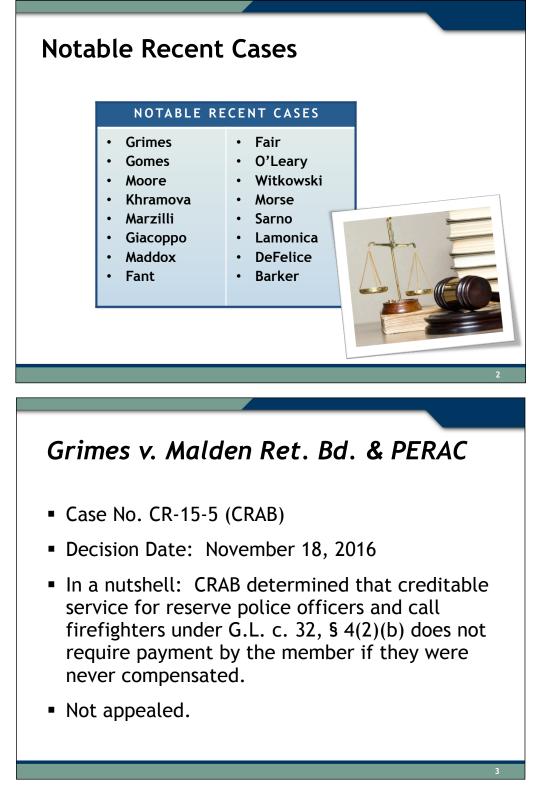
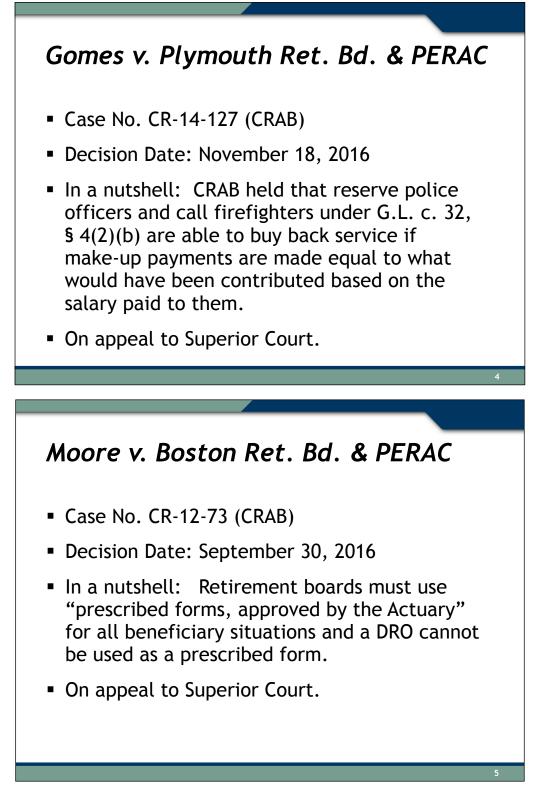
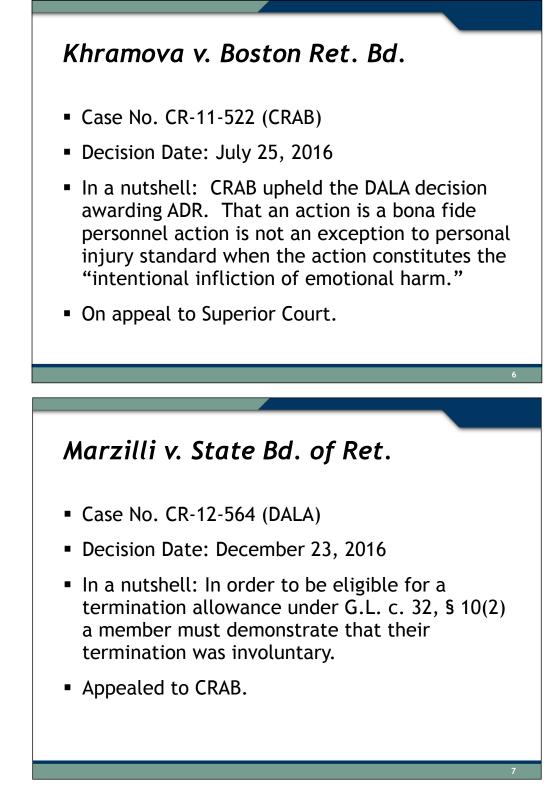
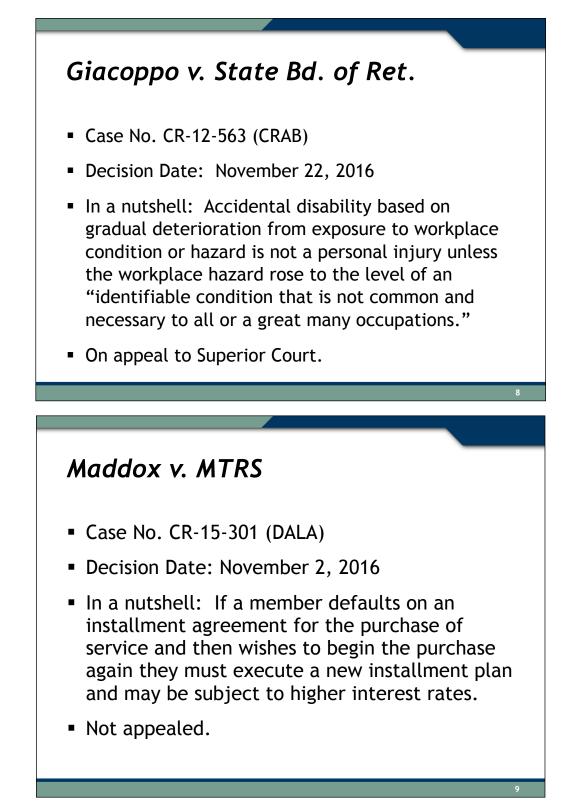


SPRING 2017









## Fant v. Middlesex County Ret. Bd.

- Case No. CR-13-68 (CRAB)
- Decision Date: August 9, 2016
- In a nutshell: Engaging in work duties at home, even important duties, does not transform the home into a work location and injuries suffered at home are not injuries that are in the performance of a member's duties and thus are not a basis for ADR.
- Not appealed.

## PERAC Memorandum #39/2012

THRESHOLD REQUIREMENTS	FURTHER CRITERIA
<ul> <li>The payments must either be part of the base salary of the employee or "other base compensation of the employee". Payments cannot be found to be "other base compensation" if a payment is of only limited duration or if the payments lack predictability.</li> <li>The payments must be for services performed. A retirement board would have to find that working in lieu of taking vacation is a "service performed".</li> </ul>	<ul> <li>Payments for unused vacation leave are not excluded by statute, regulation or case law.</li> <li>Such payments are not '1 time' because they have been made year after year.</li> <li>Such payments have not been made primarily in the last three years or for any other period of limited duration such that they could be considered 'salary enhancements or salary augmentation plans which will recur for a limited or definite term'</li> <li>If an individual elects to participate in a buyback program, he or she must do so in a consistent manner from year to year and in conformity with the legal restrictions of salary augmentation contained in the statute and regulations.</li> <li>Participation in such a plan is available to all similarly situated employees.</li> <li>Such payments were actually earned during the 12 month period for which such purchase is authorized.</li> <li>Such a payment has not been made as a result of giving notice of retirement.</li> <li>Payments must only be made pursuant to an official written policy of the employer, a collective bargaining agreement, or an individual employment contract that allows an employee to receive compensation in lieu of vacation time.</li> <li>Payments must be in a reasonable amount which would not cause a substantial burden on the retirement system.</li> <li>If such payments are deemed to be regular compensation, anti-spiking provisions would apply in the calculation of retirement benefits.</li> </ul>

## Fair v. Middlesex County Ret. Bd.

- Case No. CR-15-294 (CRAB)
- Decision Date: Nov. 18, 2016
- In a nutshell: Payments received for unused sick time do not constitute "regular compensation," regardless of what is contained within CBA. Such payments are similar to overtime payments, and are not regular and recurrent. CRAB commented – but did not rule – that the same would apply to payments made in lieu of taking vacation days.
- Not appealed.

## O'Leary v. Lexington Ret. Bd. & PERAC

- Case No. CR-15-30 (DALA)
- Decision Date: Oct. 6, 2016
- In a nutshell: Payments made in lieu of taking vacation days did not constitute "other base compensation" as they needed to be elected every year. The payments were also effectively overtime payments and, in this situation, appeared to be salary enhancements as the option was only available to officers with 20 or more years of service.
- On appeal to CRAB.

