

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Bonnie Brien,**  
Petitioner,

No. CR-23-0126

Dated: July 5, 2024

v.

**State Board of Retirement,**  
Respondent.

**Appearances:**

For Petitioner: Bonnie Brien (pro se)

For Respondent: Sarah Kim, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner did not file her appeal “within fifteen days of notification of [the respondent board’s] . . . decision.” G.L. c. 32, § 16(4). DALA therefore lacks jurisdiction.

**DECISION**

Petitioner Bonnie Brien appeals from a decision of the State Board of Retirement declining to treat certain payments to Ms. Brien as within her regular compensation for retirement purposes. The appeal was submitted on the papers under standard rule 10(c).<sup>1</sup> I admit into evidence exhibits marked A-E and 10-12 in DALA’s case file.<sup>2</sup>

**Findings of Fact**

I find the following facts.

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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.

<sup>2</sup> Exhibits 10-12 were offered and marked by the board. Exhibits A-E were offered by Ms. Brien but not originally marked.

1. Ms. Brien worked for the Department of Corrections from 2000 to 2022. Alongside her salary, Ms. Brien received extra payments for handling DOC canines while off duty. In 2021, when she applied to retire for superannuation, Ms. Brien asked the board to treat those payments as within her regular compensation for retirement purposes. (Exhibits B, 10.)

2. The board denied Ms. Brien’s request in a decision letter dated December 14, 2022. The board explained that it viewed the pertinent payments as overtime or reimbursement for expenses. The board’s letter recited Ms. Brien’s appellate rights, specifically stating that she could appeal to CRAB within fifteen days. (Exhibit A.)

3. Ms. Brien filed a notice of appeal bearing the date January 9, 2023. Her mailing envelope was delivered to DALA by U.S. mail with a postmark of one month later, February 9, 2023. With respect to the appeal’s timeliness, Ms. Brien stated: “The [board’s decision letter] was not in hand because of a family vacation, and a bout of COVID-19 that my family and I went through, as well as two (2) emergency room visits for my retired canine on January 5th and 9th.” She added that she made repeated, unsuccessful efforts to ask the board for a substitute decision letter bearing a more recent date. (Exhibit 12.)

### **Analysis**

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). The statutory deadline is “jurisdictional,” meaning that DALA has no authority to extend it. *Lambert v. MTRS*, No. CR-09-74 (CRAB Feb. 17, 2012).

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.” *Bailey v. State Bd. of Ret.*, No. CR-07-724, at \*5 (CRAB Nov. 16, 2012). A letter sent to a petitioner by U.S. mail is

presumed to have been delivered three days later. Standard rule 4(c). An appeal filed by a petitioner by U.S. mail is deemed filed as of the date of the postmark. Standard rule 4(a).

Taken together, these rules mean that Ms. Brien filed her appeal approximately 54 days after she received the board’s decision. The appeal was therefore untimely.

Ms. Brien’s account of her particular circumstances does not change the result. In order for the February 9, 2023 appeal to have been timely, the board’s decision would have needed to remain “unavailable” to Ms. Brien until fifteen days earlier, i.e., January 25, 2023. *Even if* Ms. Brien’s “family vacation” took her away from her usual address, and *even if* vacation travel may be viewed as making incoming mail “unavailable” to the member, it remains the most reasonable inference from Ms. Brien’s papers that she returned home no later than her veterinarian visits of January 5 and 9, 2023.

The fifteen-day appeal period is strict. The circumstances of Ms. Brien’s failure to satisfy it are sympathetic. But the only proper course of action available to an agency lacking jurisdiction is “dismissing the cause.” *Phone Recovery Servs., LLC v. Verizon of New England, Inc.*, 480 Mass. 224, 230 (2018).

### **Conclusion and Order**

Given that Ms. Brien did not file her appeal within the fifteen-day statutory deadline, DALA lacks jurisdiction. The appeal is therefore DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate