

CASES OF INTEREST



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RECENT CASES OF INTEREST

- *O'Leary*
- *Elwell*
- *Gallagher*
- *Hajjar*
- *Nassiff*
- *Monteiro*
- *Stillwell*
- *Warren*
- *Smith*
- *Murphy*
- *Worcester Reg. (Vernava II)*
- *Hong*
- *Kotkin*
- *Krentzman*
- *Jessica J.*
- *Harper*
- *Melillo*
- *McGeary*
- *Travers*
- *Mystic Valley Reg. (Kravitz)*
- *Dufresne, et al.*

O'Leary v. PERAC, Lexington Retirement Board, & CRAB

- Case No.: 2021-P-0394 (SJC)
- Decision Date: Aug. 11, 2022
- In a nutshell: The SJC ruled that payments made in lieu of unused vacation time can never be considered regular compensation and, therefore, should not be included in a retirement calculation.
- HOWEVER, one week prior to this decision, the Governor signed Chapter 147 of the Acts of 2022 into law, which created G.L. c. 32, sec. 106, which exempts retirees who already had such payments calculated into their retirement benefit and exempted certain other limited members.
- See PERAC Memo #23 of 2002 for full analyses. Boards that did not take deductions from payments for unused vacation time as of May 1, 2018, do not have to take any further action.

Elwell v. Gloucester Retirement Board

- Case No.: CR-16-488 (DALA)
- Decision Date: July 8, 2022
- **In a nutshell:** Police Officer injured her foot in the line of duty and missed several months of work. She returned to work without restriction. During her last shift, she argued with a supervisor about a dress code violation. She said she was sick and left. The next day she claimed that her foot hurt, and she could no longer work.
- DALA: Pursuant to the standard established in *Vest v. CRAB*, 41 Mass. App. Ct. 191 (1996), she failed to establish that she was injured on her last day of work and was ineligible for Accidental Disability Retirement (ADR).
- Appealed to CRAB.

Gallagher v. Bristol County Retirement Board

- Case No.: CR-20-0135 (DALA)
- Decision Date: July 1, 2022
- **In a nutshell:** Elected official who did not apply for membership within 90-days of his election should not have been permitted to purchase such prior elected service time after becoming enrolled in the retirement system.
- G.L. c. 32, Sec. 3(2)(a)(vi) very specifically provides a 90-day window to apply for membership, which overrides the less specific buy-back provisions under Sections 3(3) and 3(5).
- Even if he had not been informed of the option to apply for membership within 90-days of election, the Board was not required to have notified him of his eligibility for membership.
- Final decision.

Hajjar v. Methuen Retirement Board

- Case No.: CR-18-0569 (DALA)
- Decision Date: July 1, 2022
- **In a nutshell:** Member filed for superannuation and the Board subsequently sought to retroactively suspend and then terminate her pension based on moral turpitude grounds for theft.
- DALA: City cannot retroactively suspend an “employee” who has already voluntarily retired for superannuation.
- Final decision.

Nassiff v. Mass. Teachers' Retirement System

- Case No.: CR-18-0500 (DALA)
- Decision Date: Oct. 28, 2022
- **In a nutshell:** Teacher was notified of his imminent termination. Disputed the termination and eventually entered into settlement agreement with employer. Pursuant to the terms, teacher was awarded “back pay” (period of time from the termination to the date of the settlement agreement) and “front pay” (period of time from the settlement agreement to the start of next school year).
- Teacher did not perform any services for employer, but “back pay” is an exception in wrongful termination cases, so considered regular compensation and awarded creditable service. No such exception exists for “front pay” which is essentially severance pay and specifically excluded from definition of wages.
- Final decision.

Monteiro v. PERAC

- Case No.: CR-19-0453 (DALA)
- Decision Date: Oct. 7, 2022
- **In a nutshell:** Terminated employee filed lawsuit for wrongful termination. Jury returned a large verdict amount for “back pay, front pay, and consequential damages.” Employee deferred her retirement for several years and requested creditable service for the entire deferment, on the basis that the verdict was intended to compensate her for her truncated career.
- Like a settlement agreement, a jury verdict for “back pay” is considered regular compensation, but “front pay” is not regular compensation, so employee was not awarded creditable service for any time after the date of the jury verdict.
- Final decision.

Stillwell v. Middlesex County Retirement System

- Case No.: CR-19-0945 (DALA)
- Decision Date: June 24, 2022
- **In a nutshell:** An injured employee may not be eligible for ADR if they have been offered an accommodated position, if the essential duties of the accommodated position are similar in responsibility and purpose, with no loss of pay.
- Here, there was insufficient evidence to suggest that the member had in fact been offered an accommodated position, or whether any such claimed accommodation could even have been possible.
- Final decision.

Warren v. Boston Retirement Board

- Case No.: CR-13-199 (DALA)
- Decision Date: Sept. 30, 2022
- In a nutshell: Police Officer successfully proved a causal connection between one of his work-place injuries as an aggravation of a pre-existing condition but was not entitled to ADR because he failed to prove that he was incapacitated on his last day of work.
- He was offered a modified position that was substantially similar to the job he was performing at the time of his injury, and his decision to retire rather than accept the modified duty precluded ADR.
- Appealed to CRAB.

