

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

Division of Administrative Law Appeals

Mayli Shing,
Petitioner

v.

Docket No. CR-22-0102
Date: December 12, 2025

State Board of Retirement,
Respondent

Appearance for Petitioner:

Mayli Shing, pro se

Appearance for Respondent:

Alison K. Eggers, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

After several revisions based on updated information from the retired Petitioner's employer, including pay data and a settlement agreement that resulted from a lawsuit against the employer, the State Board of Retirement has properly calculated Petitioner's retirement allowance. The Board shall pay the Petitioner's retirement allowance according to its latest calculations and shall make a retroactive make-up payment, including correction-of-errors interest, to Petitioner.

DECISION

Petitioner Mayli Shing appeals the retirement allowance calculation made by Respondent State Board of Retirement. *See G.L. c. 32, § 16(4).* It was a complicated

calculation because the compensation that she received in her highest three years included regular wages, partial disability workers' compensation, and court-ordered back pay and front pay in connection with a lawsuit Ms. Shing brought against her employer, the Department of Revenue (DOR).

Pursuant to several scheduling orders, on July 28, 2023, the Board submitted its explanation of the retirement allowance calculation, along with 13 attachments. On September 14, 2023, Ms. Shing submitted a memorandum supporting her proposed calculation, with 4 attachments. After conducting a status conference on October 24, 2023, I ordered Ms. Shing to produce her pay stubs. After Ms. Shing produced the pay stubs, on February 1, 2024, the Board agreed to re-calculate her retirement allowance. The Board had significant difficulty re-calculating the allowance because it needed more information from DOR, a further meeting was required, Ms. Shing preferred meeting in person with Board employees, and the employee who performed the calculation came to work in Boston just one day each month. Ultimately, the Board made several adjustments to its calculation, but these adjustments did not fully resolve the parties' differences.

On December 13, 2024, I ordered Ms. Shing to explain in detail the remaining differences. Ms. Shing requested until March 31, 2025, to respond. On April 2, 2025, she submitted her explanation and 6 proposed exhibits, marked Exs. 1-6. On June 13, 2025, the Board submitted a response to Ms. Shing's explanation, along with 5 additional proposed exhibits, marked Exs. 7-11.

After reviewing the parties' memoranda and documents, I have determined that this appeal can be decided on written submissions. 801 CMR 1.01(10)(c). I hereby enter the parties' proposed exhibits into evidence as marked. (Exs. 1-11.) I also enter into evidence the Board's July 28, 2023 attachments, as marked. (Attachments 1-13.)

FINDINGS OF FACT

Based on the documents in evidence, I make the following findings of fact:

1. Mayli Shing, born in 1960, is a retired member of the State Board of Retirement. She began working for the DOR on August 30, 1987 and stopped working for DOR April 1, 2007. She deferred her retirement from state service and ultimately retired effective February 16, 2021. She also worked for the City of Cambridge from October 24, 1983 through August 6, 1984. (Attachment 1.)

2. In 2001, Ms. Shing sued DOR, alleging violations of G.L. c. 151B. She claimed that "she had been subjected to discrimination and retaliation in not receiving promotions for which she had applied and by other means." (Attachment 4.)

3. On April 21, 2006, the parties entered into a Release and Settlement Agreement that provided a gross sum of \$300,000.00, divided as follows: \$57,500.00 for emotional suffering; \$100,000 for attorney's fees; and \$72,500.00 (less ordinary withholding and retirement contributions) for lost wages. The remaining \$70,000.00 was paid subject to the following provision: "From the date of this agreement until April 2, 2007, DOR shall pay Ms. Shing wages of *no less than* Seventy Thousand Dollars (\$70,000.00) . . ." For this last period, Ms. Shing would be on administrative leave, and

she would be considered involuntarily separated from employment on April 2, 2007.

(Attachment 4.) (Emphasis added.)

4. Ms. Shing earned the floor salary of \$70,000.00 from April 21, 2006 until May 28, 2006, when her salary was increased to \$73,700.00, where it remained until the agreed upon involuntary separation. (Attachment 4; Ex. 9.)

5. The settlement agreement was incorporated into an order of the court, dated April 21, 2006, which provided:

Plaintiff Mayli Shing shall receive full credit for retirement purposes for the wages described below to be paid to her by the Commonwealth of Massachusetts, Department of Revenue. Specifically, the Court orders \$72,500 as back pay wages for the period April 21, 2004 to April 20, 2006. As agreed between the parties, for the period April 21, 2006 until April 2, 2007, Plaintiff's salary shall be \$70,000, which is intended as creditable service under the Commonwealth retirement system.

(Attachment 4.)

