

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Carol Zuccala,
Petitioner,

No. CR-24-0521

Dated: May 23, 2025

v.

**Arlington Retirement Board and Charles
Zuccala,**
Respondents.

Appearances:

For Petitioner: Joshua N. Garick, Esq.

For Arlington Retirement Board: Timothy J. Smyth, Esq.

For Charles Zuccala: Thomas F. Gibson, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

A public employee received workers' compensation for approximately nineteen months after his effective retirement date. Under an applicable domestic relations order, the employee's ex-wife is entitled to a share of his retirement benefits. To apportion a disbursement of benefits between the couple, the board must first offset the member's workers' compensation against his retirement allowance under G.L. c. 32, § 14(2)(a). The board must then calculate the ex-wife's share of the disbursement under the domestic relations order. *Id.* § 19. No additional offset needs to be taken under § 14(2)(a) from the ex-wife's share.

DECISION

Petitioner Carol Zuccala (Carol) is the ex-wife of retired public employee Charles Zuccala (Charles). Carol appeals from a decision of the Arlington Retirement Board (board) apportioning a July 2024 benefit payment between Charles and her. The appeal was submitted on the papers without objection. Charles was impleaded on my initiative, and all three parties filed briefs. I admit into evidence exhibits marked 1-9.

Background

1. Charles was an employee of the town of Arlington and a member of the retirement system administered by the board. He and Carol divorced in 2019. (Exhibit 4.)

2. In 2020, Charles suffered a disabling back injury. He successfully pursued workers' compensation, which was paid to him through July 12, 2024. The amount of the workers' compensation came to \$3,060 per month.¹ (Exhibits 5-7.)

3. Charles also applied for accidental disability retirement. The application was approved in June 2024, with a retroactive effective date of December 28, 2022. The retirement allowance came to \$3,989 per month. Of that sum, \$812 reflected the "annuity," with the remaining "pension" coming to \$3,177. (Exhibit 4.)²

4. A domestic relations order (DRO) issued in the divorce proceedings and filed with the board entitles Carol to a portion of Charles's retirement benefits. The DRO addresses the scenarios of Charles retiring for superannuation (paragraph 5), retiring for disability (paragraph 6), or withdrawing his accumulated retirement deductions (paragraph 8). Generally speaking, each provision entitles Carol to half of the benefits attributable to the couple's years together. (Exhibit 3.)

5. The DRO provision applicable to retirement for disability defines the term "marital portion" to mean the ratio formed when the duration of the couple's relationship is divided by the total duration of Charles's creditable service. The parties agree that *half* of the

¹ This decision uses rounded-out figures and makes no cost-of-living adjustments.

² In the statutes implicated here, the term "annuity" denotes the portion of the retirement allowance "derived from [the member's] accumulated regular deductions." *Id.* § 1. The term "pension" means the remainder of the payable allowance, which is funded by appropriations from "the appropriate governmental unit." *Id.* See also *id.* § 22(3)(b), (7).

marital portion is the number 0.249391. That number is what the DRO's phrase "such fraction" refers to in the following passage:

[F]or purposes of determining the portion of the *accidental disability* benefit payable to [Carol], *such fraction* shall be applied only to the amount . . . which would have been payable for *ordinary disability* rather than the actual amount payable for accidental disability.

(Emphasis added.) As calculated by the board, the total amount that hypothetically "would have been payable [to Charles] for ordinary disability" is \$2,804 per month. (Exhibit 3.)

6. In July 2024, the board decided to pay out the entire amount of Charles's retirement allowance running through that month and extending back to the December 28, 2022 retirement date. The parties agree that the total sum payable for the period is \$18,375, representing nineteen-plus months' worth of Charles's retirement benefits less the sums paid to him as workers' compensation.³ After considering the DRO's instructions, the board disbursed \$13,547 to Charles and \$4,828 to Carol. (Exhibits 3, 8.)

7. The board memorialized its analysis of Carol's benefits in an appealable decision. She timely appealed, claiming for reasons discussed below that she should have received a much larger portion of the July 2024 disbursement. (Exhibits 2, 3.)

Analysis

There is no dispute that Charles properly retired for accidental disability after a qualifying career in public service. *See* G.L. c. 32, § 7. The questions presented revolve around a pair of statutes that impact the payable amounts of the resulting benefits. To roughly preview the core dispute, it is whether the workers' compensation paid to *Charles* needs to be deducted

³ The record only mostly explains the exact math leading to the \$18,375 figure. In the circumstances of this carefully litigated, already complicated dispute, I adopt the parties' joint position, without prejudice to them revisiting the point by agreement.

not only from his total retirement benefits but also, separately, from the sum payable to *Carol* under the DRO.

The first of the two statutes implicated here discusses members who have received workers' compensation for periods postdating their retirement dates. As to such periods, the statute says:

All sums of money payable under [sections of the workers' compensation statute] . . . shall be offset against and payable in lieu of any pension payable on [the member's] account under [the ordinary disability, accidental disability, and accidental death statutes] by reason of the same injury, but not against his accumulated total deductions or any annuity derived therefrom.

G.L. c. 32, § 14(2)(a). The effect of this provision is to protect the Commonwealth against paying twice for the same injury-induced absence from work. *See Goodman v. Springfield Ret. Syst.*, No. CR-19-354, at *5 (Div. Admin. Law App. Sept. 17, 2021).

The second pertinent statute implicates members whose property is subject to DROs. The statute starts out by stating a general rule that retirement benefits cannot be taxed, attached, or assigned; but it adds the following caveat:

Nothing in this section shall prevent a member's . . . retirement allowance . . . from being attached, taken on execution, assigned, or subject to other process to satisfy . . . an assignment of marital property under [the divorce statute].

G.L. c. 32, § 19. This provision seeks to enable divorcing couples to craft "equitable . . . agreements and court orders for alimony and property division." *Contributory Ret. Bd. of Arlington v. Mangiacotti*, 406 Mass. 184, 186 (1989). To that end, a couple may use a DRO to "assign or . . . share [a member's] pension benefits with a nonmember [ex-spouse]." *Early v. State Bd. of Ret.*, 420 Mass. 836, 840 (1995).

Turning to the interplay between the two statutes, one important point is both clear and undisputed. What the DRO can properly do is "assign" a share of Charles's rights to Carol. An

assignment cannot generate any “new” entitlements not already held by the member-assignor. *See Early*, 420 Mass. at 841. *See generally Matter of Thornhill Bros. Fitness, LLC*, 85 F.4th 321, 327 (5th Cir. 2023). It follows that the DRO can be implemented only once Charles’s bottom-line benefits have been ascertained. That bottom line is reached only once Charles’s workers’ compensation has been deducted from his usual allowance. In other words, § 14(2)(a) must be applied before § 19. The parties’ agreement on this point is implicit in their shared position on the total disburseable amount, i.e., the \$18,375 that remains when Charles’s workers’ compensation has been deducted from the pension portion of his retirement allowance.

Once the total disburseable sum has been identified, § 19 empowers the DRO to control the apportionment of the payout between the member and the ex-spouse. Under the DRO, Carol is entitled to half of the “marital portion” multiplied by the amount “which would have been payable [to Charles] for ordinary disability.” Roughly speaking, the parties accept the board’s calculation of the latter amount as equaling \$2,804 per month.⁴

When the monthly sum of \$2,804 is multiplied by the “marital portion” and by the length of the pertinent period, the result is that Carol is entitled to approximately \$13,300. Carol maintains that the analysis ends there.

⁴ Because the parties articulate no meaningful interpretive dispute, it is not necessary to analyze the circumstances in which this tribunal is required to wade into such disputes. *Compare Mason v. Massachusetts Teachers’ Ret. Syst.*, No. CR-16-200, 2017 WL 3440539 (Div. Admin. Law App. May 26, 2017), with *Bigwood v. State Bd. of Ret.*, No. CR-12-106 (Div. Admin. Law App. Sept. 14, 2012). Nonetheless, for the sake of completeness, it may be useful to note that the phrase, “the amount . . . which would have been payable [to Charles] for ordinary disability,” cannot reasonably be interpreted as denoting the sum that Charles would have taken home after a § 14(2)(a) offset. In the case of Charles at first receiving workers’ compensation but then retiring retroactively, the benefits out of which the DRO intended to award Carol a share have been paid out in full; they were first directed to Charles alone on the mistaken expectation that he would remain an active employee. *Cf.* G.L. c. 152, § 73. The misdirected original payment still might have offered a reason for the DRO to reduce Carol’s payout if the DRO had also entitled her to a share of the workers’ compensation, but it does not. *Cf. id.* § 47.

The board proposes an additional computational step. In its view, once Carol's share has been calculated under the DRO, § 14(2)(a) is triggered again, so that Carol's share must be reduced by the amount of Charles's workers' compensation. The board supports this approach by reference to § 14(2)(a)'s statement that a workers' compensation offset must be taken against "any pension" payable on the member's account.

The board's position is contrary to § 14(2)(a)'s language and purpose. *See generally Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012). The premise of the board's analysis is that DRO-prescribed benefits to a non-member involve a second "pension" separate from the member's. But as *Early* explains, a DRO only "shares" the member's own pension with the ex-spouse. 420 Mass. at 840-41. It does not create any "new" entitlement. *Id.* Carol is thus receiving no separate "pension" to which § 14(2)(a) would separately apply.

The statutory purpose of preventing duplicative payments also would not be advanced by the board's approach. That purpose is achieved in full as soon as § 14(2)(a) is implemented to produce the total amount allocatable under the DRO. An additional "offset" against Carol's payout would serve only to rework the apportionment of benefits between her and Charles. That consequence is irrelevant to § 14(2)(a)'s purposes; and it runs counter to § 19's efforts to allow the divorcing parties to craft their own equitable intra-couple distribution. *See Mangiacotti*, 406 Mass. at 186.

Other interpretive considerations point in the same direction. Section 14(2)(a) was given its current shape by Acts 1951, c. 542. It is implausible that the Legislature intended there to regulate DRO-based assignments, which did not become permissible until the 1980s. *See* Acts 1981, c. 428; Acts 1993, c. 442; *Mangiacotti, supra*. Also, by § 14(2)(a)'s terms, it is supposed to result in workers' compensation being paid "in lieu of" duplicative retirement benefits. At

least in this case, a § 14(2)(a) offset against Carol’s share would not yield that result, since she received no part of the workers’ compensation.

All in all, the proper method for apportioning the July 2024 disbursement runs as follows: Charles’s workers’ compensation must first be offset under § 14(2)(a) against his accidental disability retirement allowance, yielding a total disburseable sum of \$18,375. Out of that amount, Carol is entitled under the DRO to half of the “marital portion” times the \$2,804 per month “which would have been payable [to Charles] for ordinary disability.” The resulting sum of \$13,300 is not subject to an additional § 14(2)(a) offset.

The consequence of this series of steps is that, with respect to the July 2024 disbursement, Carol is entitled to much more than her usual share of Charles’s retirement allowance, i.e., much more than half of the marital portion. But that outcome is ultimately unsurprising: it is the end result of Charles receiving a large piece of his benefits for the pertinent period in the form of workers’ compensation delivered directly to him.

Conclusion and Order

The board’s decision is VACATED. On remand, the board shall recompute and reprocess the sums payable to Charles and Carol in accordance with this decision’s analysis. In the course of so doing, the board is encouraged to make any necessary corrections to the specific figures stated in this decision.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate