

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)

Elizabeth Byrne,  
Petitioner

v.

Docket No. CR-24-0345

State Board of Retirement,  
Respondent

Date: March 21, 2025

**ORDER OF DISMISSAL**

Procedure for the motion to dismiss

On June 3, 2024 The Division of Administrative Law Appeals (DALA) docketed an appeal from Ms. Byrne. It is not clear in Ms. Byrne's voluminous filing which document is her appeal, but there is enough information to show that her appeal was about group classification.

Many paperclipped packets of documents from Ms. Byrne appear in this appeal's file. The packet most relevant to this motion has a sticky note with "Statement of facts" written on it. Documents in that packet are not numbered by document or page and do not appear to be organized in any order, such as chronological.

On January 21, 2025, SBR moved to dismiss Ms. Byrne's appeal as untimely. SBR attached four proposed exhibits, which I refer to as exhibits. On January 31, 2025, Ms. Byrne opposed the motion to dismiss. She attached two exhibits.

Procedure for the appeal

1. On February 6, 2023, Ms. Byrne applied for Group 2 classification. Page 1 of her application stated that she was applying for Group 2 for her work at the Department of Public

Health from October 1985 to the present. Page 2 listed four positions as a nursing assistant from October 1985 to December 1985; December 1985 to November 1989; November 1989 to January 1990; and January 1990 to June 1990. She did not seek prorating. (SBR Ex. 1)<sup>1</sup>

2. On May 25, 2023, SBR denied Ms. Byrne's application for Group 2 classification for her position as a Registered Nurse II; on May 26, 2023, it notified her of the denial. SBR advised Ms. Byre of her right to appeal to DALA. (Denial letter, SBR to Byrne, May 26, 2023, Statement of facts packet)<sup>2</sup>

3. Ms. Byrne did not appeal this denial to DALA.

4. Rather, Ms. Byrne SBR "request[ed] reconsideration for a Group 2 classification" from SBR. (Letter from Byrne to SBR, June 9, 2023, Statement of facts packet)

5. On June 29, 2023, SBR denied Ms. Byrne's request for reconsideration; on June 30, 2023, it notified her of the denial. SBR advised Ms. Byre of her right to appeal to DALA within 15 days. (Denial letter, SBR to Byrne, June 30, 2023, Statement of facts packet)

6. Ms. Byrne did not appeal this denial of reconsideration to DALA. Rather, on July 10, 2023, she applied for Group 2 classification, this time pro-rating her service. (SBR Ex. 2)

7. Ms. Byrne's application for prorated service was from October 1985 to August 2014. (SBR Ex. 2)

8. On page 1 of her application, Ms. Byrne sought group classification for her positions as a Registered Nurse II, nursing assistant, and physical therapy aide. Although the application

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<sup>1</sup> If this application included information about Ms. Byrne's service from 1990 to 2023, it is not part of the exhibit or apparently among the documents that Ms. Byrne submitted in packets.

<sup>2</sup> In its motion to dismiss, SBR referred to its May 26, 2023 denial as having denied the February 6, 2023 application. However, the February 6, 2023 application was for four nursing assistant positions, whereas the May 26, 2023 denial was for an RN II position. Presumably, SBR had information that in her last year before her application, her position was that of a Registered Nurse. The topic of this footnote is ultimately insignificant because this denial is not on appeal.

required Ms. Byrne to submit a separate application for each position for which she sought group classification, she stated that she was submitting only one application. (SBR Ex. 2)

9. On page 2 of her application, which asked Ms. Byrne to list her positions and dates of service, Ms. Byrne wrote “Please See Attached.”<sup>3</sup>

10. On December 21, 2023, SBR decided on Ms. Byrne’s application for prorated service. In two separate letters, one on December 21 and one on December 22, 2023:

A. SBR denied Group 2 classification for Ms. Byrne’s service as:

- i. Attendant Nurse, 1985 to 1986;
- ii. Nursing Assistant I, 1988 to 1990;
- iii. Nursing Assistant I, 1993 to 1997;
- iv. Registered Nurse II, March 1997 to June 1997;
- v. Registered Nurse III, June 1997 to September 1997; and
- vi. Registered Nurse, September 1997 to August 2014.

SBR advised Ms. Byrne of her right to appeal to DALA within 15 days.

B. SBR granted Group 2 classification for Ms. Byrne’s service as:

- i. Nursing Assistant I, from 1990 to 1991; and
- ii. Physical Therapist Aide, from 1991 to 1993.

(Letters from SBR to Byrne, December 21 and 22, 2023, Statement of facts packet)

11. Ms. Byrne did not appeal these denials to DALA within 15 days.

12. Rather, Ms. Byrne “request[ed] reconsideration” from SBR. (Letter from Byrne to SBR, December 26, 2023, Statement of facts packet)

13. On April 25, 2024, SBR, having reconsidered its denial, granted Group 2 classification for Ms. Byrne’s service as a Registered Nurse II from 2012 to 2014. (Since SBR had previously denied Group 2 classification for Ms. Byrne’s position as a Registered Nurse II

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<sup>3</sup> No attachment is part of the exhibit or apparently among the documents that Ms. Byrne submitted in packets. Ultimately, the absence is insignificant, because later documents explain for what positions Ms. Byrne sought, received, and was denied prorating.

from September 1997 to August 2014, SBR’s decision represented a partial reconsideration.)

14. On April 26, 2024, SBR notified Ms. Byrne of its decision. SBR’s letter did not mention the other positions for which Ms. Byrne had sought reconsideration. It did not advise her of her appeal rights. (Letter from SBR to Byrne, April 26, 2024, Statement of facts packet)<sup>4</sup>

15. Email exchanges between SBR and Ms. Byrne indicate that Ms. Byrne preferred asking SBR to reconsider its decisions instead of appealing to DALA. (Statement of facts packet)

16. In an email on April 22, 2024, SBR discussed the “legal process” of “your DALA appeal.” SBR was apparently unaware that Ms. Byrne had not appealed. An SBR paralegal wrote, “I understand that the DALA appeal process is lengthier than having your request

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<sup>4</sup> The absence of advice of rights from the denial of reconsideration is not significant. Similarly, the presence of advice of rights in the previous denial of reconsideration is not significant.

A petitioner may not miss the 15-day deadline under G.L. c. 32, §16(4), then file a motion to reconsider, and if a retirement board denies the motion, appeal the denial of the motion and revive the underlying claim. If DALA allowed such a sequence of events, it would eviscerate the 15-day deadline under G.L. c. 32, §16(4); contravene the clear intent of the Legislature that parties’ appealing decisions under Chapter 32 have a deadline and that the deadline is 15 days; and make it possible for a petitioner to revive a claim years after a retirement board had denied it. *See Barbara Mobilia (Estate of Julie Enzian) v. State Board of Retirement*, CR-22-0602 (DALA March 14, 2025) (“It is not clear” whether a motion to reconsider can revive a year-and-a-half-old case). *Contra Patricia Taylor v. State Board of Retirement*, CR-09-45 \*3 (CRAB 2012) (“the time to appeal to DALA or CRAB is not tolled or enlarged during the pendency of a request for reconsideration, nor does the denial of reconsideration open a new appeal period from the original decision”) & n.6; *George Levesque v. State Board of Retirement*, CR-16-501 (DALA 2021) (“There is no provision in section 16(4) that permits a member to toll the fifteen-day appeal period by filing a request for reconsideration”); *Thalia Lambert v. Massachusetts Teachers’ Retirement System*, CR-09-74 (DALA 2011) (same).

For a petitioner to be erroneously advised of a right that in fact does not exist does not create and grant them that right. *See Nancy Lospennato v. State Board of Retirement*, CR-08-614 (DALA 2012) (“A retirement board’s review of a matter that it has previously decided does not necessarily constitute a new action from which there is a statutory right of appeal...”). A denial letter is not a source of rights. Thus, the following are not significant: SBR advised Ms. Byrne that she could appeal a denial of her request for reconsideration; SBR did not advise Ms. Byrne that she could appeal another denial of her request for reconsideration; and SBR’s two denials differed in that one advised Ms. Byrne of the right to appeal, and one did not.

reviewed by the Board....” (P. 8, email chain, Statement of facts packet)

17. In an email on May 6, 2024, Ms. Byrne again asked SBR to reconsider its decision.  
(P. 5, email chain, Statement of facts packet)

18. On May 30, 2024, Ms. Byrne emailed SBR in part: “If the board continues] to refuse my reconsideration...I would like to pursue this with a DALA hearing.” (P. 4, email chain, Statement of facts packet)

19. On May 31, 2024, Ms. Byrne emailed SBR asking for a denial letter dated on that date so that she could appeal to DALA. (P. 2, email chain, Statement of facts packet)

20. Also on May 31, 2024, SBR emailed Ms. Byrne, stating in part that “the Board cannot resend a letter with a new date.” (P. 2, email chain, Statement of facts packet)

21. On June 3, 2024, Ms. Byrne mailed SBR:

Can [I] reapply? I initially did in January and it was sent to reconsideration.<sup>5</sup>  
Nowhere in the retirement board website does it say this is not allowed.

(P. 1, email chain, Statement of facts packet)

22. On June 7, 2024, SBR emailed Ms. Byrne that it had decided her application for Group 2 classification and that she could not reapply. (P. 1, email chain, Statement of facts packet)

23. On June 5, 2024, DALA acknowledged receiving Ms. Byrne’s appeal.

### **Discussion**

“Appeal periods are jurisdictional, and because Petitioner’s appeal is untimely, DALA has no jurisdiction to hear it.” *Michael Thompson v. State Board of Retirement*, CR-15-85 (DALA 2020) (quotation marks and citation omitted). That is, because Ms. Byrne missed the

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<sup>5</sup> It is unknown what Ms. Byrne referred to.

deadline to appeal, I have no authority to hear her appeal. I have no authority to waive the deadline. I dismiss her appeal, as I must.

Ms. Byrne knows that she missed the deadline to appeal, as evidenced by her request to SBR for a new denial letter. When SBR granted Ms. Byrne multiple bites of the proverbial apple, it did so as a courtesy. *Nancy Lospennato v. State Board of Retirement*, CR-08-614 (DALA 2012). Her multiple bites of the apple do not entitle her to still another. SBR's courtesies to Ms. Byrne did not toll her deadline to appeal. Ms. Byrne's preference to ask SBR to reconsider its decisions, rather than to appeal to DALA, did not toll her deadline to appeal. *Patricia Taylor v. State Board of Retirement*, CR-09-45 (CRAB 2012); *George Levesque v. State Board of Retirement*, CR-16-501 (DALA 2021); *Thalia Lambert v. Massachusetts Teachers' Retirement System*, CR-09-74 (DALA 2011).

In her opposition, Ms. Byrne states:

Respondent continually told Petitioner Byrne that the proper course of action was to request reconsideration of their initial finding.

I do not see support for this statement in the file. It is not in the 14-page email chain in the Statement of facts packet. I doubt that SBR told Ms. Byrne that the proper course of action was to request reconsideration, rather than to appeal, and I doubt that SBR did so continually. Instead, I see evidence that SBR advised Ms. Byrne of her right to appeal to DALA; assumed that Ms. Byrne had appealed to DALA; and repeatedly told Ms. Byrne to pursue her appeal at DALA. But no matter what SBR told Ms. Byrne, requesting reconsideration does not toll the appeal period.

In her opposition, Ms. Byrne states, "To Petitioner, who is pro se, reconsideration or appeal is a distinction with no difference." Although the distinction between a request to SBR and an appeal to DALA has no difference to Ms. Byrne, her understanding does not decide this

matter. The law decides this matter. Under the law, she missed the deadline to appeal and I must dismiss her appeal.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Sent to: Elizabeth Byrne  
Jennifer Hunt, Esq.