

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Margaret FitzPatrick,**  
Petitioner,

No. CR-17-204

Dated: January 17, 2025

v.

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

**ORDER OF DISMISSAL**

This appeal arises from the petitioner's application to retire for ordinary disability. The respondent board moves for reconsideration of the December 20, 2024 final decision, which remanded the matter to the board for certain additional proceedings. The board reports in support of the motion that, in May 2020, the petitioner withdrew her accumulated deductions and relinquished her system membership.

The merits of the motion standing on its own two feet are debatable. The motion relies on newly presented information that the tribunal could not have "overlooked." *See* standard rule 7(1)<sup>1</sup>; *Barker v. State Bd. of Ret.*, No. CR-07-155, at \*1-2 (CRAB n.d.). The board also likely forfeited its argument by failing to present it in response to a pre-decision order that asked the parties whether, for any reason, a final decision should not yet be issued. Further, in some circumstances, a member's withdrawal of her deductions while she possesses a potentially meritorious claim to retirement benefits may be treated as a correctable error. *See Boston Ret. Bd. v. McCormick*, 345 Mass. 692 (1963); *Mitchell v. State Bd. of Ret.*, No. CR-23-330, 2024 WL 4345191 (Div. Admin. Law App. Sept. 13, 2024).

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<sup>1</sup> In accordance with G.L. c. 30A, § 9, the "standard rules" in this context are the provisions of 801 C.M.R. § 1.01.

Nevertheless, the relief sought by the board is warranted here. Upon receipt of the board's motion, I issued an order requiring the petitioner to report her position. The order advised the petitioner that her failure to respond would likely be construed as an agreement "that the final decision should be vacated and the appeal dismissed." *Compare Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co.*, 527 F. Supp. 2d 1355, 1371 (M.D. Fla. 2007), with *Jones v. Providence Pub. Sch.*, No. 23-1407, 2024 WL 1128034 (1st Cir. Mar. 11, 2024) (unpublished judgment). The petitioner has not filed anything in response. This development is consistent with the actions and statements described by the board in its motion, all to the effect that the petitioner chose in May 2020 to abandon this appeal and any potential relief it might yield. *See* standard rules 6(g), 7(g)(2).

In view of the foregoing, it is hereby ORDERED that:

1. The December 20, 2024 final decision is VACATED.
2. This appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate