

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

SJC-13208

PAUL MAHAN vs. BOSTON RETIREMENT BOARD & another.¹

Suffolk. March 7, 2022. - September 6, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt,
& Georges, JJ.

Retirement. Public Employment, Retirement, Forfeiture of retirement benefits. Municipal Corporations, Retirement board. Statute, Construction.

Civil action commenced in the Supreme Judicial Court for the county of Suffolk on March 7, 2019.

Following transfer to the Superior Court Department, the case was heard by Sharon E. Donatelle, J., on motions for judgment on the pleadings.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Nicholas Poser for the plaintiff.
Natacha Thomas for Boston Retirement Board.

GEORGES, J. In this case, we are asked to decide whether the pension forfeiture provisions set forth in G. L. c. 32,

¹ Boston Municipal Court.

§ 15 (3) and (4), are applicable to an individual who, after having retired from public service, misappropriates government funds or engages in criminal activity tied to his or her former public employment. The plaintiff is a former correction officer for the Suffolk County sheriff's department who was found to be permanently disabled after suffering a work-related injury. He began receiving workers' compensation benefits soon after the injury and eventually was approved for accidental disability retirement. Two years after his retirement, while continuing to receive workers' compensation and other benefits from the Suffolk County sheriff's department, the plaintiff started working at a used car dealership owned by his wife. He ultimately was convicted of workers' compensation fraud and larceny for falsely certifying, regularly, over a period of seven years, that he was not working or able to work.

Following the plaintiff's convictions, the Boston retirement board (board) revoked his retirement allowance pursuant to G. L. c. 32, § 15 (3) and (4). The plaintiff sought review of the board's decision on the ground that he had been retired from public service for more than two years before his criminal conduct commenced and, therefore, that the forfeiture provisions were inapplicable to him. A judge of the Boston Municipal Court disagreed and found that the board did not err in applying both G. L. c. 32, § 15 (3) and (4), to the

plaintiff. The plaintiff then filed a petition for a writ of certiorari in the county court. A single justice transferred the matter to the Superior Court, and a Superior Court judge denied the petition. After the plaintiff appealed to the Appeals Court, we transferred the matter to this court on our own motion.

We discern no error in the board's conclusion that G. L. c. 32, § 15 (3) and (4), may be applicable to an individual whose criminal activity occurs after the individual has retired from public service, because both provisions apply to a "member" of a retirement system, irrespective of whether that member is a public employee at the time that the member commits the relevant offense. We also discern no error in the board's determination that the requirements of G. L. c. 32, § 15 (3) and (4), were satisfied here. Accordingly, there was no abuse of discretion in the Superior Court judge's denial of the plaintiff's petition for a writ of certiorari.

1. Background. a. Workplace injury. The relevant facts are taken from the transcript of the plaintiff's plea hearing in the underlying criminal case, the recommended decision by the hearing officer of the board, and the Superior Court judge's decision on the petition for a writ in the nature of certiorari.

The plaintiff was hired as a correction officer for the Suffolk County sheriff's department in 1997. His duties

included providing general security by searching inmate cells for weapons and other contraband and by intervening in physical altercations between inmates. On August 15, 2000, while attempting to restrain an inmate who was involved in a fight, the plaintiff severely injured his knee. Following the incident, the plaintiff attempted to return to work with a knee brace, but his doctors subsequently advised him, after reviewing several magnetic resonance imaging scans, to stop working.

The plaintiff then applied for workers' compensation benefits; from August of 2000 until August of 2003, he received temporary total incapacity workers' compensation benefits, pursuant to G. L. c. 152, § 34, which limits receipt of such benefits to a period of 156 weeks. Starting in August of 2003, he began receiving partial incapacity benefits, pursuant to G. L. c. 152, § 35, which allows an individual to receive such benefits for up to 260 weeks. As a former employee of the city of Boston, the plaintiff also was eligible for a retirement allowance. In May of 2004, he filed an application for accidental disability retirement with the Boston retirement system; the board approved the application in September of 2005, after a panel of doctors unanimously determined that the plaintiff was physically incapable of performing the essential duties of his job as a correction officer and that his incapacity was likely to be permanent. In August of 2006, the

Public Employee Retirement Administration Commission (PERAC) sent a letter to the board stating that it had approved payment of the plaintiff's accidental disability retirement allowance effective November 4, 2003.

