

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**JOSEPH DONOGHUE,**

**Petitioner-Appellant**

v.

**STATE BOARD OF RETIREMENT,**

**Respondent-Appellee.**

**CR-18-0077**

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**DECISION**

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The petitioner Joseph Donoghue appeals from a decision of the Division of Administrative Law Appeals (DALA) dismissing his appeal for lack of jurisdiction because he failed to file his appeal within the statutory prescribed time pursuant to G.L. c. 32, § 16(4).<sup>1</sup> A hearing was held on December 2, 2021 regarding the timeliness of Mr. Donoghue's appeal and the underlying merits of the appeal relating to the calculation and payment of interest based on an adjustment of his retirement allowance that included his housing allowance. The magistrate admitted into evidence Exhibits P1 – P13 and R1 – R7. The DALA decision is dated May 13, 2022. Mr. Donoghue filed a timely appeal to us.

After considering the evidence in the record and the arguments presented by the parties, we adopt the magistrates Findings of Fact 1 – 13 as our own and incorporate the DALA Summary of Dismissal as our own.

By way of background, a dispute arose between Mr. Donoghue and the SBR with respect to the amount of interest owed to Mr. Donoghue from the make-up contributions for his housing benefit, which SBR failed to include in the calculation of his retirement allowance. Various calculations were provided, but ultimately, on November 24, 2017, the SBR calculated the

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<sup>1</sup> For a full discussion of the entire procedural history of this case, please see DALA decision at pp 2-4.

interest and arrived at a final figure.<sup>2</sup> In the same letter, the SBR informed Mr. Donoghue that he could appeal this determination to CRAB.<sup>3</sup> On November 28, 2017, Mr. Donoghue, in a letter and an email, disputed the calculation made by the SBR and provided his own calculation.<sup>4</sup> In the mailed letter (but not the email correspondence), he asked the SBR the following:

“Your letter stated that if I was aggrieved with the decision of the Board I have 15 days to appeal. Does that mean you are refusing to correct the omission of the additional \$5,814.23 of the 2011 interest? I look forward to a quick response to this long overdue payment.”<sup>5</sup>

The SBR responded the following day, informing Mr. Donoghue that it believed the calculations reported in its November 24, 2017 letter to him to be accurate.<sup>6</sup> Subsequently, on January 19, 2018, the SBR issued a check to Mr. Donoghue in the amount noted in its letter of November 24, 2017.<sup>7</sup> On January 25, 2018, Mr. Donoghue filed an appeal with DALA.<sup>8</sup>

Our governing statute requires that an appeal from an action by a retirement board, such as the State Board of Retirement, must be filed “within fifteen days of notification of such action or decision of the retirement board[.]” G.L. c. 32, § 16(4). The statutory time limit is “jurisdictional in nature, and if an appeal is not timely filed, DALA has no jurisdiction to hear the appeal.” *Worcester County Sheriff’s Office v. State Bd. of Retirement*, CR-08-169 at 11 (DALA, Sept. 30, 2011); *Hanchett v. State Bd. of Retirement*, CR-07-1071 at 15 (DALA, Sept. 2, 2011); see *Herrick v. Essex Reg’l Retirement Bd.*, 68 Mass. App. Ct. 187, 190 (2007) (appeal period for judicial review under G.L. c. 30A, § 14(1) is jurisdictional); *Garrett v. Board of Assessors*, 43 Mass. App. Ct. 911, 911 (1997) (same); *Flynn v. Contributory Retirement Appeal Bd.*, 17 Mass. App. Ct. 668, 669 (1984) (same). Furthermore, since the statutory limitations period is jurisdictional, neither the SBR nor CRAB, has the authority to waive it by consent. *Flynn v. Contributory Retirement App. Bd.*, 17 Mass. App. Ct. at 670.

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<sup>2</sup> Finding of Fact 1-7; Exhibits 9, 10, 13, R3, R4, R6.

<sup>3</sup> FF 8; Ex. P2, R1.

<sup>4</sup> FF 9; Ex. P3, R5.

<sup>5</sup> FF 10; Ex. R5.

<sup>6</sup> FF 11; Ex. 3.

<sup>7</sup> FF 12; Ex. 1.

<sup>8</sup> FF 13; Ex. R2.

Here, Mr. Donoghue filed his appeal on January 25, 2018, more than fifteen days after being notified of the SBR's decision relating to the interest owed to him. He was aware of the deadline for filing his Notice of Appeal of the SBR's decision, even pointing out the fifteen-day deadline in his letter of November 28, 2017. Moreover, Mr. Donoghue is knowledgeable about the appeals process, having had no difficulties appealing two (2) prior board decisions. Thus, as the magistrate pointed out, there was little reasoning behind Mr. Donoghue's decision to wait until he received the interest check from SBR to file his Notice of Appeal. As sympathetic as we may be to the circumstances presented by this case, 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). If exceptions were available to toll or excuse the appeal periods under G.L. c. 30, § 16(4), DALA's resources and the energies of its magistrates would be diverted to evaluating factual timeliness claims, potentially involving testimony by the petitioner, other witnesses, or experts such as medical providers. Such additional duties, and the indefinite extension of the appeal period for benefit decisions, could pose "untoward, massive, continuing burdens"<sup>9</sup> on both retirement systems and on DALA.

Mr. Donoghue's additional arguments appear to be based on equity. DALA and CRAB do not have the authority to provide equitable relief in the absence of statutory language. *Adolph Petrillo v. Public Employee Retirement Administration*, CR-92-731 (DALA 1993). See *Petrillo v. Public Employee Retirement Admin. Comm.*, CR-92-731 (CRAB 1993) (CRAB does not have "authority to employ an equitable remedy in the face of specific statutory language [to the]

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<sup>9</sup> See *Kozloski v. Contributory Retirement Appeal Bd.*, 61 Mass. App. Ct. 783, 785, 787 (2004) (denying claim for adjustment of "regular compensation" by a retroactive memorandum supplementing the union contract).

contrary."); *Bristol County Retirement Bd. v. Contributory Retirement Appeal Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006) (same). Nor has CRAB located "any statutory or case law indicating that this board has the authority to employ an equitable remedy in the face of specific statutory language contrary to the position fostered by the Petitioner." *Barry v. Mass. Teachers' Retirement Bd.*, CR-01-933 (DALA 2002), quoting *Petrillo v. PERAC*, CR-92-731 (Oct. 22, 1993), CRAB's Decision on Reconsideration.

For the above reasons, Mr. Donoghue's appeal was not timely filed, and therefore, DALA lacks jurisdiction to hear his appeal. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

*Did not participate*

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Date: February 19, 2026