relationship exists between the System and Mr. Capozzi, this relationship had not been realized to render Mr. Capozzi retired prior to his passing. This argument is based on the “quasi-contractual relationship” that is established pursuant to G.L. c. 32, § 25(5) when an individual enters employment with a governmental entity and becomes a member of the retirement system. *See Opinion of the Justices*, 364 Mass. 847 (1973) (Section 25(5) “create[es] something less than a full contractual relationship, but one that protects the core of a member’s reasonable expectations of vested pension rights against the gratuity theory of government pensions that was utilized successfully in the mid-1950’s in avoidance of claims of impairment of contract under the State and Federal Constitutions). The System maintains that the contractual relationship is completed when Mr. Capozzi receives his first retirement benefit payment. Since he had not received his first retirement benefit payment prior to his passing, Mr. Capozzi had not “actually” retired. Thus, the MWRA Employee Retirement System asserts that Mrs. Capozzi could change the option election to Option D. The System also contends that the phrase “before being retired” in Section 12(2)(d) is ambiguous and is not clearly understood as the phrase “effective date of retirement” noted in the same section. It argues that the Legislature intended a different meaning for the phrase “before being retired” and implores the Contributory Retirement Appeal Board (CRAB) to adopt its interpretation of when a member is determined to be “actually” retired.

While we are extremely sympathetic to Mrs. Capozzi’s circumstances and grateful for Mr. Capozzi’s years of service with the MWRA, we agree with the magistrate that Mr. Capozzi was retired as of the date specified on his retirement application and that Mrs. Capozzi is only entitled to the Option C retirement benefit. The provision implicated in this matter is §5(1)(a), which states in pertinent part:

“Any member in service or any member inactive on authorized leave of absence classified in either Group 1 or Group 2 or Group 4 who has attained age 55... and upon his written application on a prescribed form filed with the board ... as provided for in subdivision

(1) of section sixteen and subject to the conditions set forth in said section and in this section *shall be retired* for superannuation as of a date which shall be specified in such application and which shall be subsequent to but not more than four months after filing of such application.”

(emphasis added). The language of the provision is clear and unambiguous. The date specified in the retirement application is the effective date of retirement and the date to which the member is deemed “retired.” Where the statutory language is plain and unambiguous, there is no need to look beyond that language to properly interpret it. *See State Board of Retirement v. Boston Retirement Board*, 391 Mass. 92, 94 (1984). While the MWRA Employee Retirement System urges CRAB to interpret “retired” to mean a member is not actually retired until the member receives the first retirement benefit payment, we cannot expand on the plain meaning of “retired” as noted in §5(1)(a). “[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result.” *Commonwealth v. Hatch*, 438 Mass. 618, 622 (2003) (quoting *Sullivan v. Brookline*, 435 Mass. 353, 360 (2001)). Here, Mr. Capozzi specified his date of retirement as May 26, 2019. He was retired as of that date, electing Option C retirement benefits with Mrs. Capozzi as the named beneficiary. CRAB has consistently held that an option election may not be changed after retirement.¹⁰

As much as we appreciate the MWRA Employee Retirement System’s endeavor to obtain the maximum benefit for Mrs. Capozzi, the System’s interpretation to use the specified date on the retirement application as an “anticipated” retirement date would lead to an absurd result. If the Legislature wanted the date specified on the retirement application to be the “anticipated” retirement date, it would have so denoted. Further, retirement boards need to know the exact date upon which a member is to be retired to calculate the correct amount of the member’s retirement benefit. Applying the System’s interpretation would not allow for an efficient process and would actually burden the retirement boards with unnecessary tasks. The benefit calculation would also be dependent on the member accurately reporting to the retirement board the date of

¹⁰ *Donoghue v. State Board of Retirement*, CR-11-531 (CRAB Sept. 30, 2016)(option selection may not be changed after retirement); *Elmi v. Massachusetts Teachers’ Retirement System*, CR-17-110 (CRAB July 23, 2018)(retirement law does not allow change in a member’s option selection after retirement);

the receipt of the first retirement benefit payment, which is not an accurate calculation of the benefit since the member is not “actually” retired until the date of receipt of the payment. Moreover, in a situation where the member passes away before receiving the retirement benefit payment, there would be no actual retirement date. Following the System’s interpretation results in a process that is cumbersome, unpredictable and is fraught with issues. We do not believe the Legislature had this in mind when drafting this provision and decline to adopt such an interpretation.

Further, a similar matter was discussed in an Opinion of the Attorney General, reported in Rep. A.G., Vol. VIII at 120 (June 15, 1926), where an issue arose as to the amount of assessments paid under G.L. c. 32, §11(4) to the estate of a member who filed a retirement application designating his retirement date but subsequently passed away after the date of retirement but before the retirement board took action on the member’s application. In answering the questions posed, the Attorney General noted that it was necessary to ascertain whether at the date of the member’s death the member had been retired. He concluded that “the member’s retirement became effective at the date fixed in his application, and was not affected by his subsequent death.” *Id.* at 121. In further support of this proposition, the Attorney General expressed that “[h]ad he lived, his allowance would have been computed as of that date, and upon the basis of his then age. His estate can take nothing under G.L. c. 32, § 11(4).” The Attorney General noted that the member was eligible to retire based on the terms of the statute as evidenced by his application with an elected retired dated noted therein. While the member passed away following that date without any action by the retirement board, this action by the member brought about his retirement and the member’s death did not vacate the retirement. *Id.* The Attorney General went on to state that the statute did not confer any added powers to the board. Accordingly, the member’s retirement was not affected by the fact that the member died before action was taken by the board.

Accordingly, we determine that the date of a member’s retirement is the date specified on the retirement application. The retirement allowance becomes effective on the date of retirement. G.L. c. 32, § 5(2). Section 12(1) provides that “the option elected shall take effect as of the date the retirement allowance of such member becomes effective.” Here, Mr. Capozzi retired on May 26, 2019 and elected Option C designating Mrs. Capozzi as the beneficiary. Mrs. Capozzi is not

permitted to change Mr. Capozzi's option election after his retirement. The DALA decision is affirmed. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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Date: June 3, 2024