

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

BONNIE BRIEN

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee

CR-23-0126

DECISION

On July 5, 2024 the Division of Administrative Law Appeals (“DALA”) dismissed Petitioner Bonnie Brien’s appeal of the State Board of Retirement’s (“SBR”) denial of her request to include certain payments as regular compensation. In his decision, the DALA magistrate noted that the letter from SBR, declining to consider these payments as regular compensation, was dated December 14, 2022. In providing the Petitioner with her appellate rights, the decision letter noted that she could appeal to the Contributory Retirement Appeal Board (“CRAB”) within fifteen days of receiving notice of the decision. Ms. Brien mailed a notice of objection to DALA that was postmarked on February 9, 2023.

We issued to Petitioner an Order to Show Cause on July 10, 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 on August 16, 2024. She acknowledged that the appeal was not timely filed and that DALA and CRAB do not consider extenuating

circumstances with respect to the issue of jurisdiction. Nevertheless, Ms. Brien provides several arguments in favor of not dismissing her appeal for lack of jurisdiction. First, she asserts that she was only approximately one month late in appealing SBR's decision, rather than several months late. Second, after multiple attempts to contact SBR, she was under the impression that the representative from SBR gave her an extension to file her appeal. Third, Ms. Brien claims that her Memorandum of Specific Objections presented irrefutable arguments, proving that the stipend she received for being a K9 handler should constitute regular compensation. She asserts that the facts in her appeal outweigh the contention that "wages" do not include "overtime" pay. Lastly, Ms. Brien argues that her appeal aligns with the facts in *Barnes v. Essex Regional Retirement Syst.*, CR-21-469, where a K9 Handler was ultimately allowed to include K9 stipend, which was calculated as overtime pay, as regular compensation in the calculation of his retirement benefit. In essence, Ms. Brien argues that fairness requires that her K9 stipend should constitute regular compensation because other K9 handlers were allowed to include such pay in the calculation of their retirement benefits. While we commend Ms. Brien for her services with the DOC and have fully considered her arguments, Ms. Brien has not cited any authority that allows CRAB and DALA to expand a statutory deadline.

As we noted in the Order to Show Cause, our governing statute, G.L. c. 32, § 16(4) provides that "any person when aggrieved by any action taken or decision of the retirement board...may appeal to the contributory retirement appeal board by filing therewith a claim in writing *within fifteen days* of notification of such action or decision of the retirement board." *Id.* (emphasis added). DALA correctly explained that a petitioner receives notification of a Board's decision "as soon as the decision is delivered to the petitioner's home or is available to the petitioner." DALA decision at 2. DALA goes on to cite Standard Rule 4(c), instructing that a letter mailed by U.S. Mail is presumed to have been delivered to the petitioner 3 days later. *Id.* Moreover, an appeal filed by a petitioner is presumed to have been filed as of the postmark date. Standard Rule 4(a).

Applying the above, the DALA magistrate noted that Ms. Brien filed her appeal on February 9, 2023, the postmark date. For this appeal to be timely, Ms. Brien must have presented evidence that she received notification of the Board's decision on January 25, 2023. But here, the magistrate correctly determined from the facts that Ms. Brien returned home no later than January 5 and 9, 2023 from her canine's veterinary visits and therefore, received notice

of SBR's decision at that time. Because Ms. Brien filed her appeal on February 9, 2023, DALA correctly concluded that Ms. Brien's appeal was untimely.

Ms. Brien's other contentions are also not availing. If an appeal to DALA from a retirement board is filed more than fifteen (15) days after notice of the retirement board's decision, it must be dismissed for lack of subject matter jurisdiction - regardless of whether or not the appeal has strong evidentiary support. Time periods contained within the statute are jurisdictional. *Lambert v. Massachusetts Teachers' Retirement Bd.*, CR-09-0074 (CRAB Feb. 7, 2012). Thus, the merits of Ms. Brien's claim have no impact on whether DALA or CRAB has jurisdiction to hear the appeal. While we sympathize with Ms. Brien's circumstances that lead to her untimely appeal and her years of service, CRAB is bound by the statutory language in G.L. c. 32, § 16(4) and lacks authority to provide equitable relief that creates new exceptions to c. 32. See, e.g., *Early v. State Bd. of Ret.*, 420 Mass. 836 (1995) (Board had no authority to expand meaning of "member" in G.L. c. 32, § 1, as directed to by judicial order in divorce proceeding); *Petrillo v. Public Employee Ret. Admin.*, CR-92-731, Decision on Reconsideration (CRAB, Oct. 22, 1993) (CRAB has no authority to employ equitable remedy in face of specific contrary statutory language). Accordingly, this appeal must be dismissed for lack of jurisdiction. The DALA decision is affirmed. ***Affirm.***

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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Date: October 30, 2024