

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

William Bartini,
Petitioner,

No. CR-22-0018

Dated: July 5, 2024

v.

Berkshire County Retirement Board and
Public Employee Retirement
Administration Commission,
Respondents.

ORDER OF DISMISSAL

Petitioner William Bartini is a retired member of the respondent board. He appeals from a board decision determining that his post-retirement earnings exceeded the applicable statutory limits. The respondents have filed a motion to dismiss, which Mr. Bartini has not opposed. *See* Standard rule 7(a).^{1,2}

I

Mr. Bartini retired for accidental disability in 2015. Since 2018, he has operated a security and investigative business. Upon review of Mr. Bartini’s documentation about his earnings in 2020, PERAC determined that he had exceeded the limits imposed by G.L. c. 32, § 91A. The board held an evidentiary hearing in November 2021, agreed with PERAC, and concluded that Mr. Bartini owed the board approximately \$30,000.

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

² At a May 13, 2024 evidentiary hearing, Mr. Bartini successfully obtained a continuance for the purpose of securing legal representation. He requested and was granted twenty-one days to cause his representative to file a status report. Neither Mr. Bartini nor a representative on his behalf has submitted anything since. Coupled with Mr. Bartini’s failure to oppose the motion to dismiss, these circumstances tend to indicate Mr. Bartini’s “intention not to continue with the prosecution of [his] claim.” Standard rule 7(g)(2).

The board prepared a formal decision letter bearing the date December 29, 2021. The letter stated: “The board has determined that you are required to refund the amount of [approximately \$30,000] to the [board]. . . . [Y]our allowance shall be withheld . . . until such refund is made.” The letter recited Mr. Bartini’s appellate rights, stating: “If you are aggrieved by this decision, you may appeal . . . by filing a claim with the Contributory Retirement Appeal Board . . . within fifteen (15) days of receipt of this notice.”

A representative of the board emailed Mr. Bartini on December 30, 2021, attaching a copy of the board’s decision letter. Mr. Bartini read the email and its attachment on that same day. The body of the email said: “The board made their decision yesterday I have mailed you copies first class and certified mail. I have also attached a copy to this email for your convenience.”

Mr. Bartini received his paper copy of the board’s decision letter on January 5, 2022. He prepared a notice of appeal to CRAB bearing the date January 17, 2022. The notice of appeal arrived at DALA postmarked January 20, 2022, twenty-three days after the board’s email to Mr. Bartini.

II

An appeal from a retirement board’s decision must be filed “within fifteen days of notification of such . . . decision.” G.L. c. 32, § 16(4). An appeal filed by U.S. mail is deemed filed on the date of its postmark. Standard rule 4(a). The statutory time limit is jurisdictional, meaning that if it is not satisfied, DALA has no authority to extend the deadline or take any other action. *See Lambert v. MTRS*, No. CR-09-74 (CRAB Feb. 17, 2012).

To count as an appealable “decision,” a retirement board’s letter must “expressly state[] that it is an appealable decision.” *Barnstable Cty. Ret. Bd. v. PERAC*, No. CR-07-163, at *12 (CRAB Feb. 17, 2012). The board’s letter of December 29, 2021 satisfied this requirement.

The only question is when Mr. Bartini received “notification” of the decision within the meaning of G.L. c. 32, § 16(4). The case law has made clear that “notification” does not necessarily mean formal service by traditional methods. A petitioner receives “notification” of a decision when the decision “is delivered to the petitioner’s home *or is available to the petitioner.*” *Bailey v. State Bd. of Ret.*, No. CR-07-724, at *5 (CRAB Nov. 16, 2012) (emphasis added). Some administrative decisions have also inquired into the date on which a member actually learned that the board has finalized its “official position.” *Cronin v. Milton Ret. Bd.*, No. CR-01-946, at *11 (DALA Oct. 25, 2002, *aff’d*, CRAB July 30, 2003); *Fitzpatrick v. Fall River Ret. Bd.*, No. CR-05-940 (DALA Jan. 13, 2012, *vacated on other grounds*, DALA May 24, 2012). These forms of notification may be accomplished by methods other than paper mail. *See Caton v. State Bd. of Ret.*, No. CR-16-470, at *11 (DALA June 14, 2019) (fax); *Hill v. State Bd. of Ret.*, No. CR-07-605, at *10-11 (DALA June 12, 2009) (fax); *Moulton v. State Bd. of Ret.*, No. CR-06-356, at *5 (DALA Oct. 5, 2007) (email).

Binding regulations *require* agencies operating under them to issue their decisions by email. Standard rule 4(c). One of the benefits of that practice is that an email ordinarily becomes available to the recipient promptly after it is sent. Standard rule 4(a). *See Andino v. Fair Labor Div.*, No. LB-21-572, 2022 WL 9619031, at *1 (DALA Jan. 21, 2022). On the same date of the board’s December 30, 2021 email, Mr. Bartini learned that the board had finalized its official position. He also simultaneously received into his possession an electronic copy of the board’s decision letter, including the appellate-rights language recited there. The fifteen-day appeal period began to run on that day. Mr. Bartini did not file his appeal within that timeframe.

In principle, there might arise circumstances in which a decision letter correctly states the member’s appellate rights, but the board undercuts that guidance by informing the member that

the decision has not yet taken effect. *Cf. In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2021 WL 11680398, at *2 (DALA Oct. 22, 2021); *Zanetti v. Boston Ret. Bd.*, No. CR-21-176, 2023 WL 4052397, at *1 (DALA June 9, 2023). That problem is not presented here. The board's email to Mr. Bartini told him that the board had made its decision, that he was receiving a copy by email, and that he would also be receiving additional copies by mail. The decision letter that the board attached to its email identified the decision's date as December 29, 2021 and informed Mr. Bartini that the appeal period would last only fifteen days. Fairly read, the board's correspondence did not suggest that Mr. Bartini's appeal period would remain on hold until his receipt of a paper copy.

III

The fifteen-day appeal period is demanding and unyielding. It may generate harsh results. But an administrative agency cannot depart from statutory rules on the basis of such concerns. *See Bristol County Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006). The motion to dismiss is therefore ALLOWED, and this appeal is hereby DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate