

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Ruifan Zhang,
Petitioner,

Nos. CR-21-0357, CR-21-0544

Dated: December 1, 2023

v.

Middlesex County Retirement Board,
Respondent.

Appearance for Petitioner:
Ruifan Zhang (pro se)

Appearance for Respondent:
Thomas F. Gibson, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

In her two appeals, the petitioner seeks (a) to change her retirement “option” and (b) to require the respondent board to recalculate her retirement allowance. A retirement option cannot be changed after the effective date of retirement, i.e., after the first day for which the retiree is entitled to receive benefits. And whether or not the respondent board’s method of calculating the petitioner’s retirement allowance was ideal, that method was permissible.

DECISION

These are consolidated appeals from two decisions of the Middlesex County Retirement Board: one denying petitioner Ruifan Zhang’s request to change her retirement “option,” and one determining the amount of her retirement allowance. The appeals were submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-9 and A-L in DALA’s case file.¹

¹ The board offered exhibits 1-9 along with its January 2022 memorandum. Ms. Zhang offered exhibits A-H along with her November 2021 memorandum and exhibits I-L (which she did not mark) along with her January 2022 reply letter.

Findings of Fact

I find the following facts:

1. Ms. Zhang was a Massachusetts public employee for approximately twenty years. Her last position was with the Town of Hudson, where she was paid on a weekly basis. When she applied to retire for superannuation, Ms. Zhang selected option (b) and requested a retirement date of June 24, 2021. (Exhibit 1.)

2. Ms. Zhang received the board's original calculation of her benefits. She then provided the board with additional information about her July 1, 2021 paycheck, which covered her last, partial week of work. The board determined that that paycheck was intended to reflect a retroactive pay raise effective throughout Ms. Zhang's final year of employment. (Exhibits 3, D.)

3. The board upwardly adjusted its pay figures for Ms. Zhang's last full year of paychecks, dating back to July 2, 2020. According to the board's ensuing calculations, the new data required an "anti-spiking" adjustment to Ms. Zhang's final year of compensation. The board issued a decision so stating in November 2021, and Ms. Zhang timely appealed. (Exhibits 3, 6, 8, D, G.)

4. While the board was recalculating her benefits, Ms. Zhang asked the board to change her retirement "option" from option (b) to option (a). The board declined during September 2021. Ms. Zhang timely appealed that decision too. (Exhibits 2, 7, D.)

Analysis

The retirement law allows members to choose among three blends of benefits, designated options (a), (b), and (c). Each option combines a certain allowance to the retiree during his or her lifetime with certain subsequent benefits to the retiree's surviving beneficiaries (in the case of options (b) and (c)). *See* G.L. c. 32, § 12(2). A member's choice of option cannot be changed

after “the date [the] allowance becomes effective.” § 12(1). See *Conde-Daza v. State Bd. of Ret.*, No. CR-19-0403 (DALA Oct. 4, 2019); *Holmlund v. State Bd. of Ret.*, No. CR-18-0022 (DALA May 24, 2019).

Ms. Zhang argues that, when she asked to change her option, her allowance was not yet “effective,” because the board still had not finalized the allowance’s amount. The argument reflects a straightforward misunderstanding of the term “effective” in this context. A retirement allowance “becomes effective” on the first date of the member’s retirement period, i.e., on the first date for which the member is entitled to a retirement allowance. This meaning of the term is reflected most clearly in the statutory provision stating: “Upon retirement . . . a member shall receive a superannuation retirement allowance to become effective on the date of his retirement.” G.L. c. 32, § 5(2). See also *Bonah v. State Bd. of Ret.*, No. CR-05-577 (DALA Aug. 16, 2006). The “effective” date of Ms. Zhang’s retirement was therefore June 24, 2021, and the board properly denied her request to change her “option” after that date.

Ms. Zhang’s challenge to the board’s calculation of her retirement allowance is more complicated. In the board’s calculations, the final “year” of Ms. Zhang’s compensation runs from July 2, 2020 through July 1, 2021. Ms. Zhang observes that this period encompasses fifty-three weekly paychecks, combining amounts from thirteen different months (July through July). Each of the two preceding years in the board’s calculation consists of fifty-two weekly paychecks, covering amounts from twelve different months (July through June).

These aspects of the board’s math may have been significant here. The pertinent anti-spiking provision excludes from a member’s regular compensation for retirement purposes any pay “that exceeds the average of . . . the 2 preceding years by more than 10 per cent.” G.L. c. 32, § 5(2)(f). See generally *DeGiacomo v. State Bd. of Ret.*, No. CR-20-116, 2021 WL 9697050, at

*2, *4 (DALA Dec. 17, 2021). Ms. Zhang maintains that her final year of pay would not have exceeded the prior-two-years-plus-ten-percent threshold if the board had chosen a different calculation methodology.

Neither the retirement statute nor any regulation prescribes a specific method that the boards must use in their anti-spiking calculations. A DALA decision addressing a related dilemma suggests that multiple alternative methodologies may permissibly generate a member's compensation figures for retirement purposes. Each approach is likely to suffer from drawbacks, given "the complex arrangements of retirement date, payment dates, and pay periods that present in the real world." *Navoy v. Mass. Water Res. Auth. Emps.' Ret. Bd.*, No. CR 17-108, at *8 (DALA June 26, 2019). "Complexities regarding the relation of retirement date to pay periods tend . . . to render any such calculation an approximation." *Id.* at *9. In this context, an "approximation" is all that a board's computation can be expected to achieve. *Id.*

The board here apparently started with the date of Ms. Zhang's last paycheck (July 1, 2021); counted the full preceding calendar year of paychecks as Ms. Zhang's final year of compensation (going back to July 2, 2020); and similarly counted each earlier calendar year's worth of paychecks as one year's worth of compensation. This stringently calendar-year-based approach may not be the most natural fit for the circumstances of an employee paid on a weekly basis. A calculation that analyzes each year as consisting of fifty-two weeks may "adhere[] more closely to actual payment and pay periods[] where said periods are weekly." *Navoy, supra*, at *8. The board may wish to reevaluate whether a fifty-two-week-based calculation would better suit the cases of Ms. Zhang and similarly situated individuals.

Nonetheless, there was nothing legally or factually erroneous about the board's analysis. A calculation method that views an employee's annual pay as the pay that the employee received

during one full calendar year is perfectly consistent with the terms of the governing statute. And it holds at least one advantage over the fifty-two-weeks-based approach, which necessarily “results in the loss of one day a year.” *Navoy, supra*, at *8.²

Conclusion and Order

For the foregoing reasons, the board’s two decisions are AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

² Ms. Zhang’s own preferred methodology is not very clear. It appears most likely that she would define her final year of compensation as her last fifty-two paychecks (including one for a partial week); her next-to-last year of compensation as her previous fifty-two paychecks; and her third-to-last year of compensation as her fifty-three paychecks before that (in all, covering the same three-year period analyzed by the board). This particular methodology does not seem any more fair or accurate than the board’s approach.