

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Christopher Baratta,**  
Petitioner,

No. CR-23-0216

Dated: August 13, 2024

v.

**Boston Retirement System,**  
Respondent.

**ORDER ON MOTION FOR RECONSIDERATION**

Petitioner Christopher Baratta is a teacher. He brought this appeal to challenge a decision of the Boston Retirement System determining that he is not entitled to be enrolled in the benefits program established by G.L. c. 32, § 5(4)(i). In the Boston system, that program is known as TARP. In the Massachusetts Teachers' Retirement System (MTRS), where Mr. Baratta is a member today, the same program is known as Retirement Plus.

Hundreds of teachers have appealed from similar decisions. Consolidated proceedings to adjudicate such appeals fairly and efficiently commenced in late 2021. *See In the Matter of Enrollment in Retirement Plus*, No. CR-21-369. Numerous appeals were settled or dismissed during the next approximately two years.

Consolidated orders dated August 30, 2023 established procedures for the adjudication of two categories of teachers whose appeals remained live. One of the orders addressed enumerated teachers who claimed that they were entitled to participate in the § 5(4)(i) program because—notwithstanding the contrary records maintained by their systems—they had filed timely enrollment forms.

Mr. Baratta's appeal was listed in and governed by that order. It required him to file one or more affidavits in support of his appeal within 30 days, i.e., by September 29, 2023. The order stated that any petitioner's failure to comply could "result in dismissal . . . based on failure

to prosecute.” Mr. Baratta did not file a timely response. His appeal was dismissed based on failure to prosecute by an order dated October 6, 2023.

Thereafter, Mr. Baratta filed a letter and attachments with the Contributory Retirement Appeal Board. He wrote: “I readily acknowledge that I failed to abide by the stipulations outlined within the [consolidated docket] in which the petitioner (me) needed to file affidavits pertinent to my appeals.” Mr. Baratta explained that, during the months or years leading up to September 2023, his attention was diverted away from his retirement benefits and toward his family’s probate-related disputes. With respect to the underlying merits of his claim, Mr. Baratta reasserted that he “did in fact submit the required enrollment form.”

Mr. Baratta’s mailing to CRAB bears the postmark October 20, 2023. CRAB more recently relayed his submission back to DALA. It is being construed here as a motion for reconsideration. In separate responsive briefs, the Boston system and MTRS maintain that Mr. Baratta is ineligible for relief.

A motion for reconsideration “must identify a clerical or mechanical error in the decision or a significant factor . . . the Presiding Officer may have overlooked in deciding the case.” Standard rule 7(l).<sup>1</sup> This demanding standard reflects the important benefits of finality and certainty in the law. *See Dunner v. Boston Ret. Bd.*, No. CR-12-552, at \*2-4 (CRAB Dec. 2, 2015); *Newman v. State Bd. of Ret.*, No. CR-04-203, at \*3 (CRAB Dec. 23, 2008).

Mr. Baratta’s motion does not establish a compelling basis for reconsideration. His appeal was dismissed for failure to prosecute. *See* standard rule 7(g)(2). He does not maintain that the dismissal featured any error, whether “clerical or mechanical” or otherwise. *See*

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<sup>1</sup> In accordance with G.L. c. 30A, § 9, the “standard rules” in this context are the provisions of 801 C.M.R. § 1.01.

Standard rule 7(l). And the tribunal did not “overlook” the circumstances of Mr. Baratta’s competing litigation matters, because he did not report them while the case was live. *See Barker v. State Bd. of Ret.*, No. CR-07-155, at \*1-2 (CRAB n.d.).

Mr. Baratta’s reported circumstances also cannot be viewed as a “significant factor” with respect to the dismissal of his appeal. It is overwhelmingly common for a litigant to be busy with other important affairs. Mr. Baratta does not suggest that his probate-related matters made him *incapable* of responding to the August 30, 2023 consolidated order, if only to request an extension. *See* standard rule 4(e). In the judicial courts, similar circumstances would not support a finding of “excusable neglect.” *See Shaev v. Alvord*, 66 Mass. App. Ct. 910, 911-12 (2006); *Kiley v. Glynn*, 2004 Mass. App. Div. 183 (Dist. Ct. 2004). Here, they do not warrant post-decision reconsideration.

Finally, further litigation of Mr. Baratta’s appeal would not be likely to produce an outcome in his favor. His unsworn claim to timely enrollment is conclusory. He describes no details of the sort that might lend persuasiveness to his account. He relies on no contemporaneous documents. He identifies no potential testimony other than his own and his wife’s equally conclusory recollection. On the other side of the scale, the Boston system’s decision to exclude Mr. Baratta from the § 5(4)(i) program is supported at least by the statutory presumption that public agencies maintain regular records. *See City of Newburyport v. Thurlow*, 324 Mass. 40, 44 (1949). *See also Commonwealth v. Barboza*, 68 Mass. App. Ct. 180, 185 (2007). A reinstatement of Mr. Baratta’s appeal would therefore be likely to result in further efforts bearing no fruit. *See Teamsters, Chauffeurs, Warehousemen & Helpers Union, Loc. No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 20 (1st Cir. 1992).

In view of the foregoing, it is hereby ORDERED that Mr. Baratta's motion for reconsideration is DENIED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate