

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

James M. Thompson,
Petitioner

Docket No. CR-24-0713

v.

Boston Retirement System,
Respondent

Appearances:

For Petitioner: Leigh A. Panettiere, Esq.

For Respondent: Timothy J. Smyth, Esq.

Administrative Magistrate:

Judi Goldberg, Esq.

SUMMARY OF DECISION

Petitioner is not entitled to have past vacation leave buyback payments included in his last year of regular compensation for the purpose of his accidental disability retirement allowance calculation. He did not participate in the vacation leave buyback program during his last year of regular compensation and as a result respondent properly did not include vacation buyback amounts in its calculation of his pension.

DECISION

Petitioner James M. Thompson timely appealed, under G.L. c. 32, § 16(4), the decision of respondent Boston Retirement System (BRS) to deny his request to include past annual vacation leave buyback payments in the calculation of his accidental disability retirement allowance. The parties did not object to having the appeal decided based on their written submissions. I admit into evidence agreed-upon exhibits 1 to 3 and respondent's exhibits A to C.

Findings of Fact

Based on the evidence in the record and reasonable inferences drawn from it, I make the following findings of fact:

1. Before retiring from his job as a City of Boston police detective, Mr. Thompson participated in a vacation buyback program and chose to receive payments instead of using vacation time that he had earned. (Agreed-Upon Fact 5; Ex. 1.)

2. He received payments for unused vacation time in September 2010, September and October 2011, August 2012, August 2014, August 2015, August 2016, August 2017, and August 2018. These payments ranged from \$1,703.68 to \$6,846.53. (Agreed-Upon Fact 5; Ex. 1.)

3. Mr. Thompson did not participate in the vacation buyback program in 2013 or 2019. (Agreed-Upon Fact 5; Ex. 1.)¹

4. Mr. Thompson's last year of employment was from April 2, 2019, to March 31, 2020. During this last year of employment, Mr. Thompson received payment for regular, sick, holiday, nighttime differential, vacation, and other kinds of compensable time. (Agreed-Upon Fact 1; Exs. 3 & A.)

5. The BRS determined that Mr. Thompson's effective retirement date was March 31, 2020. (Ex. 3.)

6. Mr. Thompson applied for, and received final approval for, an accidental disability retirement (ADR) under the "heart law" presumption in January 2022.² (Exs. 3, B, & C.)

¹ There is no evidence as to whether Mr. Thompson participated in the vacation buyback program in 2020. Based on the evidence presented, I infer that he did not participate in 2020.

² The Heart Law presumption provides, in pertinent part, that "any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a . . . permanent member of a police department . . . shall, if he successfully passed a physical examination on entry into such service, . . . be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence." G.L. c. 32, § 94.

7. On December 9, 2024, the BRS denied Mr. Thompson’s request to include “past annual vacation leave buybacks” as part of his regular compensation for the calculation of his ADR allowance. (Ex. 3.)

8. Mr. Thompson timely appealed from that denial.

Analysis

Mr. Thompson appeals from the BRS’s denial of his request to include past annual vacation leave buyback payments as part of his regular compensation for the calculation of his ADR allowance. As the petitioner, Mr. Thompson has the burden to demonstrate by a preponderance of the evidence, or that it is more likely than not, that the BRS incorrectly applied the law or regulations, or has made a correctible administrative mistake, relating to the calculation of his retirement allowance. *See JT Travers v. Winchester Ret. Bd. et al.*, CR-21-0080, 2022 WL 18398909, at *3 (Div. Admin. Law App. Nov. 18, 2022).

The BRS’s denial of Mr. Thompson’s request occurred after a series of events that defined the parameters of vacation leave buyback payments. In 2015, a police captain asked the Lexington Retirement Board (LRB) to treat payments that he received in place of unused vacation time as regular compensation for the calculation of his retirement benefits. *O’Leary v. Lexington Ret. Bd. and Public Emp. Ret. Admin. Comm’n*, CR-15-30 (Div. Admin. Law App. Sept. 16, 2016). The LRB denied his request, deciding that payment for accrued but unused vacation time was not “regular compensation” for the calculation of his retirement benefits. *Id.* The Division of Administrative Law Appeals (DALA), the Contributory Retirement Appeal Board (CRAB), the Superior Court, and the Supreme Judicial Court (SJC) all agreed that payment for accrued but

unused vacation time was not regular compensation. See *O’Leary v. Contributory Ret. App. Bd.*, 490 Mass. 480 (2022) (setting out the history of the appeal process).