#### NOTES:

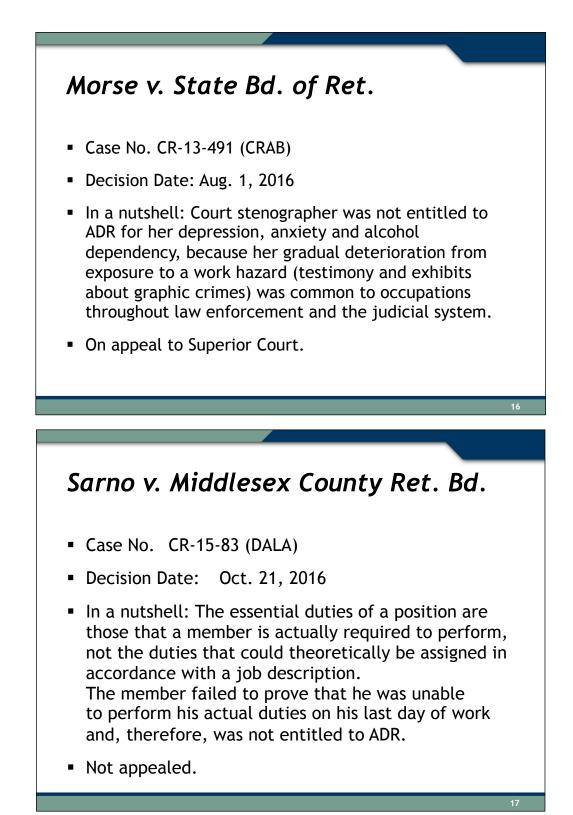
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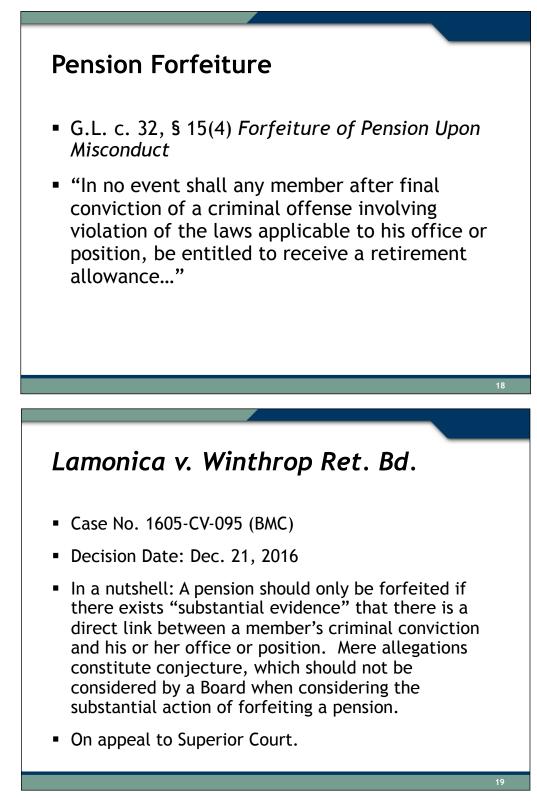


- § 7(1) Conditions for Allowance
- "Any member in service...who is unable to perform the essential duties of his job and that such inability is likely to be permanent... by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of his duties...shall be retired for accidental disability...
- ...no such retirement shall be allowed unless such injury was sustained or such hazard was undergone within two years prior to the filing of such application or, if occurring earlier, unless written notice thereof was filed with the board by such member or in his behalf within ninety days after its occurrence." (Emphases added).

### Witkowski v. CRAB & Massport Ret. Bd.

- Case No. 15-P-1382 (Appeals Ct.)
- Decision Date: Dec. 29, 2016
- In a nutshell: Member was not entitled to ADR for PTSD, because the member did not apply until ten years after undergoing the hazard, and there is no exception in section 7 for late discovery of a particular diagnosis. Further, there is no tolling of the two-year limitation period because of late discovery of the PTSD.
- Not appealed.





## G.L. c. 32, § 3 - Membership

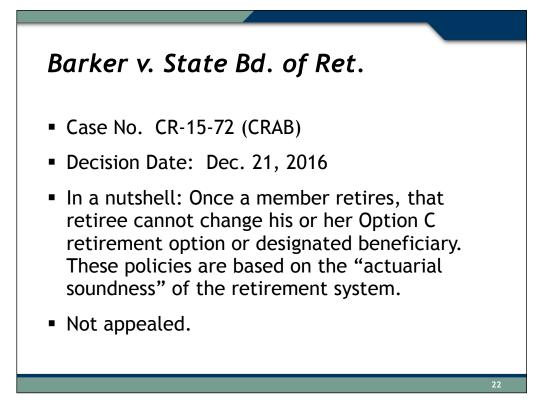
- § 3(1)(a)(i) Member in Service
- "Any member who is regularly employed in the performance of his duties...the status of a member in service shall continue as such until his death or until his prior separation from the service becomes effective..."
- § 3(2)(d)
- "In all cases involving parttime, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit...the board shall have and exercise full jurisdiction to determine such employee's eligibility for membership..."

# Stoneham Ret. Bd. v. CRAB & DeFelice

- Case No. SJC-12098 (SJC)
- Decision Date: Dec. 22, 2016
- In a nutshell: Once a member is granted initial membership in a retirement system, he or she will retain the membership status so long as he or she remains employed. Accordingly, a member whose hours or pay are reduced below the initial membership threshold of a Board may not have their membership revoked. "Once a member, always a member..." (...but not always).

#### NOTES:

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#### COMMONWEALTH OF MASSACHUSETTS

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