6. Ms. Shing has applied to retire before. On May 4, 2007, just after her involuntary separation, she filed an application to retire under G.L. c. 32, § 10(2), which provides an enhanced benefit under certain circumstances if the member has accumulated at least 20 years of creditable service. The Board rejected her application because she had a total of only 18 years, 6 months, 24 days of creditable service. She did not qualify for retirement under G.L. c. 32, § 5 either because she was Group 1 and had not yet attained 55 years of age. *Shing v. State Bd. of Ret.* ("Shing I"), CR-07-454 (Div. Admin. L. App. June 16, 2009).

7. Ms. Shing appealed the Board's creditable service calculation to DALA. In a decision dated June 16, 2009, DALA affirmed the retirement board's calculation. Ms. Shing did not appeal the DALA decision. *Id.*

8. Ms. Shing did not work for a government employer again. She deferred retiring until October 30, 2020, when she applied to retire again, this time under § 5 because she had attained 61 years of age, more than the minimum age for Group 1. Despite its earlier calculation in *Shing I*, based on fresh and more accurate information from DOR, the Board credited Ms. Shing with 18 years, 7 months, 27 days of service.

(Attachments 2, 3.)

9. DOR initially provided annual salary rate information to the Board so that it could calculate her allowance. The relevant rates were:

7/31/03 – 10/29/05:	\$54,418.52
10/30/05 – 1/7/06:	\$58,327.10
1/8/06 – 4/20/06:	\$59,493.46
4/21/06 – 4/1/07:	\$70,000.00

DOR failed to report accurately her salary for May 28, 2006 through April 1, 2007, which, as discussed *supra*, was increased to \$73,700.00. (Exs. 8, 9.)

10. DOR also reported shift differentials of \$3,635.55 for January 1, 2004 through December 31, 2004 and \$3,082.30 for January 1, 2005 through December 31, 2005. (Ex. 8.)

11. These salaries correspond to Ms. Shing's reported grades and steps for the reported periods. HR/CMS, the state's compensation system, shows the following grade and step designations for Ms. Shing on the following dates: January 24, 2004,

CSES (Child Support Enforcement Specialist) I, Grade 20/Step 12; October 30, 2005, CSES II, Grade 21/Step 12; and April 21, 2006, TA (Tax Auditor) I, Grade 16, no step listed.¹

12. The pay records from DOR align with the grades and steps listed by HR/CMS and with the pay tables found in the relevant collective bargaining agreements.

Compare Ex. 2 with Ex. 8.

13. I infer from the record that the Board initially calculated a retirement allowance for Ms. Shing that did not include any of the money that she received under the settlement agreement, as DOR had not provided it to the Board. (Attachment 5.)

14. On September 23, 2021, the Board notified Ms. Shing that it was adjusting her retirement allowance upward to reflect “settlement salary amounts back to 4/21/04 start of settlement period.” This calculation was based on Ms. Shing receiving a \$70,000 salary plus differentials for all but 19 days of her highest three years of regular compensation. This resulted in her gross retirement allowance increasing from \$2,016.50 to \$2,387.92. (Attachment 5.)

15. Ms. Shing disputed the Board’s calculation. The Board clarified that its calculation was based on representations from DOR that the settlement agreement should be interpreted to mean that she received compensation of \$70,000 annually for the nearly three-year period reflected in its September 23, 2021 recalculation. This interpretation of the settlement agreement turned out to be incorrect. (Attachment 7.)

¹ It is possible that no step was listed because Ms. Shing was on administrative leave for the entire period that she was listed as a TA I. During this period, she received the negotiated amount that was not tied to any specific grade and step.

16. Ms. Shing disputed the Board's response again. After more communication between DOR and the Board, DOR muddied the waters once more by stating that the \$72,500 of back wages was her total wages for the period April 21, 2004 through April 20, 2006, but also affirmed that DOR "reported her" at \$70,000 for the same period. (Attachment 8.)

17. The Board disagreed with DOR's interpretation of the settlement agreement and court order. The Board maintained that for Ms. Shing to receive creditable service for the period covered by her \$72,500.00 of back wages, she would have had to have been re-instated to her position and her total compensation would be the amount that she was actually paid for that period plus \$36,250.00 per year (half of the back wages). (Attachment 9.)

18. DOR affirmed the Board's interpretation but clarified that Ms. Shing was never re-instated because she was not terminated until the date the parties agreed upon in the settlement. During the period for which she received the \$72,500.00 back wages, she was on administrative leave. DOR continued to argue, though, that her retirement allowance should be based on the compensation that Ms. Shing actually received. The Board and DOR continued to wrangle until December 27, 2021, when DOR finally provided the pay information that the Board requested. (Attachment 9.)

19. After yet further review, on January 14, 2022, the Board informed Ms. Shing that it would base her retirement allowance calculation not on any salary from a reinstated position, but rather on (1) the actual compensation that she received during the three relevant years, (2) plus differentials, (3) plus the \$72,500.00 back wages, and

(4) reflecting the agreed upon \$70,000.00 rate she was paid for her almost full last year.

This resulted in a significant increase to her monthly retirement allowance, which was re-calculated to \$2,802.42. (Attachments 10, 11.)

20. Ms. Shing requested a further breakdown of her adjusted benefit. On February 28, 2022, the Board responded:

Retirement benefits are determined by multiplying a member's years of creditable service, in whole years and whole months by their age factor to arrive at the benefit percent. This percent is multiplied by the weighted average of the member's highest consecutive 36 months of regular compensation, which determines the gross annual benefit. The gross monthly benefit is determined by dividing this amount by 12.

Your benefit was calculated as follows:

- 1.) Your accrued creditable service was eighteen (18) years and seven (7) months. . . .
- 2.) [The Board] determines creditable service on a 12-month basis, so we must divide the 7 months by 12 to arrive at 0.58333. Therefore, we use 18.58333 in your benefit calculation.
- 3.) At the time of your retirement, you were 61 years old. Pursuant to M.G.L. c. 32, § 5(2) (enclosed), the age factor for 61 years of age is 2.1%, or 0.021. When we multiply this age factor by your years of creditable service, we arrive at 30.02499%

. . .

- 4.) Your adjusted salary average of \$86,173.04 was determined by calculating the weighted average of your highest 36 consecutive months of regular compensation, as reported by your former employer, plus the \$72,500.00 settlement you received for the years 2004 to 2006. The \$70,000 that you received for 2006 – 2007 as part of the settlement was entered as your salary rate from 4/21/2006 – 4/1/2007. The enclosed Salary Request & Release Form shows the annual salary rates and differentials reported. I have also enclosed the spreadsheet used to determine your adjusted salary average.

5.) To determine your monthly amount under Option A, the adjusted salary average was multiplied by 39.02499%.

- $\$86,173.03 \times 39.02499\% = \$33,629.04$ (gross annual amount)
- $\$33,629.04/12 = \$2,802.42$ (gross monthly amount)

...

The Board gave Ms. Shing her appeal rights. (Attachment 12.)

21. On March 10, 2022, Ms. Shing timely appealed the Board's calculation. (Attachment 13.)

22. The Board uses the 1095-day (365 days x 3 years) average method to calculate members' salary averages. The Board multiplies each annual salary within the most highly compensated 1095-day period by the number of days that salary was received, sums the individual totals, and then divides the result by 1095. (Exs. 9, 10.)

23. Subsequent to the appeal being filed, the Board was made aware that for the period May 28, 2006, through April 1, 2007, Ms. Shing was actually paid \$73,700.00 and not the minimum of \$70,000.00, so it conceded a further adjustment to Ms. Shing's retirement allowance. This resulted in a salary average of \$87,602.65 and a monthly gross allowance of \$2,848.91. (Ex. 9.)

CONCLUSION AND ORDER

Ms. Shing challenges the Board's calculation of her retirement allowance. First, she maintains that she should be credited with 18 years, 9 months, 7 days of creditable service. Her creditable service was already the subject of an appeal to DALA, *Shing I*. There, the DALA magistrate affirmed the Board's calculation of 18 years, 6 months, 24

days. The Board correctly argues that the doctrine of issue preclusion makes the ruling on creditable service in *Shing I* binding.

Issue preclusion applies when: (1) there was a final judgment on the merits in the prior adjudication; (2) the party against whom preclusion is asserted was a party (or in privity with a party) to the prior adjudication; (3) the issue in the prior adjudication was identical to the issue in the current adjudication; and (4) the issue decided in the prior adjudication was essential to the earlier judgment. *Duross v. Scudder Bay Cap., LLC*, 96 Mass. App. Ct. 833, 836-37 (2020) (citations omitted).

Shing I is a final judgment on the merits,² as Ms. Shing did not appeal the decision to the Contributory Retirement Appeal Board (CRAB). See G.L. c. 32, § 16(4). Ms. Shing was a party to the prior adjudication, and the issue of the amount of creditable service was the same in both appeals. The amount of creditable service was essential to *Shing I* because Ms. Shing was attempting to obtain an enhanced retirement

² An adjudicative determination by an administrative tribunal is considered a “final judgment on the merits” under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication, including: (a) adequate notice to persons who are to be bound by the adjudication, (b) the right on behalf of a party to present evidence and legal argument in support of the party’s contentions and fair opportunity to rebut evidence and argument by opposing parties; (c) a formulation of issues of law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status, or a specific series thereof; (d) a rule of finality, specifying a point in the proceeding when presentations are terminated and a final decision is rendered; and (e) such other procedural elements as may be necessary to constitute the proceeding a sufficient means of conclusively determining the matter in question, having regard for the magnitude and complexity of the matter in question, the urgency with which the matter must be resolved, and the opportunity of the parties to obtain evidence and formulate legal contentions. *Restatement (Second) of Judgments* § 83(2) (1982). *Shing I* meets these requirements.

benefit under G.L. c.32, § 10(2), which required 20 years of creditable service to qualify. Falling short of that number meant that she failed to qualify for the benefit. I therefore conclude that Ms. Shing is entitled to only 18 years, 6 months, 24 days creditable service.

The Board has generously re-examined DOR's records and determined that Ms. Shing should have been credited with 18 years, 7 months, 27.31 days. If the Board wishes to credit her with more than the amount in *Shing I*, it can. But, it cannot be forced to credit her with more than the amount to which DALA determined she was entitled in *Shing I*. Moreover, even if res judicata did not apply, Ms. Shing has produced no new evidence to support her own creditable service calculation.

Next, the parties disagree on Ms. Shing's salary history. There are two differences between the data the Board relies on and the data Ms. Shing relies on. First, she asserts that she was Grade 21/Step 12 as of July 13, 2003, but HR/CMS lists her at Grade 20/Step 12 and DOR reported a salary that corresponds to the Grade 20/Step 12 designation. The Board correctly relied on the HR/CMS designation, as it matches the pay that she actually received.

Second, Ms. Shing claims Grade 18/Step 12 designation effective July 9, 2006. She arrived at that level by working backward to a grade/step that most closely correlates with the \$70,000 award she received. The settlement agreement and order

however do not list any particular grade/step; they state only the sum of \$70,000.00.³

Nothing in the record suggests that the salary specified was intended to correlate with a specific grade/step. Ms. Shing describes it as a “promotion,” but, again, nothing in the record supports that conclusion.

Next, Ms. Shing makes a variety of criticisms of the Board’s calculation of her three-year salary average. CRAB and DALA have both rejected arguments with this general thrust before: retirement boards need not consider “actual earnings, number of business days, pay periods in a year,” or Leap Year days when calculating the highest three-year average annual rate of regular compensation. *Berman v. State Bd. of Ret.*, CR-13-549, at *5 (Div. Admin. L. App. July 28, 2017); see *Mirka v. State Bd. of Ret.*, CR-11-26 at *6 (Div. Admin. L. App. July 31, 2015), *aff’d* (Contributory Ret. App. Bd. Dec. 21, 2016). These decisions instruct that the calculation need be only an approximation rather than a calculation of actual regular compensation. “This conclusion reflects the complex arrangements of retirement date, payment dates, and pay periods that present in the real world.” *Navoy v. Massachusetts Water Res. Auth. Emp. Ret. Bd. and Pub. Emp. Ret. Admin. Comm’n*, CR-17-108, at *8 (Div. Admin. L. App. July 26, 2019). The Board’s use of the 1095-day (365 days x 3 years) average method falls within accepted practice, as it is a reasonable approximation of her regular compensation.

³ As discussed *supra*, the Board did take notice that Ms. Shing was actually paid at a higher rate than the settlement agreement’s \$70,000.00 for the period May 28, 2006 through April 1, 2007, and has incorporated that figure into its calculations that resulted in the most up-to-date \$87,602.65 salary average.

Finally, Ms. Shing contends that she is due “12% compounded interest” on the various adjustments to her retirement allowance. While she is entitled to some interest, it is not 12%. I assume she is referring to the 12% statutory interest provided by G.L. c. 231, §§ 6B or 6C. Statutory interest accrues in tort actions, § 6B, and contract actions, § 6C. This matter is neither type of action; it is an administrative appeal to determine retirement benefits.

Moreover, the Supreme Judicial Court settled this question in *Herrick v. Essex Reg. Ret. Bd.*, 465 Mass. 801, 808-09 (2013).

[W]here a retired public employee receives a lesser amount of retirement benefits because of a record-keeping or computational error made by a retirement board, the retiree, once the error is discovered, shall receive the actuarial equivalent of the pension to which he is correctly entitled.

Id. at 808. The Court instructed board actuaries to determine an interest rate that would ensure retirees received the actuarial equivalent of the amount that should have been distributed. *Id.* at 809. This instruction led to PERAC Memorandum No. 32/2013 that guides boards in selecting what came to be called the “correction-of-errors interest rate” to apply to the correction of both over- and underpayment of retirement allowances. For Ms. Shing, this means that the retroactive payments that she received must have been accompanied by correction-of-errors interest, not 12% statutory interest.

For the above-stated reasons, I adopt the Board’s most recent monthly retirement allowance calculation of \$2,848.91 and order it to pay Ms. Shing accordingly. The Board shall make a further retroactive lump sum payment, along with correction-of-

errors interest, to make up for the further adjustment in Ms. Shing's retirement allowance.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: December 12, 2025