

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Town of Natick,
Petitioner

Docket No. CR-23-0468

Date: January 17, 2025

v.

Natick Retirement Board,
Respondent

Appearance for Petitioner:

Matthew L. Feeney, Esq.

Appearance for Respondent:

Michael Sacco, Esq.

**Appearance for Necessary Party,
James M. Quilty:**

Charles M. MacLean, Esq.

Administrative Magistrate:

Bonney Cashin

Summary of Decision

The Town of Natick has standing to appeal the Natick Retirement Board's pension forfeiture decision under G. L. c. 32, § 15(4). The Board's decision is affirmed because no legal or factual link is present sufficient to warrant forfeiture. The member, a former police officer, was convicted of three counts of indecent assault and battery. His actions leading to his charges and conviction took place while off duty and away from the workplace. In addition, his conduct did not violate any law that applies to public officials or that directly implicates a statute that is specifically applicable to police officers.

DECISION

Introduction

This is an appeal by the Town of Natick from a decision by the Natick Retirement Board to not forfeit the retirement pension of James M. Quilty following his criminal conviction. G.L. c. 32, § 15(4).

The parties agreed that the matter could be decided without a hearing under 801 CMR 1.01(10)(b). The Town filed 7 proposed exhibits. The Board filed 12 exhibits, one of which was a duplicate of a document filed by the Town. I admit 18 exhibits and mark them as follows.

1. Middlesex Superior Court Docket, *Commonwealth v. Quilty*
2. Three (3) Indictments issued December 10, 2021, in *Commonwealth v. Quilty*
3. Notice of Board Decision cover letter, dated August 25, 2023
4. Reissuance of Board Decision cover letter (with notice of appeal rights to Town), dated September 7, 2023
5. Notice of Receipt of Appeal, CR-23-0468, dated September 14, 2023
6. Transcript of Change of Plea Hearing in *Commonwealth v. Quilty*, December 12, 2022
7. Transcript of Board Hearing, June 28, 2023
8. New Member Enrollment Form for James Quilty
9. Board Record - Main Screen for James Quilty
10. Board Record - Estimated Retirement Allowance for James Quilty
11. James Quilty Retirement Application
12. Letter to PERAC Re: James Quilty Conviction and Sentencing, February 23, 2023

13. PERAC letter to Board Re: James Quilty Conviction and Sentencing, February 27, 2023
14. Statement of the Case in *Commonwealth v. Quilty*, December 16, 2021
15. Notice of Board Hearing, dated March 3, 2023
16. Board Hearing Officer Decision, adopted by Board and issued August 25, 2023 and reissued September 7, 2023
17. Board minutes dated August 23, 2023
18. Town of Natick appeal dated September 7, 2023.

FINDINGS OF FACT

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

1. James Patrick Quilty was employed as a Natick police officer from January 31, 2000, until his resignation on December 15, 2022. (Exhibits 9, 16.)
2. Mr. Quilty was a member of the Natick Retirement Board. (Exhibits 8, 9.)
3. Mr. Quilty pleaded guilty on December 12, 2022, to three counts of violating G.L. c. 265, § 13H, Indecent Assault and Battery on a Person Age 14 or Over. He was sentenced the same day. (Exhibits 2, 6, 9.)
4. Mr. Quilty applied to retire on January 18, 2023. The Board subsequently voted to determine whether, under G.L. c. 32, §§15(2) and 16(1), Mr. Quilty's criminal convictions subjected him to pension forfeiture under c. 32, §15(4). (Exhibits 10, 11, 15.)
5. The Board held a hearing on June 28, 2023. Mr. Quilty testified. The Board concluded that Mr. Quilty's pension should not be forfeited. (Exhibits 7, 15, 16.)

6. The events that lead to Mr. Quilty's conviction took place on April 11, 2020, when Mr. Quilty, three other male police officers, and a woman who worked as a civilian dispatcher got together after their night shift ended. One of the other officers invited Mr. Quilty to the gathering. (Exhibits 7, 16.)

7. COVID restrictions were in place, so they gathered at a parking lot in Natick that Mr. Quilty thought was privately owned. Such gatherings were not uncommon, although they usually took place at a police officer's home. (Exhibits 7, 16.)

8. Mr. Quilty arrived alone in his own car and in plain clothes. (Exhibit 7.)

9. As a provisional sergeant and shift supervisor, Mr. Quilty supervised the civilian dispatcher when they worked the same shift. He had the authority to discipline her but had not needed to. A senior officer in charge of the dispatch unit was responsible for her performance evaluations. Mr. Quilty knew her only as a work colleague. (Exhibits 6, 7.)

10. As documented at the Change of Plea hearing on December 12, 2022, Mr. Quilty admitted to the facts that formed the basis of the three indictments against him: he put his hand down the victim's pants and touched her genital area; as everyone started to leave the parking area, Mr. Quilty moved alongside the victim's car, reached in to grope her, undid her bra and touched her breast; and he grabbed the victim's hand, placing it over his shorts onto his erect penis. Throughout her ordeal, the victim tried repeatedly to prevent Mr. Quilty from touching her by using her body and hands to try and block him, and she tried repeatedly to talk her way out of the assault. (Exhibits 2, 6, 14.)

11. Mr. Quilty returned to work on April 12, 2020. He worked until he was placed on administrative leave on July 1, 2020. (Exhibit 7.)

12. On September 7, 2023, the Board reissued its decision to provide appeal rights to the Town. (Exhibit 4.)

13. On September 7, 2023, the Town timely appealed the Board's decision to the Division of Administrative Law Appeals ("DALA").

DISCUSSION

When a member meets certain requirements, his appeal of a retirement board's action under G.L. c. 32, § 15 is to district court. G.L. c. 32, § 16(3). If another person is aggrieved by a forfeiture decision, there is no provision for such an appeal to go to district court, and the appeal is to DALA under G.L. c. 32, § 16(4).¹ *See Essex County Retirement Bd. v. Public Employee Retirement Admin. Comm'n*, CR-99-725 (Contributory Ret. App. Bd. Mar. 13, 2001). Hence the Town's appeal in this matter.

Standing

Before turning to the merits of the Town's appeal, I examine whether the Town has standing to bring it. While the Board does not contest the Town's standing,² DALA must assure itself of its own jurisdiction. *Sullivan v. State Bd. of Retirement*, CR-19-435, at *1-2 (Contributory Ret. App. Bd. Feb. 8, 2021) *citing Flynn v. Contributory Retirement App. Bd.*, 17 Mass. App. Ct. 668, 370 (1984). ("It is our duty to note and decide a jurisdictional question, regardless of the point at which it was first raised, and whether any party has raised it.")

¹ G.L. c. 32, s. 16(4) provides, in part:

... On matters other than those subject to review by the district court as provided for in subdivision (3), or other than those which would have been subject to review had the requirement for the minimum period of creditable service been fulfilled, any person when aggrieved by any action taken or decision of the retirement board or the public employee retirement administration commission rendered, or by the failure of a retirement board or the public employee retirement administration commission to act, may appeal to the contributory retirement appeal board

² At its hearing the Board permitted the Town to offer exhibits, question the witness, and present argument, thus treating it as a party. Although it did not initially send the Town a copy of the decision with appeal rights, the Board eventually did so. Exhibit 4.

As the parties have noted, DALA's approach to whether a member's employer has standing to contest a retirement board's decision has been mixed.³ A recent pension forfeiture decision, however, squarely addresses the employer standing question, and I follow it here.

In *McLaughlin v. Chelsea Retirement Bd.*, CR-11-731, CR-14-357, CR-17-308, CR-20-0301, CR-20-0372 (May 24, 2024), an issue was whether the Chelsea Housing Authority, Mr. McLaughlin's employer, had standing to bring a claim under Section 15(1) and to seek restitution to the Housing Authority. Chapter 32, § 15(2) provides that:

Proceedings under this section may be initiated by the board, by the head of the department, by the commission or board of the commonwealth or of any political subdivision thereof wherein the member is employed or was last employed if not then in service.

G.L. c. 32, § 15(2).

First Assistant Magistrate James Rooney found that "[t]he 'section' referred to in this sentence is Section 15 in its entirety. The quoted language is broad enough to give public employees standing to initiate proceedings under Section 15(1) against an employee who has misappropriated from his employer. It also gives the employer standing to appeal an adverse decision on these issues." *McLaughlin v. Chelsea Retirement Bd.* at 12. The same reasoning would apply to proceedings initiated under c. 32, § 15(4), as is the case here.

The Board surmises that *Town of Southbridge v. Litchfield*, 47 Mass. App. Ct. 920 (1999) may have resulted in a change in DALA's decisions regarding municipal standing in retirement appeals. In its rescript opinion, the Appeals Court held that "[r]elief in the nature of certiorari does not lie in these circumstances. The town must exhaust all administrative remedies before seeking judicial relief.... The town should have taken an appeal to CRAB [the Contributory

³ See *City of Methuen v. Methuen Retirement System*, CR-23-0420 (Jun. 14, 2024) (City does not have standing in a superannuation retirement appeal because it has not shown it is aggrieved; analyzes prior DALA accidental disability cases.)

Retirement Appeal Board] under G.L. c. 32, s. 16(4).” *Town of Southbridge* at 920-921. Rather than deciding that a municipal employer had standing under Section 16(4), the facts of the cases cited show that the Appeals Court was simply noting that *Southbridge* did not present a situation where “relief is otherwise unavailable under c. 32, s. 16(4).” *Id.*

Merits

Section 15(4) provides:

(4) Forfeiture of pension upon misconduct. - In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance under the provisions of section one to twenty eight, inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member. The said member or his beneficiary shall receive, unless otherwise prohibited by law, a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero.

G.L. c. 32, § 15(4). Although c. 32, § 15(4) does not define “final conviction,” the Supreme Judicial Court has held that “[t]he term ‘final conviction,’ as it is used in sec. 15(4), should be given its specialized technical meaning [citation omitted], which is the sentence that is imposed in a criminal proceeding.” *State Bd. of Retirement v. Woodward*, 446 Mass. 698, 707 n. 8 (2006). Mr. Quilty pled guilty and was sentenced on December 12, 2022. His conviction is final.

In construing the language of c. 32, § 15(4), the Supreme Judicial Court has emphasized the importance of the clause, “applicable to his office or position,” stating:

The substantive touchstone intended by the General Court is criminal activity connected with the office or position... [T]he General Court did not intend pension forfeiture to follow as a sequelae of any and all criminal convictions. Only those violations related to the member's official capacity were targeted. Looking to the facts of each case for a direct link between the criminal offense and the member's office or position best effectuates the legislative intent of s. 15(4).

Gaffney v. Contributory Retirement Appeal Bd., 423 Mass. 1, 4-5 (1996). As further explained in *Essex Regional Retirement Bd. v. Swallow and State Board of Retirement v. O'Hare*, 481 Mass. 241, 249-250 (2019) (*Swallow/O'Hare*), the “direct link” between the criminal offense and the member’s office or position may be either “factual” or “legal.” *State Bd. of Retirement v. Finneran*, 476 Mass. 714, 720 (2017).

In cases involving factual links, a public employee’s pension is subject to forfeiture only “where there is a direct factual connection between the public employee’s crime and position.” [*Finneran*, 476 Mass.] at 720-721, and cases cited. In cases involving legal links, a public employee’s pension is subject to forfeiture only “when a public employee commits a crime directly implicating a statute that is specifically applicable to the employee’s position.” *Id.* at 721, citing *Buonomo*, 467 Mass. at 664-666, and *Bulger*, 446 Mass. at 177-180. The requisite legal link is shown “where the crime committed is ‘contrary to a central function of the position as articulated in applicable laws.’” *Finneran, supra*, quoting *Garney*, 469 Mass. at 391.

Swallow/O'Hare, 481 Mass. at 250.

The Board ultimately found that Mr. Quilty did not use his position as a police officer to perpetrate his crimes against the victim. It determined that the crimes Mr. Quilty committed, three counts of sexual assault against a person fourteen years or older, do not implicate his position as a police officer. In other words, the “direct link” required under *Gaffney* was missing. For the following reasons, the Board’s decision should be affirmed.

The evidence does not establish a legal link. Mr. Quilty did not violate any law that applies to public officials or that directly implicates a statute that is specifically applicable to police officers. Moreover, G.L. c. 32, § 15(4) is a penal statute, and “its language must be construed narrowly, not stretched to accomplish an unexpressed result.” *Finneran*, 476 Mass. at 720. Consequently, one must be particularly cautious when a police officer is involved, given their charge is preventing criminal behavior. As the Supreme Judicial Court instructed in *Swallow/O'Hare*:

[T]he state board posits that “given the nature of the positions that troopers hold, the commission of any crime is contrary to the central functions of their positions to enforce the law and protect the public.” This is precisely the kind of unfettered breadth that we have consistently avoided.

Swallow/O’Hare, 481 Mass. at 251.

The evidence does not establish a factual link between Mr. Quilty’s position as a police officer and his sexual assault crimes. Mr. Quilty was out of uniform, off duty, and not at his workplace. He drove his personal car to the parking lot. He was with other officers, one who invited him to the gathering. The woman he assaulted was a civilian dispatcher, also invited by one of the other officers.

The one factor that merits further discussion is that, as the officer in charge when he worked the evening shift, Mr. Quilty supervised the victim. However, Mr. Quilty did not use “his position, uniform, or equipment for the purposes of his indecent acts.” *Retirement Bd. of Maynard v. Tyler*, 83 Mass.109, 112-113 (2013).⁴ Given that G.L. c. 32, § 15(4) must be construed narrowly, and in light of governing caselaw, the fact that he supervised the victim at the police department is insufficient to create the necessary direct link. *Id.*

⁴ In *Durkin v. Boston Retirement Bd.*, 83 Mass. App. Ct. 116 (2013), forfeiture was required where a police officer was convicted of assault and battery by means of a dangerous weapon for shooting another officer with his department-issued firearm. *Id.* at 117. As the SJC explained in *Swallow/O’Hare*, “[a]lthough the court discussed the fundamental nature of the police officer’s position and noted that the officer had violated the public trust by ‘engag[ing] in the very type of criminal behavior he was required by law to prevent,’ forfeiture was ultimately grounded on the factual connections between the officer’s position and the criminal activity. (Citation omitted.)” *Swallow/O’Hare*, 481 Mass. at 241.

CONCLUSION

The decision of the Natick Retirement Board is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin

Bonney Cashin
Administrative Magistrate

DATED: January 17, 2025