

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

---

**PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION,**

**Petitioner-Appellant**

**v.**

**BARNSTABLE COUNTY RETIREMENT BOARD & DANIEL PARKKA,**

**Respondents-Appellees.**

**CR-17-394 & CR-21-0155**

---

**DECISION**

---

Pursuant to G.L. c. 32, § 16(4), petitioner Public Employee Retirement Administration Commission (PERAC) has filed objections to two decisions of an administrative magistrate of the Division of Administrative Law Appeals (DALA), collectively holding that respondent Daniel Parkka did not exceed his allowable earnings under G.L. c. 32, § 91A, in two periods—2011-2015 (CR-17-394) and 2018-2019 (CR-21-0155). We adopt the DALA magistrate’s determination in each case that Mr. Parkka did not exceed his allowable earnings under G.L. c. 32, § 91A. We also adopt as our own the DALA’s magistrate’s findings of fact from each case, including the DALA magistrate’s credibility determinations. We add the following comments to address the primary factual issue in this case—whether Mr. Parkka’s labor, management, or supervision resulted in more profits for his wife’s business than was reflected in his wages and, if so, the extent to which the business’ income is attributable to him beyond his wages.

1. Under G.L. c. 32, § 91A, the “earnings from earned income” of accidental and ordinary disability retirees may not exceed “the amount of regular compensation which would have been payable to such member if such member had continued in service in the grade held by him at the time he was retired plus \$15,000 ....” In the event the retiree’s earnings from earned income exceed this amount, “the member shall refund the portion of his retirement allowance ...

equal to such excess ....” The purpose of Section 91A “is to prevent the overpayment of retirement benefits to individuals who are, by their labor, management, or supervision, earning a significant amount of money while simultaneously receiving a disability allowance.” *Boston Ret. Bd. v. Contributory Ret. App. Bd.*, 441 Mass. 78, 83 (2004).

Consistent with Section 91A, PERAC has defined “earnings from earned income” in 840 C.M.R. § 10.16(4). In pertinent part, it provides that “[p]rofits derived from the operation of a business through some labor, management or supervision of such profits are earned income, regardless of how a retiree categorized such income for income tax or other purposes.” 840 C.M.R. § 10.16(4). This definition, the Supreme Judicial Court explained when addressing a pre-regulation PERAC memorandum that contained the same definition of “earnings from earned income,” “furthers [the purpose of Section 91A] because it prevents disability retirees ... from circumventing the statute by labeling earnings as something other than what they are.” See *Boston Ret. Bd.*, 441 Mass. at 80 n.6, 83.

In conjunction with this regulation, PERAC has an internal policy regarding spouses and shared ownership in a corporation or business venture. Where a disability retiree has an ownership or other interest in any business with their spouse or other immediate family member, PERAC presumptively splits the business profits 50-50 unless the facts warrant a different division of the profits. The basis for the policy is that income generated from a closely-held family business through a disability retiree’s “labor, management or supervision” necessarily falls within the definition of earnings from earned income in 840 C.M.R. § 10.16(4). We accordingly acknowledge PERAC’s policy as a critical and permissible means to elicit cooperation, information, and documentation from retirees. We further find that PERAC appropriately applied the presumption in this instance where this matter involved a disability retiree having ownership or other interest in a business with their spouse.

2. As the DALA magistrate recognized, however, PERAC’s policy is a rebuttable presumption. And here we find that the DALA magistrate, after consideration of all the evidence, did not err when he determined that Mr. Parkka had overcome the presumption; that Mr. Parkka’s wage accurately reflects his contributions to the business; and that none of the business’ income between 2011 and 2015 as well as between 2018 and 2019 should therefore be attributed to him.

In conducting this analysis, we draw from the five-part test set forth most recently in *West Springfield Retirement Board v. PERAC*, CR-11-584 (DALA Nov. 9, 2016). Under that test, we must examine the following factors:

- (1) Whether the retiree is a passive investor or contributes labor, management, or supervision to the enterprise;
- (2) If the retiree does contribute labor, management, or supervision to the business, what the value of the contribution is;
- (3) Whether the retiree's compensation is commensurate with the value of his contribution;
- (4) Whether the other shareholders of the family business are being overcompensated for their contributions; and
- (5) The amount, if any, of ordinary income of the business that should be imputed to the retiree based on his ownership interest and/or contributions.

*W. Springfield Retirement Bd.*, CR-11-584 (DALA Nov. 9, 2016). Taken together, these factors require us to assess Mr. Parkka's and Ms. Parkka's roles at PCC; PCC's revenues, including those derived from Mr. Parkka's work; the wage that PCC paid Mr. Parkka for his work; and the compensation Ms. Parkka received from PCC. We examine each below.

**The Parkkas' Roles.** The evidence here establishes that Ms. Parkka's role at PCC was much more substantial than Mr. Parkka's. Ms. Parkka worked 50-70 hours per week, managed all of PCC's subcontractors, managed all of PCC's client relationships, oversaw the business development, and assigned Mr. Parkka his work. For these reasons, the DALA magistrate deemed Ms. Parkka as the person primarily responsible for the ongoing success of PCC. By contrast, Mr. Parkka, while more than a passive investor in PCC, was an hourly wage employee who worked between approximately 16 and 20 hours per week. His primary role was to review and edit reports called Special Investigation Unit ("SIU") reports before they were sent out to PCC's clients (insurers). His secondary responsibilities consisted of (1) occasional court appearances relating to the SIU reports, (2) limited work on accident reconstruction cases that were largely dormant, and (3) very limited "black box work."

**PCC's Business Income and Mr. Parkka's Wage.** The evidence establishes that the SIU work was responsible for 90% of PCC's revenue and almost 100% of its net profits. The evidence here also establishes that Mr. Parkka was paid an hourly wage (\$30 per hour between

2011 and 2015 and \$45 per hour between 2018 and 2019) for approximately 16 to 20 hours of work per week during this period. In 2018 and 2019, PCC expanded its work to include “black box” download service to assist in verifying insurance claims. The table that follows shows PCC’s business income and Mr. Parkka’s overall wages for these periods.

Year	PCC’s Business Income	Mr. Parkka’s Wages
2011	\$6,814	\$12,000.02
2012	\$21,069	\$19,084.83
2013	\$57,565	\$18,000
2014	\$102,099	\$18,000
2015	\$114,335	\$29,250
2018	\$97,294	\$31,925.00
2019	\$105,437	\$34,808.33

**The Substance of Mr. Parkka’s Work.** We now turn to assessing whether Mr. Parkka’s compensation was commensurate with the value of his contribution to the PCC. As to the substance of his work, the evidence establishes that Mr. Parkka worked between 16 and 20 hours per week for PCC and that his primary responsibility was serving as the final reviewer and named author of all PCC’s SIU reports (some 600 to 800 per year). The evidence also establishes that Mr. Parkka’s secondary responsibilities consisted of (1) occasional court appearances relating to the SIU reports, (2) limited work on a few remaining accident reconstruction cases that were largely dormant and that did not generate revenue for PCC, and (3) very limited “black box work.” While PERAC suggests that this set of responsibilities establishes that Mr. Parkka had a much more substantial role at PCC than reflected in his total annual wages, we instead agree with the DALA magistrate’s determination that Mr. Parkka’s actual annual compensation from PCC (*i.e.*, his wage) was consistent with the value of his contributions to PCC.

Mr. Parkka’s primary responsibilities included work as the final reviewer and named author of all SIU reports (some 600 to 800 per year). Because Mr. Parkka was paid a substantial wage and once PERAC’s 50-50 presumption was overcome, PERAC had to do more to show that his wage was not commensurate with PCC’s overall income. But even though there was at least one readily available way to establish this (*i.e.*, compare PCC’s per-report revenue to its

per-report costs, and then assess this in comparison with Mr. Parkka's hourly wage), PERAC did not pursue discovery and/or testimony about how much PCC charges for a single report or what costs PCC has in preparing a report (*e.g.*, the subcontractors, Mr. Parkka, and overhead, to name three). Nor did it seriously question Mr. Parkka's testimony that (1) he works between four and five hours per day, five days per week or (2) that he reviews about three reports a day (a number that is consistent with the testimony that he reviews between 600 and 800 reports per year).<sup>1</sup> While PERAC's Fraud Prevention Manager reviewed IRS documents and interviewed Mrs. Parkka, she did not interview Mr. Parkka.<sup>2</sup>

---

<sup>1</sup> Even from this final point PERAC could have developed evidence to challenge the Parkkas' credibility. For instance, accepting his testimony about the number of hours he worked per day and the number of days he worked per week, PERAC could have asked him to multiply that by his hourly rate and then him to compare that figure with his actual wages in both 2018 (\$31,925, *see* FF 60) and 2019 (\$34,808.33, *see* FF 67). Similarly, PERAC could have asked Mr. Parkka (a) about the average amount of time it takes him to complete a report and (b) for a more precise number of reports he completes per year. PERAC then could have multiplied the cost per report by the total number of reports to estimate the actual cost to PCC, comparing that figure with his actual wages in both 2018 (\$31,925, *see* FF 60) and 2019 (\$34,808.33, *see* FF 67).

But PERAC did not do any of this. Nor did it do anything else to establish that Mr. Parkka was underpaid for the revenue his efforts were generating for PCC. And given the range for each of these numbers in Mr. Parkka's testimony, as well as his testimony that he only worked one to two hours on some days, *see* Transcript II at 33:5-11, we are not inclined to speculate as to how these calculations might have come out or how the results might have influenced our current decision.

Here, Mr. Parkka testified about the number of hours he worked per day and the number of days he worked per week, as well as the average amount of time it takes him to complete a report and the number of reports he completes per year. There was no challenge to his testimony to ensure that this corresponded with the reported costs to PCC and Mr. Parkka's actual reported wages in both 2018 (\$31,925, *see* FF 60) and 2019 (\$34,808.33, *see* FF 67). Nor was there evidence to establish that Mr. Parkka was underpaid for the revenue his efforts were generating for PCC. And given the range for each of these numbers in Mr. Parkka's testimony, as well as his testimony that he only worked one to two hours on some days, *see* Transcript II at 33:5-11, we are not inclined to speculate as to how these calculations might have come out or how the results might have influenced our current decision. Further, there was no reason to reject the magistrate's credibility finding with respect to Mr. Parkka's testimony.

<sup>2</sup> Exhibits 19, 21-25 (CR-17-394); Findings of Fact 52 (CR-17-394; 38 (CR-21-0155).

Mr. Parkka's secondary responsibilities do not compel a different result. As to Mr. Parkka's court appearances, the DALA magistrate specifically found in finding of fact 22 that "PCC is not hired by insurance companies based upon Mr. Parkka's skills," a point that PERAC does not meaningfully refute. Similarly, as to the black box work, the unrefuted testimony established that while Mr. Parkka had a certification for the black box download service, Ms. Parkka handled all the work with the subcontractors, who performed almost all of the downloads. Finally, on the accident reconstruction front, PCC had stopped accepting new accident reconstruction business because the cases were not cost effective. Additionally, PCC had gotten rid of its accident reconstruction equipment, Mr. Parkka had not renewed his license for accident reconstruction work, and the few accident reconstruction cases PCC still had were largely dormant.

**Overcompensation of Ms. Parkka.** With PERAC's 50-50 presumption rebutted, PERAC has not advanced another basis from which we could reasonably conclude that Ms. Parkka received more income from PCC than what she was reasonably entitled to based on her own efforts. When exploring this factor, we look at, among other things, whether Mrs. Parkka was receiving income that is more appropriately attributable to Mr. Parkka's efforts. Here, there is ample evidence that Ms. Parkka was doing substantial work at PCC such that it generated a significant amount of the income. Again, the testimony established that Ms. Parkka made the business decisions, assigned Mr. Parkka his work, oversaw the business development, and managed PCC's subcontractors.

Accordingly, we uphold the DALA magistrate's decisions that Mr. Parkka's contributions to the business were accurately reflected in his wages and that there is not a sufficient basis on this record to impute the ordinary income of PCC to Mr. Parkka. Because Mr. Parkka's wages alone did not exceed "the amount of regular compensation which would have been payable to such member if such member had continued in service in the grade held by him at the time he was retired plus \$15,000 ...," we find that there is no basis to recoup money from Mr. Parkka.

***Conclusion.*** The DALA decisions are affirmed.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

*Uyen M. Tran*

---

Uyen M. Tran  
Assistant Attorney General  
Chair  
Attorney General's Appointee

*Nicolle M. Allen*

---

Nicolle M. Allen, Esq.  
Governor's Appointee

Did not participate

---

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

October 11 , 2023