

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

ROSALIND BANKS

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-24-0068

DECISION

On March 15, 2024 the Division of Administrative Law Appeals (“DALA”) dismissed Petitioner Rosalind Banks’ appeal of the State Board of Retirement’s (“SBR”) denial of the Petitioner’s application for accidental disability retirement pursuant to M.G.L. c. 32 § 7. On April 12, 2024, the Attorney General’s Office Consumer Advocacy and Response Division forwarded to the Contributory Retirement Appeal Board (“CRAB”) a complaint submitted by the Petitioner the previous day. It is unclear from the complaint whether Ms. Banks wanted to appeal the DALA dismissal. Nevertheless, CRAB construed this complaint as a notice of objection to the March 15, 2024 DALA decision and noted the date of appeal as April 11, 2024, the day the complaint was initially filed.

We issued to Petitioner an Order to Show Cause on April 17, 2024 noting that CRAB’s “governing statute, G.L. c. 32, § 16(4) provides that the DALA magistrate’s decision “shall be final . . . *unless within fifteen days after such decision . . . either party objects to such decision, in writing, to the contributory retirement appeal board . . .*” *Id.* (emphasis added)” and requested Petitioner provide the Board “any and all reasons why this appeal should not be dismissed as untimely”.

Petitioner filed a response to our Order with an original postmark of April 24, 2024.

For unknown reasons this filing was returned to the Petitioner. The Petitioner resubmitted her response, attaching the original postmark to the filing. We accepted the response as timely and attributed the delay to mailing issues outside of the Petitioner's control. The State Board of Retirement filed their response on May 15, 2024 closing the briefing period.

In numerous telephonic conversations with the Petitioner, CRAB conveyed that the sole issue currently under review was the timeliness of her appeal, namely whether she had "object[ed] to [the DALA] decision, in writing" within fifteen days of such decision. As CRAB recognized in our Order to Show Cause of April 17, 2024 "if an appeal to CRAB from DALA is filed more than fifteen (15) days after the date of the DALA decision, it must be dismissed." In her response, Ms. Banks does not address the timeliness of her appeal, and argues only the merits of her application. Ms. Banks submitted to CRAB copies of her medical records, job descriptions, and positive performance reviews of public service for the Department of Transitional Assistance. She does not cite to any authority that would allow CRAB to review an appeal commenced outside of this jurisdictional period.

In this respect, Ms. Banks seeks a form of equitable relief we are unable to provide. As sympathetic as we may be to the circumstances presented in the Petitioner's filing, we must be mindful that attempts to institute judicial appeals "after expiration of the period limited by a statute" are "repugnant to the procedural scheme." *Schulte v. Director of the Div. of Employment Sec.*, 369 Mass. 74, 79 (1975). In addition, we must recognize that "time limits have particular significance in the context of administrative appeals due to the extremely large volume of such cases. Retirement boards need to know with reasonable certainty which cases are still subject to appeal in order to anticipate their potential liability for benefits." *Jane Seibecker v. Teachers' Retirement Syst.*, CR-14-773 (CRAB July 25, 2017) citing *McLaughlin v. Contributory Retirement Appeal Bd.*, No. SUCV2012-04354, Memorandum of Decision and Order (Suffolk Superior Ct. Jan. 13,

2014) (CRAB has no jurisdiction to hear late appeal).¹

As with all appeals not timely filed, CRAB is jurisdictionally bound to enforce a fifteen-day deadline beginning the date of the DALA decision's issuance and may not ignore the plain language of the statute. "We interpret the language of the statute 'in accordance with its plain meaning, and if the language is clear and unambiguous, it is conclusive as to the intent of the legislature,'" *New England Auto Max, Inc. v. Hanley*, 494 Mass. 87, 91 (2024) (Statutes are to be interpreted in accordance with their plain words).

While we commend Ms. Banks for her years of service to the Commonwealth and sympathize with her circumstances, DALA and CRAB simply do not have the authority to provide equitable relief where it contravenes the retirement law. *See Early v. State Board of Retirement*, 420 Mass. 836 (1995) (DALA 1992) (*aff'd* CRAB 1993) and *Petrillo v. Public Employee Retirement Administration*, CR-92-731 (DALA 1992) (*aff'd* CRAB 1993). This appeal must be dismissed as untimely.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



Uyen M. Tran
Assistant Attorney General
Chair
Attorney General's Appointee

Did Not Participate

Nicolle M. Allen, Esq.

¹ *See Sears, Roebuck & Co. v. State Tax Comm'n*, 370 Mass. 127, 130 (1976) (board lacked jurisdiction to hear late appeal where time limit specified by statute); *Hanchett v. State Bd. of Retirement*, CR-07-1071 at 15 (DALA, Sept. 2, 2011) at 13-15 (no jurisdiction where attorney mistakenly sent appeal letter to retirement board, which did not forward it to DALA until three months later); *cf. Bowles v. Russell*, 551 U.S. 205, 209, 214 (2007) (where time limit was set by statute, Federal courts had no jurisdiction to allow appeal outside statutory limits despite clerk's error in informing counsel of deadline).

Governor's Appointee

Patrick M. Charles

Patrick M. Charles, Esq.
Public Employee Retirement Administration
Commission Appointee

Date: July 3, 2024