

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

William Watson,
Petitioner,

No. CR-21-0105

Dated: July 21, 2023

v.

State Board of Retirement,
Respondent.

Appearance for Petitioner:

William Watson (pro se)
Buzzards Bay, MA 02532

Appearance for Respondent:

Yande Lombe, Esq.
Boston, MA 02108

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner worked as a “telecommunicator” or a “radio dispatcher.” A retirement system’s regulation may have entitled the petitioner to be treated as a “fire and police signal operator” for purposes of group 2 classification under G.L. c. 32, § 3(2)(g). But the regulation did not attempt to override the statutory rule that “fire and police signal operators” belong in group 2 only if they are “employees of a municipal department.” The petitioner, whose employers were a county and then the Commonwealth, did not satisfy this requirement.

DECISION

Petitioner William Watson appeals from a decision of the State Board of Retirement declining to classify him in group 2 under G.L. c. 32, § 3(2)(g). A non-evidentiary hearing took place on July 10, 2023. I admitted into evidence exhibits marked 1-3, 7-9, 11, 12, and B. After the hearing, I admitted an exhibit marked 13 and closed the record.

Findings of Fact

I find the following facts:

1. Mr. Watson was hired by the Barnstable County Sheriff's Office in 1993. His original job title was "radio dispatcher." His job duties involved monitoring radio channels and telephone lines, processing service calls, providing callers with first-aid instructions, and directing medical and fire assistance to emergency sites. The parties agree that Mr. Watson could be described colloquially as a "911" dispatcher. (Exhibit 9.)

2. In July 1999, a supplemental regulation of the Barnstable County Retirement Board came into effect with the approval of the Public Employee Retirement Administration Commission (PERAC). The regulation stated, in part: "[F]ull-time police, fire or emergency medical dispatchers whose job title is Emergency Telecommunications Dispatcher have replaced job titles of Fire and Police Signal Operators, as listed in G.L. c. 32, § 3(2)(g) Group 2."¹ At around the same time, Mr. Watson's formal job title was amended to "telecommunicator." (Exhibits 2, 9.)

3. During 2009, the Legislature enacted Acts 2009, c. 61, titled "An Act Transferring County Sheriffs to the Commonwealth." As a result of that act, Mr. Watson became an employee of the Commonwealth and a member of the retirement system administered by the board. *See* Acts 2009, c. 61, §§ 13-14.

4. Mr. Watson first considered retirement during 2018. He filed a group classification questionnaire, asking to be classified in group 2. The board granted Mr. Watson's request, but he decided not to retire at that time. (Exhibits 7, 9.)

¹ The full text of the regulation is available online at <https://www.mass.gov/service-details/barnstable-county-retirement-board-supplemental-regulations>.

5. Mr. Watson filed another group classification questionnaire in late 2020.² This time, the board denied Mr. Watson's request for group 2 classification, assigning him to group 1 instead. Mr. Watson timely appealed. He has been retired since April 2021. (Exhibits 8, 11, 12.)

Analysis

The retirement benefits of a Massachusetts public employee are determined in part by the employee's classification into one of four groups. G.L. c. 32, § 3(2)(g).³ Membership in group 2 may yield favorable benefits as compared to group 1, the catch-all classification. Group 2 includes, among other members, "employees of a municipal department who are employed as fire or police signal operators or signal maintenance repairmen." *Id.*

The board's position is that Mr. Watson does not qualify for group 2 for two reasons: 1) the job titles "telecommunicator" and "radio dispatcher" are not listed among the statutory criteria for group 2; and 2) even if such job titles are equivalent to the title "fire or police signal operators," Mr. Watson was not an employee of a municipal department.

The later argument is decisive. Mr. Watson was employed first by a county and then by the Commonwealth. Neither of these entities is a municipal department. The retirement law therefore does not assign Mr. Watson to group 2. *See Baker v. State Bd. of Ret.*, No. CR-01-778, at *3-4 (CRAB Oct. 21, 2002); *Caton v. State Bd. of Ret.*, No. CR-16-470, at *15 (DALA June

² It appears that the board may have required such questionnaires to be completed as a matter of course along with any applications to retire for superannuation.

³ Mr. Watson observed at the hearing that the retirement law expects each member's group classification to be determined soon after the member begins working. *See* G.L. c. 32, § 3(2)(g); *Newton Ret. Bd. v. State Bd. of Ret.*, No. CR-12-527, at *6 (DALA July 21, 2017). Compliance with this rule might reduce the frequency of unpleasant classification-related surprises to members on the eve of retirement.

14, 2019); *Zenkus v. Retirement Bd. of Worcester*, 45 Mass. App. Ct. 1105 (1998) (unpublished memorandum opinion). With respect to the merits of the statute’s distinction between municipal employees and other employees, a panel of the Appeals Court has stated: “Far from being ‘nonsensical’ or ‘absurd’ . . . the distinction not only is grounded in the explicit language of the statute but also . . . is supported by rational policy considerations.” *Zenkus, supra*, slip op. at *1-2.

Mr. Watson develops a non-frivolous argument to the effect that he is entitled to be classified in group 2 notwithstanding the usual statutory analysis. The argument builds on BCRB’s 1999 regulation, which endeavored to redefine group 2’s term, “fire and police signal operators,” as including any “police, fire or emergency medical dispatchers whose job title is Emergency Telecommunications Dispatcher.”

A properly promulgated regulation is presumptively valid in the courts, and cannot be annulled by an administrative tribunal. *See Massachusetts Teachers’ Ret. Sys. v. Contributory Ret. Appeal Bd.*, 466 Mass. 292, 296-97 (2013); *Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 214 (2014). The 2009 statute transferring sheriffs from the counties to the Commonwealth required the transfer process to occur “without impairment of seniority, retirement or other rights of employees.” Acts 2009, c. 61, § 17(a). Accordingly, *if* the 1999 regulation entitled Mr. Watson to group 2 classification, then arguably that entitlement should have survived his transition into the Commonwealth’s employment.

But the premise of the argument is false: the 1999 regulation did *not* entitle Mr. Watson to group 2 classification. The regulation announced that “police, fire or emergency medical dispatchers whose job title is Emergency Telecommunications Dispatcher” would count as “fire and police signal operators.” The regulation may not have covered Mr. Watson at all: he did not

work for any police force, fire department, or medical facility; and his formal job title was never exactly “Emergency Telecommunications Dispatcher.” More importantly, even if Mr. Watson *did* satisfy the regulation’s conditions, the only consequence would be that he was entitled to be treated as a “fire and police signal operator.” The 1999 regulation made no attempt to override the statutory rule that employees in that position must be employed by a “municipal department” in order to qualify for group 2.⁴ This requirement remains one that Mr. Watson did not satisfy.⁵

Mr. Watson’s final argument is that, since the board originally classified him in group 2 (in response to his first group classification questionnaire), he should be allowed to retain that status. “It is a common, understandable intuition that a government agency’s representations are decisive and irreversible.” *Blatt v. State Bd. of Ret.*, No. CR-20-199, 2022 WL 9619034, at *1 (DALA Aug. 26, 2022). But the Appeals Court has explained that Massachusetts law rejects that intuition: “Because the [retirement statute] defines and limits the benefits to which [members] are entitled, those benefits are a legal determination that may not be enlarged, even by an erroneous interpretation by [a board] or any of its employees.” *Clothier v. Teachers’ Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010). Otherwise stated, “[t]he government cannot be ‘estopped’ from enforcing the laws correctly.” *Blatt*, 2022 WL 9619034, at *1. *See Meaney v. MTRS*, No. CR-14-811, at 14 (DALA Dec. 13, 2019). Instead, a board that discovers an error in its records is

⁴ The record does not reveal whether the 1999 regulation may have impacted any BCRB members employed by municipalities in Bristol County.

⁵ If BCRB *had* classified Mr. Watson in group 2—at least if it had done so through some vehicle other than a formal regulation—then that mistake wouldn’t have been a “right” protected by the 2009 statute; it would have been an “error” subject to correction. *See Baker, supra*, at *3-4; *Hunter v. Contributory Ret. Appeal Bd.*, 80 Mass. App. Ct. 257, 263 (2011).

obligated to correct that error. See G.L. c. 32, § 20(5)(c)(2); *Hunter*, 80 Mass. App. Ct. at 263; *Worcester Reg'l Ret. Bd. v. Contributory Ret. Appeal Bd.*, 92 Mass. App. Ct. 497, 500 (2017).⁶

Conclusion and Order

The board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

⁶ Mr. Watson asserts that other individuals in circumstances similar to his *have* been assigned to group 2. Regardless of whether the assertion is correct, a member's argument that he has been treated unequally vis-à-vis his or her peers is constitutional in substance, cannot be entertained by an administrative tribunal, and belongs in the Superior Court. See *Sarno v. MTRS*, No. CR-07-253, at *6-7 (DALA Oct. 29, 2010); *Racow v. Winthrop Ret. Bd.*, No. CR-20-492, at *3-4 (DALA Mar. 25, 2022).