

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Barbara Collins,  
Petitioner

v.

Norwood Retirement Board,  
Respondent

Division of Administrative Law Appeals  
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**[www.mass.gov/dala](http://www.mass.gov/dala)**  
Docket No: CR-24-0710

Date: 1/31/2025

**ORDER OF DISMISSAL**

On January 10, 2025, the Petitioner was ordered to show cause why her appeal should not be dismissed as untimely. She responded to the Order on January 22, 2025.

Petitioner is seeking accidental death benefits as the widow and survivor of Martin Collins. The Board's decision denying those benefits was emailed to her on Friday, November 22, 2024. The Board also mailed her a copy of the decision by first-class U.S. Mail. The email stated: "I have attached a copy of the denial letter and placed a hard copy in the mail. Please note that should you wish to appeal the decision you will have 15 days from the receipt of the letter as mailed to you at your home address."

Our jurisdiction for such matters is set out at G.L. c. 32, § 16(4), which provides that a member "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 . . . ." (Emphasis added.) The Contributory Retirement Appeal Board has held that the time limits set out in Chapter 32 for such appeals are jurisdictional. *Lambert v. Massachusetts Teachers' Ret. Bd.*, CR-09-0074 (CRAB Feb. 17, 2012). Thus, if an appeal to DALA is filed more than 15 days after the date of the retirement board's decision, it must be dismissed for lack of subject matter jurisdiction.

Petitioner was notified of the decision when she received the email on November 22, 2024. See 801 CMR 1.01(4) (communication by email generally presumed to provide notice). Fifteen days after the email is Saturday, December 7, 2024, so the deadline is extended to the next business day, which was Monday, December 9, 2024. See 801 CMR 1.01(4)(c). Petitioner filed her appeal on Wednesday, December 11, 2024, which is 2 days after the deadline. This means that her appeal was filed after the deadline.

Petitioner, in her response, explained that she was confused by the Board's instruction that she had 15 days from the date that she received the letter in the mail to file her appeal. She relied on the Board's instruction to her detriment. Her response is essentially a claim of equitable estoppel.

In Massachusetts and in most jurisdictions the principle of promissory or equitable estoppel will usually not operate against governmental bodies. The Massachusetts decisions are longstanding and consistent. See especially *Doris v. Police Commissioner of Boston*, 374 Mass. 443, 449-450, 373 N.E.2d 944 (1978); *Building Inspector of Lancaster v. Sanderson*, 372 Mass. 157, 161-164, 360 N.E.2d 1051 (1977); *Elbe File & Binder Co. v. City of Fall River*, 329 Mass. 682, 685-686, 110 N.E.2d 382 (1953); *Attorney General v. Methuen*, 236 Mass. 564, 578-579, 129 N.E. 662 (1921); *Harrington v. Fall River Housing Authority*, 27 Mass. App. Ct. 301, 307-308, 538 N.E.2d 24 (1989); *Outdoor Advertising Board v. Sun Oil Co. of Pennsylvania*, 8 Mass. App. Ct. 872, 873, 391 N.E.2d 916 (1979); and *DiGloria v. Chief of Police of Methuen*, 8 Mass. App. Ct. 506, 515-516, 395 N.E.2d 1297 (1977). A practical purpose underlies this “government non-estoppel principle.” *Harrington v. Fall River Housing Auth.*, 27 Mass. App. Ct. at 307, 538 N.E.2d 24. The errors of government officers, especially their actions in excess of their proper authority, cannot defeat the public interest embodied in the statutes and rules which the officers have violated. *Attorney General v. Methuen*, 236 Mass. at 578-79, 129 N.E. 662 (leading general statement).

It is confusing for a retirement board to provide notice of a decision by both email and U.S. Mail, especially when both of those modes of communication can potentially provide notice to a Petitioner and both of them, as in this matter, contain the same direction that you may appeal within 15 days of receipt of the decision. If a retirement board insists on informing members using more than one mode of communication, it should change the language to within 15 days of first receipt of the decision.

It is unfortunate that the Board confused Petitioner, but I must adhere to the law as it is written and not the paraphrasing of it by other parties, even government employees.

Accordingly, this matter is hereby **DISMISSED**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton  
Administrative Magistrate

Notice sent to: Barbara Collins  
Debra Wilkes