

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

MAUREEN DELSOLIO

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-22-0192

DECISION

In a decision dated January 5, 2024, an administrative magistrate of the Division of Administrative Law Appeals (“DALA”) dismissed Petitioner Maureen Delsolio’s appeal of the State Board of Retirement’s (“SBR”) denial of the Petitioner’s request for Group 2 Classification. The Contributory Retirement Appeal Board (“CRAB”) received a mailed notice of objection from the Petitioner on January 26, 2024, which had been postmarked on January 23, 2024. The deadline for the Petitioner to file their objections with CRAB was January 22, 2024.

On January 26, 2024, we issued to Petitioner an Order to Show Cause 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’s counsel filed a response to our Order on February 9, 2024, supported by an affidavit from the Petitioner. In her affidavit, Ms. Delsolio recounts that on January 14, 2024 she learned that her niece had suddenly and unexpectedly passed away. According to the Petitioner, this death “caused a significant amount of grief” and over the

following days and weeks “had difficulty recovering from the loss.” While Ms. Delsolio believes she “had placed [her notice of appeal] into a United States Postal Service mailbox on or before January 22, 2023,”¹ due to the intense emotions felt at the time, she “cannot remember the exact date of that mailing.” Petitioner’s Affidavit 3-8, February 9, 2024.

In the response, Petitioner’s Counsel acknowledged the untimely filing of Ms. Delsolio’s notice of appeal but requested that CRAB extend the time limit for the “good cause” stated in the Petitioner’s affidavit. In support thereof counsel points to our Standing Order which provides the Chair discretion to “extend any time limit for good cause.” Standing Order 2008-1 ¶ 2.d. However, this discretion is not unlimited, and may not be exercised when a deadline is “otherwise provided by law.” *Id.* Unfortunately, that is the case here. As with all appeals from DALA not timely filed, CRAB is jurisdictionally bound to enforce a fifteen-day deadline beginning the date of the DALA decision’s issuance and may not preempt the plain language of the statute. *Carmel Credit Union v. Bondeson*, 55 Mass. App. Ct. 557, 560 (2002) (Statutes are to be interpreted in accordance with their plain words).

As sympathetic as we may be to the circumstances presented in the Petitioner’s affidavit, we must be mindful that attempts to institute judicial appeals “after expiration of the period limited by a statute” are “repugnant to the procedural scheme.” *Schulte v. Director of the Div. of Employment Sec.*, 369 Mass. 74, 79 (1975). In addition, we must recognize that “time limits have particular significance in the context of administrative appeals due to the extremely large volume of such cases. Retirement boards need to know with reasonable certainty which cases are still subject to appeal in order to anticipate their potential liability for benefits.” *Jane Seibecker v. Teachers’ Retirement Syst.*, CR-14-773 (CRAB July 25, 2017) citing *McLaughlin v. Contributory Retirement Appeal Bd.*, No. SUCV2012-04354, Memorandum of Decision and Order (Suffolk

¹ We understand this date should read “January 22, 2024” and have cured this typo as a scrivener’s error.

Superior Ct. Jan. 13, 2014) (CRAB has no jurisdiction to hear late appeal).²

While we commend Ms. Delsolio for her years of service and sympathize with her circumstances, DALA and CRAB do not have the authority to provide equitable relief where it contravenes the retirement law. *See Early v. State Board of Retirement*, 420 Mass. 836 (1995) (DALA 1992) (*aff'd* CRAB 1993) and *Petrillo v. Public Employee Retirement Administration*, CR-92-731 (DALA 1992) (*aff'd* CRAB 1993). This appeal must be dismissed as untimely.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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Date: April 29, 2024

² *See Sears, Roebuck & Co. v. State Tax Comm'n*, 370 Mass. 127, 130 (1976) (board lacked jurisdiction to hear late appeal where time limit specified by statute); *Hanchett v. State Bd. of Retirement*, CR-07-1071 at 15 (DALA, Sept. 2, 2011) at 13-15 (no jurisdiction where attorney mistakenly sent appeal letter to retirement board, which did not forward it to DALA until three months later); *cf. Bowles v. Russell*, 551 U.S. 205, 209, 214 (2007) (where time limit was set by statute, Federal courts had no jurisdiction to allow appeal outside statutory limits despite clerk's error in informing counsel of deadline).