COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Thomas Cavanaugh,
Petitioner

v. Docket No. CR-24-0552

Boston Retirement System and
Public Employee Retirement Administration Commission,
Respondents

Appearance for Petitioner:

Anne M. Cavanaugh

Appearance for Respondents:

Natacha Thomas, Esq.
Felicia Baruffi, Esq.

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF CORRECTED DECISION

A statute required a disability retiree to file an Annual Statement of Earned Income by April 15, 2024. Sometime after that date, his wife, who handles his affairs, mailed his 2023 statement to the Public Employees Retirement Administration Commission (PERAC). However, PERAC did not receive it and the Boston Retirement System (BRS) notified the retiree. In June 2024, the retiree's wife mistakenly used a 2022 form to again file the retiree's 2023 information. PERAC scanned the 2022 form, filed the retiree's 2023 information under 2022, and considered him out of compliance with the requirement to submit his 2023 information. BRS terminated the retiree's benefits, the retiree submitted his information a third time, and BRS reinstated his disability benefits. Retiree is entitled to disability benefits from the time of his second submission to the time of his termination.

CORRECTED DECISION

The petitioner, Thomas Cavanaugh, appeals the termination by the Boston Retirement System (BRS) of his disability retirement benefits

I held a hearing on September 10, 2025 by Webex, which I recorded. Mr. Cavanaugh's wife, Anne Cavanaugh, represented him, testified, and called no other witness. Mr. Cavanaugh attended the hearing, but did not testify. The respondents called as a witness Ellen Furtado, a PERAC employee.

I admitted six exhibits: Exhibits 1 through 4 as submitted with the respondents' prehearing memorandum; Mr. Cavanaugh's appeal as Exhibit 5; and an Annual Statement of Earned Income labeled 2022, which Mr. Cavanaugh used to submit his 2023 financial information, as Exhibit 6.

Post-hearing briefs were submitted in September and October 2025. The respondents' joint brief alleges facts that are not in evidence; I have not considered those factual allegations.

On June 5, 2026, I issued a decision. On June 22, 2026, the respondents moved for reconsideration on two grounds, arguing that I had erred on the law and had ordered a remedy that was inconsistent with statutory language. On July 30, 2026, I held an informal hearing by telephone on the motion. I conceded the first ground and clarified what remedy would be consistent with statutory language. I grant the motion in part, deny it in part, withdraw my decision of June 5, 2026, and issue this corrected decision.

Findings of Fact

1. Mr. Cavanaugh receives disability retirement benefits. (Ex. 1)

2. Mrs. Cavanaugh manages Mr. Cavanaugh's affairs, including filing his Annual Statements of Earned Income. (Cavanaugh testimony)

3. PERAC usually mails hard copies of blank annual statement forms to retirees twice each year, in February and June. (Furtado testimony)

4. PERAC's dual mailing apparently accounted for Mrs. Cavanaugh having blank annual statements in the file that she keeps about annual statements.

5. In some past years, Mrs. Cavanaugh could not find in her file a blank Annual Statement of Earned Income with the correct year on it but could find a blank statement for an earlier year. In those years, she crossed out the incorrect year and hand-wrote the correct year. PERAC accepted these statements. (Cavanaugh testimony)

6. Sometime after April 15, 2024, after the Cavanaughs' taxes were completed, Mrs. Cavanaugh mailed to PERAC Mr. Cavanaugh's Annual Statement of Earned Income for 2023. (Cavanaugh testimony)

7. Mrs. Cavanaugh did not photocopy the Annual Statement of Earned Income for 2023. She mailed it by first-class mail with no request for a return receipt. She does not remember where she mailed the statement. (Cavanaugh testimony)

8. Mrs. Cavanaugh mailed the Annual Statement of Earned Income for 2023 sometime between April 15, 2024 (when taxes were completed) and June 20, 2024 (when she mailed a second statement).

9. PERAC is aware that mail going to and from PERAC is sometimes received late, sometimes by one or two weeks, and is sometimes not received. (Furtado testimony)

10. On June 6, 2024, PERAC mailed to Mr. Cavanaugh a letter stating that PERAC had not received his Annual Statement of Earned Income for 2023. It advised him that failure to file the statement and required accompanying documents could result in termination of his disability retirement benefits. (Ex. 1)

11. On June 20, 2024, Mrs. Cavanaugh found a blank 2022 Annual Statement of Earned Income. She did not notice that it was from 2022 and therefore did not cross out “2022” and write “2023.” On the 2022 statement form, Mrs. Cavanaugh filled in Mr. Cavanaugh’s 2023 information. She attached the Cavanaughs’ 2023 tax returns. (Ex. 6; Cavanaugh testimony; Furtado testimony)

12. Mrs. Cavanaugh did not photocopy this second statement. She mailed the second statement and tax returns by first-class mail from the South Boston post office, where she works. (Cavanaugh testimony)

13. The 2022 form has a bar code at the top, specific to Mr. Cavanaugh and 2022. When PERAC received Mr. Cavanaugh’s second Annual Statement of Earned Income and tax returns on July 5, 2024, and scanned them, the barcode indicated that Mr. Cavanaugh was submitting a statement and tax returns for 2022, not 2023. The computer system filed the second statement and attachments in Mr. Cavanaugh’s 2022 file, not his 2023 file. (Ex. 6; Furtado testimony)

14. Whereas in the past, PERAC had received similar filings from Mr. Cavanaugh and other retirees and PERAC had filed them in the correct year, PERAC had changed its computer system, resulting in Mr. Cavanaugh’s statement and tax returns for 2023, on a 2022 form, being filed in his 2022 file. (Furtado testimony)

15. As far as PERAC knew and was concerned, Mr. Cavanaugh had not filed his 2023 statement and tax returns. Even when PERAC realized that Mr. Cavanaugh had submitted his 2023 annual statement and tax returns, albeit using a 2022 blank statement, it considered his submission for 2023 to be incomplete. (Furtado testimony)

16. If a retiree mails a statement and tax returns in one year using a form from a previous year, it does not raise a “red flag” with PERAC’s computer system because some retirees submit statements and tax returns late. (Furtado testimony)

17. On June 21, 2024, BRS mailed Mr. Cavanaugh a letter with the subject line “Notice of Termination Hearing.” (Bold omitted; capital letters reduced to initial capitals) The letter stated that BRS had received multiple notices from PERAC that Mr. Cavanaugh had failed to file his Annual Statement of Earned Income for 2023. The letter stated that his retirement allowance was being terminated effective April 15, 2024. It further stated that BRS would hold a hearing on August 15, 2024 “for those who have not complied with PERAC by July 19, 2024.” (Ex. 2) (bold omitted)

18. Mrs. Cavanaugh received the June 21, 2024 letter but was not concerned because she thought that she had successfully submitted Mr. Cavanaugh’s 2023 annual statement and tax returns. She did not plan to attend the August 15, 2024 hearing and did not do so. (Cavanaugh testimony)

19. On August 16, 2024, BRS mailed Mr. Cavanaugh a letter with the subject line “Notice of Retirement Allowance Termination.” (Bold omitted; capital letters reduced to initial capitals) The letter stated that Mr. Cavanaugh did not appear for the hearing, and as of that date, PERAC reported that he had not complied with the reporting requirement. (Ex. 3)

20. After receiving the August 16, 2024 letter, Mrs. Cavanaugh filed a third annual statement and tax returns for 2023 for Mr. Cavanaugh. She dated it June 28, 2023, but does not remember why she used that date. PERAC received it on August 27, 2024. (Ex. 4; Cavanaugh testimony)

21. On August 25, 2024, Mr. Cavanaugh timely appealed. (Ex. 5) In the appeal, Mr. Cavanaugh wrote in part:

> I submitted my yearly report of income to PERAC as required; I received a notice of termination in/or around 6/28/24 with requirements of sending compliance paperwork in before 7/19/24. I send another copy of compliance paperwork immediately to PERAC. Now I get a notice on 8/23/24 (letter was dated 8/16/24 and I only get 15 days to respond) stating that I missed a hearing before the Retirement board that I did not know I had to appear in front of because I sent my compliance paperwork in twice to PERAC.

(Ex. 5)

22. On December 19, 2024, PERAC was joined as a respondent.

Discussion

<u>The statute</u>

G.L. c. 32, § 91A requires a disability retiree to submit to PERAC by April 15

> a statement, in such form as the commission shall prescribe, certifying the full amount of his earnings from earned income during the preceding year.

If a disability retiree fails to do so and "unless such person shall show good cause for such failure to submit such statements," disability benefits are terminated and cannot be reinstated retroactively, although they can be reinstated when the retiree complies with the requirement. Before terminating benefits, a retirement board must hold a hearing. G.L. c. 32, § 91A.

<u>Did Mr. Cavanaugh submit his 2023 annual statement in April 2024?</u>

Mrs. Cavanaugh testified that she mailed her husband's 2023 statement. PERAC did not receive it. (Ex. 1)

As the Supreme Judicial Court has stated:

> The mailing of a letter properly addressed and postpaid…does not merely create a presumption…but rather constitutes prima facie evidence…of delivery to the addressee in the ordinary course of mail….But as soon as evidence is introduced that warrants a finding that the letter failed to reach its destination, the artificial compelling force of the prima facie evidence disappears, and the evidence of non-delivery has to be weighed against the likelihood that the mail service was efficient in the particular instance, with no artificial weight on either side of the balance.

Hobart-Farrell Plumbing & Heating Co. v. Klayman, 302 Mass. 508, 509–10 (1939) (ellipses indicate omitted citations).

Mrs. Cavanaugh testified that she mailed her husband's 2023 annual statement and tax returns. That is prima facie evidence that the documents were delivered to PERAC. However, the force of that prima facie evidence disappeared when PERAC introduced evidence that it did not receive the documents. (Ex. 1) I am left with Mrs. Cavanaugh's testimony that she mailed the document, and Miss Furtado's testimony that PERAC sometimes does not receive items that were mailed. The testimony constitutes a preponderance of the evidence that Mrs. Cavanaugh mailed the documents; it is more likely than not that she did so. *Sargent v. Massachusetts Accident Co.*, 307 Mass. 246, 250 (1940).

Mrs. Cavanaugh did not photocopy her husband's 2023 annual statement and tax returns. Thus, the date when her husband signed the statement is not in evidence. Mrs. Cavanaugh mailed the documents but did not request a return receipt. She did not testify when she mailed the documents. Thus, that information is not in evidence.

Mrs. Cavanaugh mailed her husband's 2023 annual statement and tax returns for the first time sometime between April 15, 2024, when the tax returns were completed (Cavanaugh testimony) and June 20, 2024, when she mailed the second statement. (Ex. 6)

The answer to the question, "Did Mr. Cavanaugh submit his 2023 annual statement in April 2024?" is: It is unknown.

Mr. Cavanaugh has the burden of proving his case. *Bagley v. Contributory Retirement Appeal Board*, 397 Mass. 255, 258 (1986). He has proved by a preponderance of the evidence that he mailed his annual statement and tax returns, but he has not proved that he did so in April 2024 or otherwise when he did so.

<u>Did Mr. Cavanaugh's submission in June 2024 constitute his 2023 annual statement?</u>

Mr. Cavanaugh's submission in June 2024 constituted his 2023 annual statement.

In G.L. c. 32, § 91A, "form" can mean two things. If it means "format," then Mr. Cavanaugh complied with the statute. He submitted his 2023 statement in the format that PERAC prescribed, albeit on a 2022 form.

If "form" means a blank statement, then Mr. Cavanaugh again complied with the statute. By sending to disability retirees blank statements with a year on top, PERAC impliedly prescribed that disability retirees use those forms for the same year's statements. However, in past years, PERAC has accepted statements for one year with a different year on top, although Mr. Cavanaugh and other disability retirees have crossed out the incorrect year and hand-written the correct year. Mrs. Cavanaugh did not cross out the incorrect year, 2022, for his 2023 statement, but this case should not turn on such a minor detail. In the past, PERAC has accepted statements for one year with a different year on top as being “in such form as the commission shall prescribe.” G.L. c. 32, § 91A.

<u>Another argument by Mr. Cavanaugh</u>

In Mr. Cavanaugh’s post-hearing brief, Mrs. Cavanaugh argues that PERAC should fix its system so that this situation does not recur. I have no jurisdiction over PERAC’s internal processes. What is before me and what I can rule on is whether BRS correctly terminated Mr. Cavanaugh’s benefits.

Conclusion and Order

BRS shall reinstate Mr. Cavanaugh’s disability retirement benefits starting on July 5, 2024, when PERAC received Mr. Cavanaugh’s annual statement for 2023. Mr. Cavanaugh owes a refund to BRS of the benefits he received from April 15, 2024 until the filing of his annual statement on July 5, 2024. The BRS may recoup these funds.

Dated: August 14, 2026

/s/ Kenneth Bresler
____
Kenneth Bresler
Administrative Magistrate
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