COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

HENRY DO NGUYEN

Petitioner-Appellant

v.

BOSTON RETIREMENT SYSTEM,

Respondent-Appellee.

CR-23-0042

DECISION

Petitioner Henry Do Nguyen appeals from an August 11, 2023 Order of an administrative magistrate of the Division of Administrative Law Appeals ("DALA") conditionally dismissing his petition to join the Boston Retirement System's ("BRS") Teachers' Alternative Retirement Program, generally referred to as TARP. Because of the substantial number of appeals received by DALA requesting to join either TARP, or Retirement*Plus* (an analogous program operated by the Massachusetts Teachers' Retirement System), the magistrate supported each dispositive order with a consolidated memorandum issued August 7, 2023 (hereinafter "the August 7th Memo") analyzing the legal history and outlining the eligibility requirements for the respective programs.[1]

On September 5, 2023, the Contributory Retirement Appeal Board ("CRAB") received a timely postmarked objection to the magistrate's decision[2] from Mr. Do Nguyen. In the following weeks, we received nearly daily objections contesting the August 7th Memo. BRS filed a motion to consolidate these matters and requested CRAB issue a scheduling order for briefing. CRAB allowed the motion to consolidate and ordered each Petitioner to file their

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[1] *See Memorandum and Order on Late Elections by 2001 Teachers*, DALA Order (Aug. 7, 2024), https://www.mass.gov/doc/enrollment-in-retirement-plus-8723/download.

[2] The DALA Order of Conditional Dismissal was postmarked September 2, 2023.

exhibits and memorandum by October 18, 2023. BRS submitted its consolidated response memorandum on November 14, 2023, closing the briefing period.

After considering all the arguments presented by the parties and after a review of the record, we incorporate the DALA Conditional Dismissal and DALA's August 7th Memo by reference. We affirm the DALA Decision for the reasons set forth in its Final Order. We agree with the magistrate that Mr. Do Nguyen is not eligible to join TARP after missing the statutorily set enrollment deadline. While we understand the frustration and disappointment held by Petitioners like Mr. Do Nguyen who may not have learned about this opportunity until after the deadline's expiration, CRAB does not have authority to extend this deadline and grant an equitable remedy when the law explicitly reads otherwise.

Discussion. This matter involves G.L. c. 32, § 5(4)(i) which established "an alternative superannuation retirement benefit program for members of the teachers' retirement system and teachers who are members of the Boston retirement system." Principally, this program requires teachers to contribute to their respective retirement system at a higher rate but allows them "to retire at maximum benefit several years earlier."[3] In order to join this program, active members of BRS were required to submit an affirmative enrollment application "on or after January 1, 2001 and before July 1, 2001." *Id.*

Mr. Do Nguyen, a teacher with Boston Public Schools who was an active member of BRS between January 1, 2001 and July 1, 2001, acknowledges he did not file an application by the statutory deadline. Mr. Do Nguyen appeals to CRAB seeking an additional opportunity over twenty years later. Specifically, he objects to the magistrate's holding that "a teacher who missed the July 1, 2001 deadline cannot join the benefits program at a later date." *Order of Conditional Dismissal*, Do Nguyen v. BRS, CR-23-0042 (DALA Aug. 11, 2023). Mr. Do Nguyen does not cite to any statutory provision or existing case law in his filings to CRAB; but avers we should rule in his favor on the grounds that BRS failed in its obligation to inform him of such benefit, thereby depriving him the right to obtain it. In other words, Mr. Do Nguyen seeks an equitable remedy—relief we may not provide.

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[3] H.B. 5250, Communication from the Governor Regarding House Bill No. 5116, "An Act Improving Teacher Recruitment, Retention and Retirement". http://archives.lib.state.ma.us/handle/2452/707865.

CRAB has consistently held that the original July 1, 2001 deadline cannot be extended "[b]ecause the [retirement statute] defines and limits the benefits to which [members] are entitled, those benefits are a legal determination that may not be enlarged, even by an erroneous interpretation by [a board] or any of its employees." *Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010). CRAB must strictly apply this precedence, even when a Petitioner alleges not to have been notified of a retirement benefit. "No statute, however, creates this duty or mandates that failure to provide such notice would result in the individual being allowed to [access the benefit he seeks]." *Leveque v. Essex Cty. Ret. Bd.*, CR-95-571 (CRAB Oct. 7, 1996); *accord Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621 (CRAB Dec. 19, 2014).

Unfortunately, we must apply the law as written,[4] even where the result may appear harsh.[5] CRAB is tasked only with interpreting and applying the statutory provisions it is charged with administering. *Haverhill Retirement Syst. v. CRAB*, 82 Mass. App. Ct. 129, 131 (2012); *Arlington Retirement Bd. v. CRAB*, 75 Mass. App. Ct. 437, 441 (2009). The authority to make changes to the retirement law rests with the Legislature. While we commend Mr. Do Nguyen for his years of service and sympathize with his 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)

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[4] Courts "'are construed to follow' the plain language of a statute when its 'language is plain and unambiguous,' and its application would not lead to an 'absurd result,' or contravene the Legislature's clear intent." *Commissioner of Rev. v. Cargill, Inc.*, 429 Mass 79, 82 (1999), quoting *White v. Boston*, 428 Mass. 250, 253 (1998).

[5] See also *Pearlmutter v. TRB*, No. CR-01-1044 (CRAB Nov. 6, 2003)(application denied where teacher completed the application form, timely submitted it to the payroll department for signature which was returned to the teacher, but teacher could not recall whether she filed it with the retirement board); *Lamour v. TRB*, No. CR-01-1004 (CRAB Nov. 6, 2003) (application denied where teacher completed the application form, timely submitted it to the payroll department for signature which was returned to the teacher by interoffice mail at the end of the school year, and teacher subsequently filed the election form with the retirement board upon her return to school in the Fall); *Hale (Robinson) v. TRB*, No. CR-01-861 (CRAB Jan. 31, 2003)(application denied for teacher caring for a seriously ill father who filed the election form after the statutory deadline); *Boland v. TRB*, CR-01-823 (CRAB July 31, 2002(application denied for teacher caring for daughter undergoing a course of chemotherapy who filed election form ten days late).

(*aff'd* CRAB 1993) and *Petrillo v. Public Employee Retirement Administration*, CR-92-731 (DALA 1992) (*aff'd* CRAB 1993).

The filing date for election to participate in the TARP is statutory. Neither DALA, nor CRAB, can act contrary to the specific mandates of G.L. c. 32, § 5(4)(i). The decision of the DALA magistrate is affirmed. ***Affirm***.

SO ORDERED.

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