

# COURT RULES THAT POSTHUMOUS QDRO IS VALID FOR PRE-EXISTING INTEREST IN PENSION

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**Practices & Industries**

Employee Benefits

The U.S. District Court for the District of Massachusetts recently ruled that a posthumous Qualified Domestic Relations Order (“QDRO”) can validly award pension benefits to an ex-spouse whose interest in the participant’s pension benefits was established by a divorce decree entered before the participant’s death. The case was brought by the ex-wife of deceased former New England Patriots player, Mosiula Tatupu after the NFL Players Retirement Plan (the “plan”) denied her claim for pension benefits. The couple married in 1978, the year Tatupu’s NFL career began. Tatupu retired in 1991 and the couple divorced in 1997. Tatupu later died in 2010, after which his ex-wife obtained a domestic relations order (“DRO”) and claimed benefits. In examining the plan’s denial of benefits, the court concluded that the plan’s reasoning was essentially that the DRO, by virtue of being obtained after Tatupu’s death, provided increased benefits or rights not otherwise available under the plan, and was therefore not a QDRO. Briefly, to be a QDRO, a DRO must (1) clearly specify certain facts (names, addresses, amount/percentage of benefits to be paid, number of payments/period to which the order applies, and each plan to which the order applies) and (2) not alter the amount or form of benefits. The court examined existing case law on posthumous QDROs, and found that an ex-spouse’s interest can be established through a divorce decree entered before a participant’s death that sufficiently creates a right to benefits and the ability to obtain an order meeting the requirements to be a QDRO. Conversely, a post-death amendment to a divorce decree to retroactively create an interest in benefits to allow for a QDRO would not be valid. However, a pre-death decree that creates an interest in pension benefits but does not meet all of the criteria to be a QDRO, still gives rise to a right to benefits that can be enforced through a later issued QDRO. The court could not reach a ruling in this case on the facts because it had not yet been provided a copy of the 1997 divorce decree. In any event, its analysis and discussion of posthumous QDROs and conclusion that QDROs obtained after a participant’s death do not impermissibly alter the amount or form of benefits under the plan if the ex-spouse’s interest in the benefits is established before the participant’s death, is worth taking note of. *Garcia-Tatupu v. Bell* (D. Mass).