Smith v. Gloucester Retirement Board, & PERAC

- Case No.: CR-19-493 (DALA)
- Decision Date: Apr. 22, 2022
- In a nutshell: Firefighter passed away from cancer and his beneficiary was awarded “accidental death” benefits under Section 9, pursuant to the cancer presumption of Section 94B.
- Beneficiary also applied for “killed in the line of duty benefits” under Section 100. That benefit specifically excludes presumption cases, but the beneficiary argued that the Firefighter’s death was directly attributable to one particular fire he fought in his career.
- Although that one fire might have been a contributing cause of his death, it was not enough to prove that it was the proximate cause, given the other exposures throughout his life and career.
- Appealed to CRAB.

Murphy v. Newton Retirement Board & PERAC

- Case No.: CR-17-724 (DALA)
- Decision Date: May 13, 2022
- In a nutshell: Member swapped shifts with colleagues throughout his career. In October of 2011, employers and retirement boards were charged with monitoring swapped shifts, to ensure that an employee does not get creditable service for shifts he or she did not work.
- Member retired in 2017, owing 9 months of shifts. Board decreased his creditable service by 9 months and repaid him his contributions.
- DALA reversed the decision of the Board, finding that it was “very likely” that the member had been owed shifts prior to October of 2011, and that the swapped shifts “netted out.” DALA reversed the Board’s decision and credited the member with the disputed 9 months of creditable service.
- Appealed to CRAB.

Worcester Reg. Ret. Board & Others v. PERAC (Vernava II)

- Case No.: SJC-13137
- Decision Date: Feb. 4, 2022
- In a nutshell: Supplemental payments of vacation and sick time taken in conjunction with Workers' Compensation benefits are not regular compensation, regardless of the type of retirement.
- Final decision of the Supreme Judicial Court.

Sukhyune Hong v. State Board of Retirement

- Case No.: CR-17-843
- Decision Date: May 6, 2022
- In a nutshell: Petitioner, who served as a wound care nurse, was not entitled to Group 2 classification under G.L. c. 32, § 3(2)(g) because the individuals she treated only had a “secondary” diagnosis of mental illness.
- Ms. Hong appealed to CRAB.

Leonid Kotkin v. State Board of Retirement

- **Case No.:** CR-17-1024
- **Decision Date:** May 27, 2022
- **In a nutshell:** Denial of Group 2 classification was reversed as evidence showed that Petitioner, as a urologist, spent a majority of his time providing direct care to inmates or mentally ill patients as required by G.L. c. 32, § 3(2)(g).
- State Board of Retirement appealed to CRAB.

Mark Krentzman v. Everett Retirement Board

- **Case No.:** CR-19-0368 (DALA)
- **Decision Date:** Jun. 17, 2022
- **In a nutshell:** Petitioner is entitled to an evaluation by a medical panel as he made out a prima facie case for accidental disability benefits. Additionally, the Board failed to support its charges of serious and willful misconduct with reliable evidence.
- **Final decision of CRAB.**

Jessica J. v. Mass. Teachers Ret. System

- Case No.: CR-20-288 (DALA)
- Decision Date: Jun. 3, 2022
- In a nutshell: Denial of Petitioner's application for accidental disability retirement affirmed as the day-to-day teaching of hostile and profane middle-schoolers did not qualify as a "hazard" under G.L. c. 32, § 7.
- Final Decision of CRAB.

Kenneth Harper v. Middlesex County Retirement Board

- Case No.: CR-21-0067 (DALA)
- Decision Date: May 13, 2022
- In a nutshell: Petitioner is not entitled to a retroactive retirement allowance payment during the time his benefits were terminated for failure to file his tax return with PERAC pursuant to G.L. c. 32, § 91A.
- Final Decision of CRAB.

Christina Melillo v. Gloucester Retirement Board

- **Case No.:** CR-19-0178
- **Decision Date:** Sept. 16, 2022
- **In a nutshell:** Petitioner is entitled to an evaluation by a medical panel as there was sufficient evidence that she was in the performance of her duties, delivering interoffice mail, when she was injured. Her stop for a sandwich did not obviate the fact that she was still performing her duties when she fell.
- Gloucester Ret. Bd. appealed to CRAB.

Maryann McGeary v. Webster Retirement Board

- **Case No.:** CR-20-0261 (DALA)
- **Decision Date:** Sept. 9, 2022
- **In a nutshell:** Affirmed denial of Petitioner's request to change her retirement Option from B to C as G.L. c. 32, § 12(1) does not allow a retiree to change options after retiring. Regardless of whether Petitioner met an exception for invalidating her selection, the default Option is B, which is what she chose.
- **Final decision of CRAB.**

JT Travers v. Winchester Retirement Board & PERAC

- **Case No.:** CR-21-0080 (DALA)
- **Decision Date:** Nov. 29, 2022
- **In a nutshell:** Affirmed PERAC's decision directing the Winchester Retirement Board to recover excess earnings for calendar year 2019 from the Petitioner pursuant to G.L. c. 32, § 91A. The fact that his 2019 pension was paid in 2020 was irrelevant.
- Mr. Travers appealed to CRAB.

Mystic Valley Reg. Charter School (Robert Kravitz) v. State Board of Ret. & PERAC

- Case No.: CR-20-0243
- Decision Date: Nov. 29, 2022
- In a nutshell: Petitioner is not eligible for membership in the State Retirement System because he is a non-teaching employee of the charter school.
- Mr. Kravitz appealed to CRAB.

Michael Dufresne, et al. v. State Board of Retirement

- Case No.: CR-19-0572 (DALA)
- Decision Date: Jul. 29, 2022
- In a nutshell: State Board of Retirement's denial of waivers for several members who owed missed contributions because of the employer's failure to deduct retirement contributions was affirmed as the Board's denial was not arbitrary or capricious.
- Final decision of CRAB.

QUESTIONS?

