

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Douglas Racca,
Petitioner,

No. CR-23-0103

Dated: April 12, 2024

v.

Boston Retirement Board,
Respondent.

Appearances:

For Petitioner: Joseph G. Donnellan, Esq.

For Respondent: Natacha Thomas, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner's employment was terminated on the basis of his participation in criminal drug distribution and his concomitant drug use. Eighteen years later, the petitioner applied to retire for superannuation. His application was not meritorious under the applicable provisions of the retirement law, in part because his termination entailed moral turpitude.

DECISION

Petitioner Douglas Racca appeals from a decision of the Boston Retirement Board determining that he is not entitled to a retirement allowance. The parties jointly waived the right to a live hearing. They filed briefs, exhibits, and supplemental memoranda during February-April 2024. I admit into evidence exhibits marked 1-9.

Findings of Fact

I find the following facts.

1. Mr. Racca began working as a correction officer in April 1983. His employer was the Suffolk County Sheriff's Department. (Exhibit 1.)

2. At some point, Mr. Racca became involved in a drug-distribution operation. He used a prison telephone to further the distribution efforts. In June 1999, Mr. Racca was arrested

and charged with conspiracy to distribute prescription drugs. He eventually pleaded guilty and served three years of probation. (Exhibits 2, 3, 7.)

3. In May 2000, the sheriff's department terminated Mr. Racca's employment. The department described the basis for the termination as Mr. Racca's criminal conduct and concomitant drug use. By that time, Mr. Racca had accumulated just under seventeen years' worth of creditable service. (Exhibits 3, 7.)

4. In June 2018, Mr. Racca applied to retire. During the ensuing months, the board allowed the application and began to pay Mr. Racca an allowance. (Exhibits 4, 5.)

5. Spurred by reasons unclear from the record, the board later launched an effort to revoke Mr. Racca's allowance on the basis of his criminal conviction. The board first commenced forfeiture proceedings under G.L. c. 32, § 15(4). In March 2022, after an evidentiary hearing, the board issued a forfeiture decision, which Mr. Racca appealed to the Boston Municipal Court. (Exhibits 1, 7.)

6. Based on subsequent advice from PERAC, the board arrived at the conclusion that the forfeiture proceedings had been unnecessary; in the board's updated view, the various provisions of G.L. c. 32, §§ 5, 10 had not entitled Mr. Racca to any allowance in the first place. The board informed Mr. Racca of its decision to that effect in February 2023.¹ He timely appealed. (Exhibits 8, 9.)

¹ The board's decision incorporated a letter prepared by PERAC. That letter analyzed several of the specific provisions of §§ 5, 10, though not § 10(2)(b). *See infra* p.3.

Analysis

The conditions under which a public employee may be entitled to a retirement allowance are established by a collage of statutory provisions. They appear in various subdivisions and clauses of G.L. c. 32, §§ 5, 10.

Most of these provisions are inapplicable to Mr. Racca by operation of undisputed facts. He was no longer in service or on authorized leave when he applied to retire, which rules out § 5(1)(a).² He has accumulated fewer than twenty years of creditable service, which rules out the first portion of § 10(1)³ and all of § 10(2)(a).⁴ He was less than fifty-five years old when his employment was terminated, which rules out the second portion of § 10(1).⁵ And he left his public position involuntarily, which rules out § 10(2)(b½).⁶

The one provision that requires close attention is § 10(2)(b), which awards an allowance to “[a]ny member classified in Group 1, Group 2 or Group 4, who has completed 10 or more years of creditable service, and who . . . is removed or discharged from his office or position without moral turpitude on his part.” The dispute in this context concentrates on whether Mr. Racca was discharged with or without “moral turpitude.”

² “Any member in service or . . . on authorized leave of absence . . .” § 5(1)(a).

³ “Any member . . . after completing twenty or more years of creditable service . . .” § 10(1)(a).

⁴ “Any member . . . who has completed twenty or more years of creditable service . . . or who has completed thirty or more years of creditable service . . .” § 10(2)(a).

⁵ “[A]ny member who, *after* having attained age fifty-five, resigns, or fails of reappointment or is removed or discharged from his office or position without moral turpitude on his part . . .” § 10(1)(a) (emphasis added). As discussed shortly, Mr. Racca in any case fails the “without moral turpitude” requirement.

⁶ “Any member . . . who resigns or voluntarily terminates his service . . .” § 10(2)(b½).

CRAB has defined moral turpitude as “conduct that is contrary to justice, honesty or morality . . . an act of baseness, vileness or depravity . . . contrary to the accepted and customary rule of right and duty between people.” *Butkiewicz v. State Ret. Bd.*, No. CR-00-1237, at *2 (CRAB Oct. 21, 2002). CRAB has added that “[t]he test is . . . not morality in the abstract, but whether, taking the nature of the member’s employment into account, the acts complained of rendered the [member] unfit to perform the duties which he had undertaken.” *Rapisardi v. MTRS*, No. CR-00-983, at *5 (CRAB Mar. 30, 2004). *See Sullivan v. Brockton Ret. Bd.*, No. CR-14-104, at *11-12 (DALA June 12, 2015, *aff’d*, CRAB July 23, 2018); *Hajjar v. Methuen Ret. Syst.*, No. CR-18-569, at *5-6 (DALA July 1, 2022).

It sometimes may be difficult to determine whether a given set of circumstances entailed moral turpitude. But here any uncertainty is eliminated by *Rapisardi, supra*. The member in that matter was a teacher who confessed to simple possession of cocaine. CRAB concluded that the teacher’s termination entailed moral turpitude, emphasizing “the role of teachers in our society and the importance of drug enforcement for the protection of our youth.” *Rapisardi, supra*, at *6. With this guidepost in mind, it is impossible to doubt that moral turpitude attaches to the termination of a correction officer who was involved not only in possession but in a distribution operation. *See also Alexander v. Exxon Co., U.S.A.*, 949 F. Supp. 1248, 1253 (M.D.N.C. 1996) (doubts in the case law about whether simple possession involves moral turpitude do not extend to possession with intent to distribute).⁷

⁷ Mr. Racca has elected to rely on a thin documentary record rather than testifying. I do not draw adverse inferences from that permissible choice. On the other hand, the current decision necessarily relies on the record presented, and not on any conjecture about the testimony that Mr. Racca might have offered if he had taken the stand. *See* G.L. c. 30A, § 11(4).

Because Mr. Racca was terminated with moral turpitude, he is not entitled to a termination allowance under § 10(2)(b). It therefore is not necessary to dwell on the implications of § 10(2)(c), which denies certain allowances to “[a]ny member who is removed or discharged for violation of the laws, rules and regulations applicable to his office or position” *See generally Retirement Bd. of Revere v. Contributory Ret. Appeal Bd.*, 48 Mass. App. Ct. 1104, slip op. at *5 (1999) (unpublished memorandum opinion). *Cf. State Bd. of Ret. v. Finneran*, 476 Mass. 714, 722 (2017) (analyzing the modifier “applicable to his office or position” in the related context of § 15(4)).⁸

Conclusion and Order

In view of the foregoing, the board’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
 Yakov Malkiel
 Administrative Magistrate

⁸ CRAB has drawn a conceptual distinction between a “denial of . . . the enhanced benefit of a termination allowance” and a “complete forfeiture of a member’s pension.” *Barnstable Cty. Ret. Bd. v. PERAC (Fayne)*, No. CR-12-572 (CRAB July 25, 2016). The latter consequence “ought to be reserved for the most serious cases.” *Id.* The Legislature and the appellate courts have expressed a similar attitude specifically in the context of forfeitures under G.L. c. 32, § 15(4). Such forfeitures are appealable directly to the District Court, § 16(3), and must be analyzed for excessiveness under the Eighth Amendment to the United States Constitution. *Public Emp. Ret. Admin. Comm’n v. Bettencourt*, 474 Mass. 60 (2016). There may arise circumstances in which provisions other than § 15(4) effect complete forfeitures and thus implicate equivalent concerns. *See Fayne, supra; Retirement Bd. of Revere*, 48 Mass. App. Ct. at 1104. It is not entirely clear whether the current case is among them, given that the only benefit to which Mr. Racca would have been eligible if not for his misconduct is an enhanced termination allowance under § 10(2)(b). *See supra* p. 3. In any event, Mr. Racca has not argued that § 10(2)(b) or other applicable provisions produce unconstitutional results in his case; and any such argument would need to be made in the judicial courts. *See Baker v. Director of Div. of Unemployment Assistance*, 83 Mass. App. Ct. 1105 (2013) (unpublished memorandum opinion); *Sarno v. MTRS*, No. CR-07-253, at 6-7 (DALA Oct. 29, 2010).