As the appeals wended their way forward, CRAB issued an Order of Partial Stay on November 6, 2018, pausing implementation of its 2018 decision for retired, active, and pre-retired inactive members. See *Pub. Emp. Ret. Admin. Comm’n Memorandum 33* (Dec. 5, 2018) (attaching CRAB’s Order of Partial Stay). The Public Employee Retirement Administration Commission (PERAC), which has the general responsibility for administering the public employee retirement system, issued a memorandum in December 2018 stating that all retirement boards were bound by CRAB’s stay. *Id.*

During the appeal process, the Legislature was not idle. On August 4, 2022 – just days before the SJC issued its opinion in *O’Leary* – then-Governor Baker signed Chapter 147 of the Acts of 2022 into law, adding Section 106 to Chapter 32. Section 106 directly addresses payment for accrued but unused vacation time. Among other provisions, Section 106 allows certain employees to have vacation buyback payments included as regular compensation for the calculation of their retirement allowance. G.L. c. 32, § 106.

As noted above, Mr. Thompson asked the BRS to include past annual vacation leave buyback payments in his regular compensation for the calculation of his ADR allowance. The amount of the pension portion of the ADR allowance is 72% of the retiree’s “annual rate of . . . regular compensation.” G.L. c. 32, § 7(2)(a)(ii). The annual rate of regular compensation is the greater of two options: either the member’s actual earnings for the last 12-months that they received regular compensation or an annualized number from the member’s regular compensation “on the date [the] injury was sustained or [the] hazard was undergone[.]” *Id.*

Here, the BRS used Mr. Thompson's last 12 months of regular compensation – April 2, 2019, through March 31, 2020 – as the basis for calculating the pension portion of his ADR allowance. The BRS provided a list of weekly payments to Mr. Thompson from March 30, 2019, through March 31, 2020, that include a variety of types of pay (e.g., regular, sick leave, vacation, night differential, holiday, etc.) and a calculation of Mr. Thompson's total salary from April 2, 2019, through March 31, 2020, the last day for which he received regular compensation. Mr. Thompson asserts that 2019 was his final year of regular compensation. I find that the BRS properly determined that Mr. Thompson's last year of regular compensation was April 2, 2019, through March 31, 2020. Because Mr. Thompson did not participate in the vacation buyback program between April 2019 and March 2020, the BRS did not include any vacation buyback in the calculation of Mr. Thompson's ADR pension allowance.

Mr. Thompson asserts that he is within the category of people for whom the Legislature designed Section 106, and in particular, that he satisfies the criteria set out in Section 106(b).

Section 106(b) requires that:

[A]ny amount paid annually in lieu of vacation leave to a member in service as of May 1, 2018 pursuant to any applicable collective bargaining agreement . . . in effect on May 1, 2018 and for which the applicable retirement system was accepting regular contributions or deductions as of May 1, 2018 shall be considered regular compensation as defined in said section 1. Any such annual payment in lieu of vacation leave subsequent to May 1, 2018 shall continue to qualify as regular compensation only for members who were in service as of May 1, 2018, as long as the payment in lieu of vacation leave is permitted under an applicable collective bargaining agreement . . . ; provided, however, that such an annual payment in lieu of vacation leave shall be to a member who consistently participates in a program that is available to all similarly situated employees and shall not have been made: (i) only in the final 3 years of employment for a member who joined the retirement system prior to April 2, 2012; (ii) only in the final 5 years of employment for a member who joined the retirement system on or after April 2, 2012; or (iii) as a result of providing retirement notice.

G.L. c. 32, § 106(b).

Mr. Thompson is correct that had he participated in a vacation buyback program in 2019, he likely would have been eligible to have that amount included in the calculation of his regular compensation. However, Mr. Thompson did not participate in a vacation buyback program in 2019 and, as a result, BRS properly did not include any vacation buyback amounts in his regular compensation for his last year of employment.³

Mr. Thompson also asserts that, but for the *O’Leary* CRAB decision in 2018, he would have participated in the vacation buyback program in 2019 as he had in previous years. Asking the Division of Administrative Law Appeals to consider what Mr. Thompson might have done but for the *O’Leary* decision is, in essence, asking for equitable relief, which DALA is unable to provide. *See Garvey v. Northampton Ret. Bd.*, CR-21-0147, 2023 WL 3122143, at *2 (Apr. 21, 2023) (DALA unable to provide equitable remedies). Equitable considerations cannot overcome the mandates of applicable statutes. *See, e.g., Clothier v. Teachers’ Ret Bd.*, 78 Mass. App. Ct. 143, 146 (2010); *Bristol Cnty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006). Here, Section 106 requires the member to “consistently participate[]” in the buyback program to have payments for unused vacation time qualify as regular compensation. Mr. Thompson did not satisfy this condition because he declined to participate in the vacation buyback program in 2019.

³ He received various payments for his unused vacation time over the years, ranging from \$1,703.68 to \$6,846.53, but he did not specify which of these amounts the BRS should have included as part of his last year’s regular compensation.

Conclusion and Order

For the reasons set forth above, the BRS's decision is hereby **affirmed**.

Dated: January 30, 2026

/s/ Judi Goldberg

Judi Goldberg

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

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