At some point, the plaintiff filed a claim with the Department of Industrial Accidents for "permanent and total" workers' compensation benefits under G. L. c. 152, § 34A, which allows an individual to receive benefits for as long as he or she is disabled. An administrative judge allowed the claim and ordered that the plaintiff be paid such benefits effective May 23, 2006. The plaintiff also was eligible for, and began receiving, assault pay pursuant to G. L. c. 30, § 58, as "an employee who, while in the performance of duty, receive[d] bodily injuries resulting from acts of violence of patients or prisoners in the employee's custody." Thus, between January 1, 2006, and January 1, 2013, the plaintiff received a combination of workers' compensation benefits, assault pay, and a disability retirement allowance.² To demonstrate his ongoing eligibility for workers' compensation benefits during that period, the plaintiff certified, every six months, under the pains and

² Pursuant to G. L. c. 32, § 14 (2), the plaintiff's disability retirement allowance was offset by the workers' compensation payments he was receiving, meaning that the allowance was decreased by the dollar amount he received in workers' compensation benefits.

penalties of perjury, that he was not working or deriving any income from work.

b. Criminal conviction. In 2005, the plaintiff's wife opened a used car dealership in Winchendon. Between January 1, 2006, and January 1, 2013, the plaintiff worked at the dealership; he generally was present during business hours, sold cars at the dealership, was involved in the hiring of employees, and bid on cars for resale at used car auctions. In addition, although his wife was the listed owner of the dealership, he represented himself to the general public as the business owner.

Following a joint investigation by the Suffolk County sheriff's department and the Attorney General's office, the plaintiff was indicted by a grand jury, in February of 2013, on one count of workers' compensation fraud, in violation of G. L. c. 152, § 14 (3), and one count of larceny over \$250, in violation of G. L. c. 266, § 30. He was arraigned in the Superior Court and subsequently pleaded guilty to both offenses. In so doing, the plaintiff agreed that he was capable of working and, in fact, had worked while receiving workers' compensation benefits. The plaintiff, however, denied that he had earned any wages for his work at the dealership, and instead said that payments for all of the income that he earned were issued to his wife.

As a result of his fraud, the plaintiff received overpayments of \$205,618.25 in workers' compensation benefits, \$181,825.59 in assault pay benefits, and \$49,841.18 in retirement benefits. As the Suffolk County sheriff's department is self-insured, all of the workers' compensation and assault pay benefits come directly from its budget, rather than through an insurance fund or private insurer. After pleading guilty, the plaintiff was sentenced to five years of probation and ordered to pay restitution to the Suffolk County sheriff's department in the amount of \$205,618 for workers' compensation overpayments and \$100,000 for assault pay overpayments. As of March of 2017, the plaintiff had repaid \$1,280 in restitution.

c. Pension forfeiture proceedings. In June of 2015, the office of the Attorney General sent a letter to PERAC notifying the agency of the plaintiff's criminal convictions. The Boston retirement system subsequently initiated proceedings to consider the application of G. L. c. 32, § 15, to the plaintiff. Following a hearing in May of 2017, at which both the plaintiff and his wife testified, a hearing officer for the board issued a decision recommending that the board revoke the plaintiff's retirement benefits through application of either G. L. c. 32, § 15 (3) or (4). The board unanimously voted to "forfeit [the plaintiff's] retirement benefits pursuant to G. L. c. 32, § 15 (4)," and to "adopt the recommended decision of the hearing

officer," thus determining that G. L. c. 32, § 15 (3), also applied to the plaintiff's case.

On April 6, 2018, the plaintiff filed a petition in the Boston Municipal Court for review of the board's decision. The plaintiff asserted that neither G. L. c. 32, § 15 (3) nor (4), was applicable to him because he was already retired at the time of the commission of his crimes, and that the forfeiture of his pension constituted an excessive fine in violation of the Eighth Amendment to the United States Constitution. Once the board filed its answer, the plaintiff moved for judgment on the pleadings, and the board filed a cross motion for judgment on the pleadings. Following a hearing on October 4, 2018, a Boston Municipal Court judge concluded that the board did not err in deciding that the plaintiff's pension should be forfeited. The judge denied the plaintiff's motion for judgment on the pleadings and allowed the board's cross motion.

The plaintiff then filed a petition for a writ of certiorari in the county court, pursuant to G. L. c. 249, § 4. A single justice transferred the matter to the Superior Court, where a Superior Court judge declined to issue the requested writ of certiorari.³ The plaintiff appealed from the denial of

³ The Superior Court judge initially remanded the matter to the Boston Municipal Court so that the motion judge could decide whether forfeiture of the plaintiff's pension constituted an excessive fine in violation of the Eighth Amendment to the

his petition for a writ of certiorari to the Appeals Court, and we transferred the matter to this court on our own motion.

2. Discussion. a. Standards of review. "The purpose [of] certiorari is to correct errors that 'are not otherwise reviewable by motion or by appeal.'" Picciotto v. Superior Court Dep't of the Trial Court, 437 Mass. 1019, 1020 (2002), quoting G. L. c. 249, § 4. The scope of judicial review of an action in the nature of certiorari under G. L. c. 249, § 4, is limited. See State Bd. of Retirement v. Bulger, 446 Mass. 169, 173 (2006). "Certiorari allows a court to 'correct only a substantial error of law, evidenced by the record, which adversely affects a material right of the plaintiff. . . . In its review, the court may rectify only those errors of law which have resulted in manifest injustice to the plaintiff or which have adversely affected the real interests of the general public.'" Id., quoting Massachusetts Bay Transp. Auth. v. Auditor of the Commonwealth, 430 Mass. 783, 790 (2000). A decision to allow this extraordinary form of relief is

United States Constitution. The plaintiff then filed a motion for relief from judgment, to which the board assented; the plaintiff requested that the Superior Court judge stay the remand and allow the plaintiff to appeal from the decision on the merits. Because the motion for a stay was allowed, the question whether forfeiture of the plaintiff's pension constituted an excessive fine under the Eighth Amendment is not before us.

discretionary. See O'Donnell v. Board of Appeals of Billerica, 349 Mass. 324, 328 (1965).

b. Statutory provisions. By its plain language, G. L. c. 32, § 15, entitled "Dereliction of duty by members," applies to "members" of a retirement system. Pursuant to G. L. c. 32, § 3, there are two types of "members": a "member in service" is defined as "[a]ny member who is regularly employed in the performance of his [or her] duties," while a "member inactive" includes "[a]ny member in service who has been retired and who is receiving a retirement allowance." General Laws c. 32, § 15, mandates the forfeiture of a retirement allowance earned by a "member" of a public retirement system in a number of circumstances where the member is convicted of certain criminal offenses.

Under G. L. c. 32, § 15 (3), which pertains to misappropriation of public funds, "[i]n no event shall any member" after conviction of an offense involving the funds or property of his or her current or former government employer, or of a retirement system to which the member belongs, "be entitled to receive a retirement allowance or a return of his accumulated total deductions . . . unless and until full restitution for any such misappropriation has been made." See G. L. c. 32, § 15 (1), (3). Likewise, under G. L. c. 32, § 15 (3A), a "member" is prohibited from receiving a retirement allowance or

a return of his or her accumulated total deductions if the member is convicted of one of two highly specialized crimes involving "police or licensing duties." Finally, under G. L. c. 32, § 15 (4), which pertains to criminal conduct related to an individual's public employment, "[i]n 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." Unlike a member whose pension is forfeited under G. L. c. 32, § 15 (3), a member whose pension benefits are subject to forfeiture under either G. L. c. 32, § 15 (3A) or (4), may not regain such benefits through payment of restitution; a member whose pension is forfeited under G. L. c. 32, § 15 (4), however, is entitled to receive "a return of his [or her] accumulated total deductions."

Additional provisions in G. L. c. 32, § 15, set forth the procedure to be followed for forfeiture of a public pension. As part of this procedure, "[i]f the attorney general or district attorney becomes aware of a final conviction of a member of a retirement system under circumstances which may require forfeiture of the member's rights to a pension . . . [or] retirement allowance . . . , he [or she] shall immediately notify [PERAC] of such conviction." G. L. c. 32, § 15 (5). The retirement board with jurisdiction over the retirement system to which the member belongs is authorized, along with other

entities and individuals, to initiate forfeiture proceedings. See G. L. c. 32, §§ 1, 15 (2). Should the board or another authorized entity find that forfeiture is required under G. L. c. 32, § 15, the member subject to forfeiture has a right to judicial review. Pursuant to G. L. c. 32, § 16 (3), any member "aggrieved by any action taken or decision of a [retirement] board or the public employee retirement administration commission rendered with reference to his dereliction of duty as set forth in [§ 15]" may "bring a petition in the district court" for review of such decision. In conducting the review, a District Court judge shall "hear any and all evidence and determine whether such action was justified." See id. A decision of the District Court pursuant to G. L. c. 32, § 16 (3), "shall be final."

The relationship between G. L. c. 32, § 15 (3) and (4), is complex and intertwined. This court first examined the relationship between those two provisions in Gaffney v. Contributory Retirement Appeal Bd., 423 Mass. 1, 3-5 (1996). There, the former superintendent of the Shrewsbury water and sewer department was convicted of larceny after he stole money from the town and the town's retirement board subsequently revoked his pension benefits under G. L. c. 32, § 15 (4). See Gaffney, supra at 2-3. In his appeal from the board's decision, the superintendent argued that G. L. c. 32, § 15 (3), rather

than G. L. c. 32, § 15 (4), should apply to him, as application of the former provision would allow for recovery of his pension benefits upon payment of restitution. See Gaffney, supra. We rejected the superintendent's argument on the ground that G. L. c. 32, § 15 (3) and (4), are not "mutually exclusive alternatives," but, rather, provide "complementary remedies." See Gaffney, supra at 5. General Laws c. 32, § 15 (3), which prohibits "any payout of remaining benefits unless restitution is first made, whenever the member has been convicted of crimes relating to public funds or property," is temporary and remedial in nature. See Gaffney, supra at 4-5. General Laws c. 32, § 15 (4), on the other hand, requires permanent forfeiture of a retirement allowance where a member engages in misconduct that is "applicable to his [or her] office or position," and thus is considered penal in nature. See Bulger, 446 Mass. at 174. A member whose pension is forfeited under G. L. c. 32, § 15 (4), however, recovers the contributions that that the member actually made while the member was working. As we observed in Gaffney, supra at 5, in certain circumstances, "the restitutionary scheme of [G. L. c. 32, § 15 (1)-(3),] might still be needed to recover any misappropriated funds or property out of the pension assets not forfeited."⁴

⁴ Although the question was not addressed directly in Gaffney, it is not evident that a member ever could engage in

The Gaffney decision also was our first opportunity to interpret the language of G. L. c. 32, § 15 (4). Recognizing that § 15 (4) was added by the Legislature in an effort to "broaden the range of crimes that would lead to pension forfeiture," we stated that the "substantive touchstone intended by the [Legislature] is criminal activity connected with the office or position." See Gaffney, 423 Mass. at 3, 4. We understood, however, that the Legislature "did not intend pension forfeiture to follow as a sequelae of any and all criminal convictions." Id. at 5. We therefore concluded that, to "best effectuate[] the legislative intent of [G. L. c. 32, § 15 (4),]" courts should look "to the facts of each case for a direct link between the criminal offense and the member's office or position." Id.

In subsequent cases, we clarified that "[t]his 'direct link' requirement 'does not mean that the crime itself must reference public employment or the employee's particular position or responsibility, . . . or that the crime necessarily

misappropriation of government funds, within the meaning of G. L. c. 32, § 15 (3), without also violating the provisions applicable to the member's office or position, pursuant to G. L. c. 32, § 15 (4). In other words, it appears that whenever a member's pension could be forfeited under G. L. c. 32, § 15 (3), it also would be forfeitable under G. L. c. 32, § 15 (4). The reverse is not the case, as a member could commit a criminal offense other than misappropriation that would trigger the application of G. L. c. 32, § 15 (4).

must have been committed at or during work." See Garney v. Massachusetts Teachers' Retirement System., 469 Mass. 384, 389 (2014), quoting Maher v. Justices of the Quincy Div. of the Dist. Court Dep't, 67 Mass. App. Ct. 612, 616 (2006). Rather, a "direct link" may be either legal or factual; while a legal link exists "when a public employee commits a crime directly implicating a statute that is specifically applicable to the employee's position," a factual link exists "where there is a direct factual connection between the public employee's crime and position." See State Bd. of Retirement v. Finneran, 476 Mass. 714, 720-721 (2017).

Direct factual links have been found to exist where a member's public job somehow facilitated the crime, by allowing either access to or the use of resources, see Dell'Isola v. State Bd. of Retirement, 92 Mass. App. Ct. 547, 547-548 (2017) (correction officer who possessed cocaine as result of arrangement with inmate who had been in his custody was subject to forfeiture of pension); Durkin v. Boston Retirement Bd., 83 Mass. App. Ct. 116, 116-117 (2013) (Boston police officer who shot fellow officer while off duty, using department-issued firearm, was subject to forfeiture of pension), or by putting the member in a position to commit the crime, see Finneran, 476 Mass. at 715 (Speaker of House who falsely testified regarding his role in and knowledge of State redistricting process was

subject to pension forfeiture). Compare Garney, 469 Mass. at 389 (no forfeiture where teacher who was convicted of possessing child pornography "committed his crimes outside of school, without using school resources or otherwise using his position to facilitate his crimes, and without involving students in his illicit activities"). Direct factual connections also have been identified where a government employer was the victim of the criminal offense. See, e.g., Maher, 67 Mass. App. Ct. at 613, 616-617 (Quincy chief plumbing and gas inspector who broke into city hall, reviewed personnel files, and stole documents was subject to forfeiture). In cases where no direct factual link has been found, the crimes at issue were "personal in nature," rather than work-related. See Garney, 469 Mass. at 385-386 (no forfeiture where teacher purchased and stored child pornography on home computer); Retirement Bd. of Maynard v. Tyler, 83 Mass. App. Ct. 109, 112 (2013) (no forfeiture where firefighter sexually abused fellow firefighter's child); Herrick v. Essex Regional Retirement Bd., 77 Mass. App. Ct. 645, 646-647 (2010), S.C., 465 Mass. 801 (2013) (no forfeiture where custodian at housing authority committed assault and battery on daughter).

c. Applicability of G. L. c. 32, § 15, to criminal conduct that occurs after retirement from public service. The parties agree that the plaintiff was "retired" from his job as a

correction officer as of November 4, 2003, the date his disability retirement allowance was effective; the plaintiff's criminal activity commenced more than two years after that date. In his motion for judgment on the pleadings, the plaintiff argued that G. L. c. 32, § 15, could not apply in his case because its provisions were "not designed to follow a retiree into retirement." A Boston Municipal Court judge rejected this argument, based on the plain language of G. L. c. 32; the judge concluded that the plaintiff was an inactive member of a retirement system at the time he committed his crimes, and therefore "would fall within the parameters of 'any member' who would be precluded from receiving a retirement allowance." In denying the plaintiff's petition for a writ of certiorari, the Superior Court judge also relied upon this reasoning. Before us, the plaintiff continues to argue that G. L. c. 32, § 15, cannot apply to an individual who is no longer a public employee when he or she engages in the relevant criminal conduct.⁵

We review questions of statutory interpretation de novo. See Commonwealth v. Perella, 464 Mass. 274, 276 (2013). "A fundamental principle of statutory interpretation 'is that a

⁵ The plaintiff does not address the requirement of G. L. c. 152, § 11D, that "[a]ny employee entitled to receive weekly compensation under [the workers' compensation statute] shall have an affirmative duty to report to the insurer [(here, the Suffolk County sheriff's department)] all earnings, including wages or salary earned from self-employment."

statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.'" Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006), quoting Hanlon v. Rollins, 286 Mass. 444, 447 (1934). "Courts must follow the plain language of a statute when it is unambiguous and when its application would not lead to an absurd result, or contravene the Legislature's clear intent." Casseus v. Eastern Bus Co., 478 Mass. 786, 787 (2018), quoting Commonwealth v. Kelly, 470 Mass. 682, 689 (2015).

The plain language of G. L. c. 32, § 15, indicates that its application is not limited to individuals who commit the criminal offense at issue while they are serving as public employees. Nowhere in that section does the statutory language state that a "member" must be a "member in service," and thus an active employee, at the time that he or she misappropriates government funds, violates laws applicable to his or her office or position, or commits any of the offenses specified in G. L. c. 32, § 15 (3A). "We will not add words to a statute that the Legislature did not put there, either by inadvertent omission or

by design." Retirement Bd. of Somerville v. Buonomo, 467 Mass. 662, 672 (2014). Notably, elsewhere in G. L. c. 32, governing retirement systems and pensions, the Legislature did distinguish between members in service and members inactive. See G. L. c. 32, § 6 ("Any member in service who is unable to perform the essential duties of his job and that such inability is likely to be permanent . . . shall be retired for ordinary disability as of a date which shall be specified . . ." [emphasis added]). That the Legislature did not make such a distinction in G. L. c. 32, § 15, is instructive. See DiFiore v. American Airlines, Inc., 454 Mass. 486, 491 (2009) ("Where possible, we construe the various provisions of a statute in harmony with one another, recognizing that the Legislature did not intend internal contradiction").

In Buonomo, 467 Mass. at 671 n.12, we explicitly noted that the fact that G. L. c. 32, § 15 (4), pertained to "any member" meant that it applied to the plaintiff in that case, who was an inactive member of one government retirement system when he committed crimes against a different government employer where he was then working. The plaintiff in that case was a former member of the board of aldermen of Somerville who, after retiring, became register of probate of Middlesex County. See Buonomo, supra at 664. While employed as a register of probate, he stole from cash vending machines attached to photocopiers

located in a building that housed the registry of probate, among other entities. See id. at 664-665. As the plaintiff had opted to receive a retirement allowance from the city of Somerville upon retiring from his position as alderman, and therefore was a "member" within the meaning of G. L. c. 32, § 15 (4), we concluded that his crimes required forfeiture of that retirement allowance, even though he was no longer employed by the city of Somerville at the time of their commission. See id. at 671-672 & n.12. We observed that "[i]f the Legislature had wanted to limit the applicability of this forfeiture provision to active members, it would have used the words 'any member in service,' instead of 'any member.'" Id. at 671 n.12. We draw the same conclusion here with regard to the entirety of G. L. c. 32, § 15.

The plaintiff attempts to distinguish Buonomo, 467 Mass. at 664, on the ground that, despite being retired from the public position from which he was receiving retirement benefits, Buonomo was actively employed by a government agency when he stole public funds. Our conclusion that Buonomo's retirement allowance was subject to forfeiture, however, did not rest on the fact that he held a public position at the time of his criminal conduct. Rather, it was premised on the unequivocal language of G. L. c. 32, § 15 (4), which provides, "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" (emphasis added). As we observed, "[t]he statute does not say that the office or position whose laws were violated be the same as the one from which the member is receiving a retirement allowance. There simply is no such limiting language in G. L. c. 32, § 15 (4)." Buonomo, supra at 672. The same can be said of G. L. c. 32, § 15, as a whole; its provisions contain no language that limits its application to members who are publicly employed at the time of the commission of the relevant offense.

Thus, the plaintiff's argument that "[n]o reported case has ever forfeited the pension of a member of the retirement system who has been convicted of a crime committed after he left public employment" is unavailing. Certainly, in prior cases involving the application of G. L. c. 32, § 15, the individual was still actively employed when he or she engaged in the relevant offense. See, e.g., Bulger, 446 Mass. at 170-171; Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 131 (1997). Yet, according to the clear and unambiguous statutory language, all that matters is that the individual subject to forfeiture is a "member" within the meaning of G. L. c. 32, § 15, at the time that he or she engages in the relevant criminal activity.

d. Application of G. L. c. 32, § 15 (3) and (4), to the plaintiff's case. Having determined that G. L. c. 32, § 15, may

apply to an individual who engages in the criminal conduct at issue after he or she has left public service, we turn to consider whether the requirements of G. L. c. 32, § 15 (3) and (4), were satisfied here.

As discussed, a member's retirement allowance is forfeited under G. L. c. 32, § 15 (3), upon conviction of an offense involving misappropriation of funds or property of the member's current or former government employer, or of the retirement system to which the member belongs. In this case, the board found that the plaintiff's fraudulent receipt of workers' compensation benefits and assault pay fell "squarely within the meaning of the term 'misappropriation' as it applies to [G. L. c. 32, § 15]." We agree. In receiving benefits to which he was not entitled, the plaintiff clearly misappropriated funds; as the overpayments he received in workers' compensation and assault pay benefits came directly from the budget of the sheriff's department, he misappropriated these funds from his former government employer, triggering application of G. L. c. 32, § 15 (3).

Turning to G. L. c. 32, § 15 (4), this provision requires a direct link between the member's crime and public employment. The board found that a direct factual link existed here because "but for [the plaintiff's] work-related injury, in August 2000, at the Suffolk County House of Correction, [the plaintiff] would

not have been in a position . . . to have to complete requisite workers' compensation documents." In affirming this reasoning, the Boston Municipal Court judge noted that, "but for his employment with [the Suffolk County sheriff's department], Plaintiff would not have been injured, would not have been receiving workers' compensation benefits, would not have made the fraudulent reports concerning other income, and thus, would not have been convicted of Worker's Compensation Fraud." In denying the plaintiff's petition for a writ of certiorari, the Superior Court judge similarly observed that the plaintiff "was convicted of lying about his eligibility for workers' compensation, which he was receiving because he was injured while performing his duties as a correction[] officer" (emphasis added).

Before us, the plaintiff maintains that there is not enough of a connection between his crimes and his former position as a correction officer to constitute a factual link. The plaintiff argues that he did not use his public employment to "facilitate" his criminal acts, as he held no public job at the time of their commission. The plaintiff also points out that G. L. c. 32, § 15 (4), as a penal statute, must be narrowly construed.

The plaintiff appears to have overlooked that, even though he was retired, his public employment can be seen as having "facilitate[d]" his crimes; absent that employment, he would not

have been eligible for workers' compensation and, therefore, would not have been in a position to commit the crime of workers' compensation fraud. His case is factually similar to that of the plaintiff in Finneran, 476 Mass. at 722. In that case, it was "only because [Finneran] had been Speaker of the House at the relevant time that he was in a position to testify as to the genesis of the redistricting plan and to do so falsely." Id. Although Finneran's duties as Speaker of the House did not involve testifying, and therefore his crime of obstruction of justice did not "directly implicate" his duties, the crime nonetheless was "inextricably intertwined" with his public job. Id.

Here, although the plaintiff's filing of fraudulent workers' compensation eligibility documents did not "directly implicate" his duties as a correction officer, his criminal offenses nonetheless were "inextricably intertwined" with his public employment. See Finneran, 476 Mass. at 722. The plaintiff lied about his ability to work when completing the eligibility documents, in order to preserve a benefit he was receiving as a result of having been injured in the course of conducting his professional duties. See Spaniol's Case, 466 Mass. 102, 107 (2013) (workers' compensation act was "designed to provide financial compensation for the impairment of an injured worker's earning capacity"); McDonough's Case, 440 Mass.

603, 604 (2003), S.C., 448 Mass. 79 (2006) ("workers' compensation scheme has been conceived as a mechanism by which workers can recover a portion of that income that they are kept from earning because of an injury suffered while working"); Ahmed's Case, 278 Mass. 180, 183 (1932) (underlying principle of workers' compensation act is that cost of injuries sustained by those employed in industry, save those due to serious and willful misconduct of employee, shall be treated as part of cost of production). Thus, the plaintiff's crimes were not "personal in nature" but, rather, bore a direct connection to his former employer and the injury he suffered while carrying out his professional duties. See Tyler, 83 Mass. App. Ct. at 112-113. Moreover, a direct factual link exists by nature of the fact that the plaintiff's former employer, the Suffolk County sheriff's department, was the victim of his criminal offenses. See Gaffney, 423 Mass. at 4-5; Maher, 67 Mass. App. Ct. at 613, 616-617.

As the plaintiff points out, we must construe G. L. c. 32, § 15 (4), narrowly because it is a penal statute. See Bulger, 446 Mass. at 174-175. "Although we have often stated that penal statutes should be strictly construed . . . , this maxim is a guide for resolving ambiguity, rather than a rigid requirement that we interpret each statute in the manner most favorable to defendants." Simon v. Solomon, 385 Mass. 91, 102-103 (1982).

Nonetheless, the link between the plaintiff's crimes and his public employment is in no way as tenuous as he suggests. There is a clear factual connection that renders the plaintiff's crimes "applicable to his office or position." G. L. c. 32, § 15 (4).

3. Conclusion. Because there was no error in the board's decision to forfeit the plaintiff's retirement allowance, there was no abuse of discretion in the Superior Court judge's order denying the plaintiff's petition for a writ of certiorari.

Judgment affirmed.