

COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

MARK PANANOS,
Petitioner-Appellant

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,
Respondent-Appellee.

CR-16-527

DECISION

Petitioner Mark Pananos appeals from a decision of an administrative magistrate in the Division of Administrative Law Appeals (DALA). The DALA magistrate affirmed the decision of the Massachusetts Teachers' Retirement System (MTRS) that Pananos is not eligible to collect retirement benefits. Magistrate Kenneth Bresler heard the case in November 2018 and admitted twenty-four exhibits. Following Magistrate Bresler's departure from DALA, Magistrate Kenneth Forton issued a decision based on the parties' written submissions under 801 C.M.R. 1.01(7)(g)(3) and entered three additional exhibits over Mr. Pananos's objection. Magistrate Forton issued a decision on July 12, 2019. Mr. Pananos filed a timely appeal to us.

The magistrate held that G.L. c. 32, § 15(4) renders Mr. Pananos ineligible for retirement benefits under Chapter 32. Section 15(4) indicates that state employees who are convicted of a criminal offense involving violation of the laws governing their position are ineligible for retirement benefits. The magistrate further found that DALA does not have jurisdiction over petitioner's claim that forfeiture of his retirement benefits constitutes an excessive fine under the Eighth Amendment.

After reviewing the evidence in the record and the arguments presented by the parties, we adopt the DALA magistrate's Findings of Fact 1-20 as our own and incorporate the DALA decision by reference. We affirm the DALA decision because the plain language of § 15(4) clearly precludes individuals who have forfeited retirement benefits are not eligible for future retirement benefits. Furthermore, state administrative agencies, including DALA and CRAB, do not have jurisdiction over constitutional questions.

Factual Background

Mr. Pananos was employed by Holyoke High School as a mathematics teacher and Treasurer of the Holyoke High School Athletic Association from 1979-1996.¹ On November 9, 1995, Mr. Pananos was indicted on two counts of larceny over \$250 and was accused of the theft of roughly \$13,000.² His employment with Holyoke High School was terminated in June of 1996, and he submitted Part I of his refund application to the MTRS to withdraw his retirement contributions in November of 1996.³ Mr. Pananos pled guilty to one count of larceny over \$250 on January 8, 1997.⁴ His sentence of two and a half years in prison was suspended in exchange for paying restitution of the missing \$13,340 to Holyoke High School.⁵ On May 27, 1997, the MTRS provided Mr. Pananos an estimate of his refund, including accrued interest, and Part II of the refund application, which contained a statement that the signer understands that upon payment of the amount due, the signer would terminate his membership in the MTRS and surrender all rights and privileges under Massachusetts retirement law.⁶ On May 30, 1997, the MTRS sent Mr. Pananos an updated estimate of his refund, indicating that "under Massachusetts General Laws chapter 32, § 15(4), you must forfeit your interest as a result of your conviction."⁷ Mr. Pananos's ultimate refund balance was \$23,429.52. Of this, \$13,340 was distributed to the City of Holyoke as restitution, \$8,881.94 was sent to his ex-wife pursuant to a domestic relations order, and Mr. Pananos himself received the remaining \$1,207.58.⁸

¹ Findings of Fact 1; Exhibits 19, 20.

² FF 3; Ex. 2, 3.

³ FF 4, 5; Ex. 7, 8.

⁴ FF 6; Ex. 4.

⁵ *Id.*

⁶ FF 7, 8; Ex. 9.

⁷ FF 10; Ex. 11.

⁸ FF 11; Ex. 11, 12, 13, 14.

From approximately 1996 to January 2005, Mr. Pananos worked in private education.⁹ In January 2005, he resumed public employment, working as a mathematics curriculum director at Springfield Public Schools until June 2006.¹⁰ From September 2006 until the present, Mr. Pananos has been employed by the Westfield Public Schools as a mathematics teacher at Westfield High School.¹¹ In 2006, he also resumed membership in the MTRS. In a letter dated November 10, 2016, MTRS informed Mr. Pananos that under G.L. c. 32 § 15(4), he had forfeited his rights to the Teachers' Retirement System in 1997 and thus was not eligible for retirement benefits.¹² Mr. Pananos had retirement contributions deducted from his paycheck until 2018.¹³

On appeal to DALA, the magistrate initially dismissed the matter because Mr. Pananos failed to comply with an order for prehearing memorandum and because DALA lacked jurisdiction to hear constitutional claims. Mr. Pananos appealed to CRAB, which remanded the case to DALA for an evidentiary hearing and a decision on February 9, 2018. A hearing occurred on November 15, 2018. DALA affirmed the decision of MTRS on July 12, 2019, finding that DALA lacked jurisdiction over petitioner's Eighth Amendment claim and that G.L. c. 32, § 15(4) precludes the petitioner from receiving retirement benefits. In Finding of Fact #6, DALA found that on December 9, 2017, David Sherman, ASA, MAAA issued a report presenting his calculation of the value of accrued benefits for the time Mr. Pananos was employed by Holyoke, Springfield, and Westfield schools. However, because the claim was precluded by § 15(4), DALA did not issue official findings on the value of Mr. Pananos' lost benefits.¹⁴ Mr. Pananos filed a timely appeal to CRAB, requesting that we take one of two actions: either remand the case to DALA for an independent finding on the value of lost benefits or hold that the forfeiture constituted a violation of the excessive fines clause of the Eighth Amendment.¹⁵

Discussion

⁹ FF 12.

¹⁰ FF 13.

¹¹ FF 14.

¹² FF 15.

¹³ FF 12-16.

¹⁴ FF 16-20.

¹⁵ Supplemental Memorandum of Objection at 13-14.

1. *Statutory requirement of forfeiture.* We agree with DALA that the forfeiture provision of G.L. c. 32, § 15(4) prohibits Mr. Pananos from receiving retirement benefits. G.L. c. 32, § 15(4) provides:

“In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance under the provisions of section one to twenty-eight, inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member. The said member or his beneficiary shall receive, unless otherwise prohibited by law, a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero.”

When a statute is unambiguous, we are directed to give the language its plain and ordinary meaning.¹⁶ Here, the meaning of the phrase “in no event” has a clear meaning. No future events, including future employment with the state that would otherwise confer benefits under Chapter 32, shall entitle an individual to receive a retirement allowance following conviction of a criminal offense involving violation of the laws applicable to his position.

We have previously affirmed this interpretation in *Gaffney v. Bristol County Retirement Board and PERAC*, where we held that the text of G.L. c. 32 § 15(4) requires that individuals who forfeit their pension under these provisions are entitled only to the return of accumulated deductions without interest and are not entitled to benefits for future state employment.¹⁷ This case is indistinguishable from *Gaffney*. Under the clear language of the statute, a forfeiture under § 15(4) applies indefinitely, and MTRS’s removal of Mr. Pananos from the retirement system constitutes mere compliance with the statute governing the initial forfeiture, not a second forfeiture.

It is undisputed that Mr. Pananos was convicted of a criminal offense involving violation of the laws applicable to his position. When he was convicted in 1997, he forfeited the right to, not only the benefits he had previously accrued, but any right to future benefits. Section 15(4) clearly precludes Mr. Pananos from receiving retirement benefits from the state. Neither DALA

¹⁶ See *Commonwealth v. Mogelinski*, 466 Mass. 627, 633 (2013).

¹⁷ *Gaffney v. Bristol County Retirement Board*, CR-12-505, at *4 (DALA Feb. 1, 2013), aff’d (CRAB Dec. 5, 2013).

nor CRAB has the authority to impose an equitable remedy in the face of clear statutory language to the contrary,¹⁸ and so we are required to affirm the decision of MTRS.

2. *Jurisdiction over Eighth Amendment Claim.* Neither CRAB nor DALA has jurisdiction over the Mr. Pananos' Eighth Amendment claim. Administrative agencies including DALA and CRAB do not have jurisdiction over issues of constitutional law.¹⁹ In *Maher v. Justices of the Quincy Division of the District Court Department*, the Appeals Court held that administrative agencies lack the authority to determine questions of constitutional law. The Court pointed out that "the determination of the constitutionality of a statute as applied can be one of the most difficult and sensitive tasks performed by the judiciary," particularly in claims regarding Eighth Amendment excessive fine issues for which there is limited precedent. While *PERAC v. Bettencourt* determined that forfeitures under § 15(4) constitute fines for the purposes of the Eighth Amendment and listed factors relevant to the question of whether a forfeiture constitutes an excessive fine,²⁰ the application of these factors to determine a constitutional question is a task that CRAB has no authority to undertake. Thus, Mr. Pananos' Eighth Amendment claim is beyond CRAB's authority to resolve.

3. *Calculation of loss resulting from forfeiture.* Mr. Pananos also requests that the case be remanded to DALA for calculation of losses resulting from his forfeiture. We affirm that DALA is not required to calculate the amount of loss resulting from Mr. Pananos' pension forfeiture. In *Maher*, the Court indicated that most of the facts required to resolve an Eighth Amendment claim are "not within the special expertise of a retirement board," and instead involve "the type of fact finding ordinarily undertaken by the courts."²¹ While nothing precludes DALA from making findings on these issues of fact, *Maher* indicates that DALA and CRAB are not required to do so. In a case like this, where neither CRAB nor DALA has jurisdiction over the underlying constitutional claim, it makes little sense to require DALA to make such findings. As such, CRAB does not need to remand the case to DALA for calculation of losses.

Conclusion

¹⁸ *Petrillo v. PERAC*, CR-92-731 (DALA decision 2/15/92, aff'd by CRAB 10/22/93).

¹⁹ *Maher v. Justices of the Quincy Division of the District Court Department*, 67 Mass. App. Ct. 612, 619 (2006).

²⁰ *PERAC v. Bettencourt*, 474 Mass. 60 (2016).

²¹ *Id.* at 621.

We affirm the DALA decision. MTRS properly rescinded Mr. Pananos' membership in the system because his prior forfeiture under G.L. c. 32, § 15(4) precluded him from receiving a retirement allowance. Mr. Pananos is entitled to a return of his accumulated deductions without interest. CRAB lacks the jurisdiction to address Mr. Pananos' constitutional claims.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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Date: December 20, 2023