

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

GINA DiBARO,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT

AND

PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION,

Respondent-Appellee.

CR-23-0279

DECISION

On August 16, 2024 the Division of Administrative Law Appeals (“DALA”) upheld the decision of the State Board of Retirement’s (SBR) denial of petitioner Gina DiBaro’s request to repurchase credit for her service from 1992 to 2001 at the buyback interest rate pursuant to G.L. c. 32, § 3(8)(b). On September 9, 2024, the Contributory Retirement Appeal Board (CRAB) received a notice of objection to the DALA decision by Ms. DiBaro dated September 4, 2024 and postmarked September 4, 2024.

We issued to Petitioner an Order to Show Cause on September 10, 2024 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”.

Counsel for the Petitioner filed a response to our Order by email on September 23, 2024 and mailed a hardcopy to CRAB. He explained that he had been ill in mid-August when the DALA decision was issued. He reviewed the DALA decision on August 20, 2024 and

understood the deadline to file an appeal to be fifteen days from the date of receipt of the decision. Thus, he had inadvertently noted the deadline for filing as September 4, 2024 – one day after the deadline. Counsel explained that there was no intent to untimely file the appeal. He urges us to find that a one day delay would not result in prejudice to the parties.

As CRAB recognized in the Order to Show Cause of September 10, 2024, “if an appeal to CRAB from DALA is filed more than fifteen (15) days after the date of the DALA decision, it must be dismissed.” Fifteen days from August 16, 2024 is Saturday, August 31, 2024. Thus, the deadline for Ms. Drake to file her notice of objection to the DALA decision was the following business day, Tuesday, September 3, 2024. While Counsel for the Petitioner was only a day late in filing the appeal, Counsel does not cite to any authority that would allow CRAB to review an appeal commenced outside of this jurisdictional period.

Here, Ms. DiBaro seeks a form of equitable relief we are unable to provide. As sympathetic as we may be to the circumstances presented, 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 Superior Ct. Jan. 13, 2014) (CRAB has no jurisdiction to hear late appeal).¹

As with all appeals not timely filed, CRAB is jurisdictionally bound to enforce a fifteen-day deadline beginning with the date of the DALA decision and may not ignore the plain language of the statute. “We interpret the language of the statute ‘in accordance with its plain

¹ 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).

meaning, and if the language is clear and unambiguous, it is conclusive as to the intent of the legislature,”” *New England Auto Max, Inc. v. Hanley*, 494 Mass. 87, 91 (2024) (Statutes are to be interpreted in accordance with their plain words).

While we commend Ms. DiBaro for her years of service and sympathize with her circumstances, DALA and CRAB simply 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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Did not participate

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Date: October 30, 2024