

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Roberta Fillmore,
Petitioner,

No. CR-23-358

Dated: January 5, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

ORDER OF DISMISSAL

Petitioner Roberta Fillmore appeals from a decision of the Massachusetts Teachers' Retirement System excluding her from the benefits program known as Retirement Plus. *See* G.L. c. 32, § 5(4). MTRS has moved to dismiss (within its memorandum dated November 27, 2023), and Ms. Fillmore's deadline to respond has expired. *See* 801 C.M.R. § 1.01(7)(a)(2).

Retirement Plus came into effect in mid-2001. The parties agree that Ms. Fillmore was then a teacher and an active MTRS member. She therefore may participate in Retirement Plus only if she "elect[ed] to participate" by July 1, 2001. *See* Acts 2000, c. 114, § 2. If Ms. Fillmore missed that original deadline, she cannot join Retirement Plus belatedly. *See In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2023 WL 5332723 (DALA Aug. 7, 2023).

In accordance with a prior procedural order, Ms. Fillmore has filed an affidavit in support of her appeal. She avers there that she and two other teachers "filled out the [Retirement Plus] forms together . . . and submitted them together through the Lowell School Department personnel office." The theory of MTRS's motion to dismiss is that the submission of an election form to a school's personnel office does not satisfy the statutory "election" requirement.

MTRS's theory and motion are meritorious. MTRS regulations and policies interpret the requisite "election" as a form or other writing delivered to MTRS. *See* 807 C.M.R. § 13.02;

Desiré v. MTRS, No. CR-14-200, 2017 WL 6335487, at *4 (DALA July 7, 2017). That interpretation serves practical goals. It merits a measure of deference. *See Pelletier v. MTRS*, No. CR-19-301, 2023 WL 3434952, at *2 n.2 (DALA May 8, 2023). And it draws powerful support from a 2004 session law that established a one-time, temporary enrollment window for teachers who “filed an election form to participate in [Retirement Plus] prior to July 1, 2001 with an officer of the city, town or school district in which [they were] employed.” Acts 2004, c. 149, § 397. That statutory exception discloses the Legislature’s reading of the usual rule, i.e., that Retirement Plus election forms are effective only when they are delivered to MTRS itself. *See also Kelly v. MTRS*, No. CR-19-137, 2023 WL 3948776, at *3 (DALA June 5, 2023); *Sabella v. MTRS*, No. CR-05-133, 2006 WL 4211623 (DALA Aug. 29, 2006). *Cf. Hanchett v. State Bd. of Ret.*, No. CR-07-1071, at *16 (DALA Sept. 2, 2011) (a notice of appeal filed with a local board does not perfect an appeal to CRAB).

Ms. Fillmore has not disputed MTRS’s representation that her election form does not appear in its records. The question remains whether the form was mishandled by Ms. Fillmore’s personnel office or by MTRS itself. As to this question, the law indulges a presumption that the records of a public agency such as MTRS are “regular,” i.e., sound. *See City of Newburyport v. Thurlow*, 324 Mass. 40, 44 (1949); *Whelan v. Division of Med. Assistance*, 44 Mass. App. Ct. 663, 668 (1998); Gerald A. McDonough, *Administrative Law and Practice* § 7:15 (2d ed. 2016). While that presumption is not conclusive, Ms. Fillmore pleads no facts capable of rebutting it. Understandably, she does not presume to have any sense of what happened to her form after she delivered it to her personnel office.

In these circumstances, the matters pleaded by Ms. Fillmore, taken as true, do not state a claim upon which relief can be granted. *See* 801 C.M.R. § 1.01(7)(g)(3); *White v. Somerville*

Ret. Bd., No. CR-17-863, at 5 (DALA Nov. 16, 2018). It is therefore ORDERED that the motion to dismiss is ALLOWED and the appeal is DISMISSED. A notice of appellate rights follows.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Notice of Appellate Rights

G.L. c. 32, § 16(4) provides that decisions of the Division of Administrative Law Appeals such as the instant decision:

shall be final and binding upon the board involved and upon all other parties, and shall be complied with by such board and by such parties unless within *fifteen days* after such decision, (1) either party objects to such decision, in writing, to the contributory retirement appeal board, or (2) the contributory retirement appeal board orders, in writing, that said board shall review such decision

(Emphasis added.) A party objecting to this decision shall mail specific objections to Uyen M. Tran, Assistant Attorney General, Chair, Contributory Retirement Appeal Board, Office of Attorney General, One Ashburton Place, 18th floor, Boston, MA 02108. Copies must be sent to the Division of Administrative Law Appeals, 14 Summer Street, Malden, MA 02148, and to the other party or parties involved in the case.

Proceedings before CRAB are governed by standing orders, copies of which may be found at <https://www.mass.gov/how-to/file-a-public-employment-retirement-appeal>. Pursuant to CRAB Standing Order 2008-1, ¶ 4(a)(2), the notice of appeal must include (a) the date of the DALA decision, (b) a copy of the DALA decision, and (c) a statement of the part or parts of the DALA decision to which objection is made.

The notice of appeal must be postmarked or delivered in hand to CRAB no later than fifteen days following the date of the DALA decision. Electronic submissions do not satisfy this filing requirement.

Pursuant to CRAB Standing Order 2008-1, ¶ 4(a)(3), within forty days following the date of the DALA decision, the appellant must supplement the notice of objection by filing with the chair of CRAB three copies, and serving on each other party one copy, of:

- (a) All exhibits admitted into evidence before DALA, numbered as they were numbered on admission;
- (b) A memorandum of no more than twenty pages containing a clear and precise statement of the relief sought and the findings of fact, if any, and legal conclusions to which objection is made, together with a clear and precise statement of the particular facts, with exact references to the record, and authorities specifically supporting each objection; and
- (c) If CRAB's passing on an objection may require a review of oral proceedings before DALA, the transcript of the relevant portion of those proceedings.

Do not send any such supplementary materials or exhibits to DALA. Failure to follow CRAB's procedures could lead to sanctions, including dismissal of the appeal.