

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**John Gibbons,**  
Petitioner

v.

Docket No. CR-24-0573

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

John Gibbons, pro se

**Appearance for the State Board of Retirement:**

Matthew S. Szafranski, Esq.

**Administrative Magistrate:**

Timothy M. Pomarole, Esq.

**SUMMARY OF DECISION**

The Petitioner appeals the State Board of Retirement's decision to deny his request to set the effective date of his retirement as April 4, 2024, his last day of work. The Board's decision is affirmed. G.L. c. 32, § 10(3) provides that the effective date of retirement "shall be not less than fifteen days nor more than four months after the filing of" a member's retirement application. Here, the application was filed on or about July 9, 2024. Accordingly, the Board's decision to set his effective retirement date as July 24, 2024 is affirmed.

**DECISION**

The Petitioner, John Gibbons, appeals the decision by the State Board of Retirement to deny his request to set the effective date of his retirement as April 10,

2024. I conducted a hearing on October 16, 2025. The hearing was recorded. I admitted into evidence Exhibits 1-7. Mr. Gibbons was the sole witness.

The Board filed a post-hearing brief on December 4, 2025, whereupon I closed the administrative record. Mr. Gibbons did not file a post-hearing brief.

**FINDINGS OF FACT**

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Mr. Gibbons was a court services coordinator for the Office of Community Corrections. (Exhibit 2).
2. Mr. Gibbons decided to retire effective April 2024. He took several steps in preparation. These steps included the following: He obtained an estimate from the Board of his anticipated benefits. He contacted his payroll coordinator for purposes of obtaining a buyout for his vacation time and a percentage of his sick time. And he wrote a letter of resignation to his supervisor. (Testimony; Exhibit 3).
3. Mr. Gibbons's position in this appeal is that he also mailed his retirement application to the Board, along with the supporting documents, on or around April 13, 2024. Mr. Gibbons acknowledges that the application he says he mailed was not sent return receipt requested or via certified mail and that he did not keep a copy of the application. Mr. Gibbons did, however, retain the originals of the supporting documents accompanying the application he says he submitted. (Testimony).

4. Mr. Gibbons's last day of work was April 10, 2024. (Testimony).
5. On or about June 28, 2024, Mr. Gibbons contacted the Board to ask when he would receive his first pension check. The person with whom he spoke reported that the Board never received a retirement application from him. (Testimony; Exhibit 3).
6. Mr. Gibbons went to the Board in person on or about July 9, 2024 and completed a retirement application. (Testimony; Exhibit 2).
7. He dated the application and the accompanying forms "April 10, 2024." (Exhibit 2).
8. Attached to the application are his birth certificate, his wife's birth certificate, and their marriage certificate. His wife's birth certificate states that the birth certificate (or to be more precise, an official copy of the birth certificate) was issued on July 8, 2024. (Presumably this means that the keeper of records generated an official copy on that date.). (Exhibit 2).
9. In a letter dated July 12, 2024, Mr. Gibbons asked the Board to set the effective date of his retirement as April 10, 2024. (Exhibit 3).
10. In a letter dated August 21, 2024, the Board informed Mr. Gibbons that because it received his retirement application on July 9, 2024, the effective date of his retirement would be July 24, 2024. (Exhibit 4).
11. Mr. Gibbons timely appealed.

**CONCLUSION AND ORDER**

Chapter 32, § 10(3) provides that a retirement allowance “shall become effective on the date which shall be specified in [the member’s] retirement application and which shall be not less than fifteen days nor more than four months after the filing of such application.”

On appeal, Mr. Gibbons asserts that because he mailed his application on or around April 13, 2024, the effective date of his retirement should be April 10, 2024, his last day of work. The Board takes the view that because “filing” for purposes of § 10(3) requires its actual receipt of the application, the fact that Mr. Gibbons says he mailed the application on April 13, 2024 is irrelevant.

The Board does not provide any legal argument for the proposition that filing requires actual receipt. The question of whether a document may be deemed filed when it is mailed or instead requires its actual receipt was discussed, albeit in a different statutory context, by the Supreme Judicial Court in *Pavian, Inc. v. Hickey*, 452 Mass. 490 (2008). In *Pavian*, the Supreme Judicial Court held that the Division of Unemployment Assistance reasonably concluded that an unemployment benefits appeal could be considered “filed” for purposes of the statutory filing deadline on the date it was mailed. *Id. at 496-97*. Among other considerations, the Court observed that under various regulations and rules, documents are deemed effectively filed on the date on which they are postmarked (called “the postmark rule”) – the point being that filing and receipt are not inseparably linked concepts, so the Division’s interpretation was not

unreasonable. *Id.* at 496 (2008).<sup>1</sup> The Court also noted the following policy rationale for not requiring actual receipt:

Exclusive use of the receipt rule could force hardship on many claimants requesting appeals by requiring them either to travel great distances or to pay for expedited means of transmission (such as facsimile or messenger service) with funds they do not have or cannot afford to pay. No matter how far in advance a claimant mails his or her application for review, he or she can never be certain that it will be received on time. It would be excessively burdensome and costly to require claimants remote from the division's office to monitor rigorously the transmission of their applications to be certain that their appeals were timely, as exclusive use of the receipt rule would require

*Id.* at 496–97.

Notwithstanding the seeming “ubiquity” of the postmark rule, *Degiolamo v. Mass. Teachers' Ret. Sys.*, CR-22-0367, 2024 WL 2801079, at \*2 (May 24, 2024) (quoting *Town of Falmouth v. Civ. Serv. Comm'n*, 447 Mass. 814, 819-21 (2006)) (internal quotation marks omitted), whether it applies in particular situation ultimately turns on the specific statutory and regulatory context at issue.

I do not need to decide here whether mailing constitutes filing for purposes of § 10(3) because Mr. Gibbons has not demonstrated by a preponderance of the evidence that he had mailed his retirement application on or around April 13, 2024.

In Massachusetts, “the regular course of the mails is presumed.” *Drury v. Franklin Reg'l Ret. Bd.*, CR-09-543 (Div. Admin. Law App. Dec. 20, 2013) (citing *Holver v. Dept. of Public Works*, 333 Mass. 18, 21 (1955)). It is important to not overstate the

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<sup>1</sup> If the postmark is not legible, “the courts have endorsed the strategy of inferring that the envelope was postmarked two to five days before it was delivered.” *Degiolamo v. Mass. Teachers' Ret. Sys.*, CR-22-0367, 2024 WL 2801079, at \*2 (May 24, 2024) (citations omitted).

force of this presumption. It is not a “special evidentiary obstacle that may be overcome only by unusually robust evidence.” *Kellner v. State Bd. of Ret.*, CR-24-0276, 2025 WL 2745680, at \*3 (Div. Admin. Law App. Sept. 19, 2025). Nevertheless, it does support a rebuttable inference that if Mr. Gibbons had mailed the application in April 2024, it would have been received by the Board in due course.

The evidence that Mr. Gibbons mailed the application on or about April 13, 2024 is not strong. Mr. Gibbons testified that he did, but bare avowals, unaccompanied by other evidence tending to corroborate or enhance their plausibility, have been generally considered insufficient. *See, e.g., Roberts v. Worcester Reg. Ret. Sys.*, CR-18-0434, 2022 WL 16921466, at \*3 (Div. Admin. Law App. May 20, 2022).<sup>2</sup>

Mr. Gibbons also testified credibly about the various other steps he took in preparation for retirement. This is some support, though modest, for his claim that he mailed the application. If he completed those other steps, that arguably makes it more likely that he also mailed the application as well.

Here, though, the testimony lacks sufficient detail and information to accord it much evidentiary heft. It is insufficient to supplement the absence of documentary corroboration or overcome the fact that one piece of documentary evidence is inconsistent with his claim regarding mailing: the issuance date on his wife’s birth certificate is several months after he says he mailed the application. Mr. Gibbons

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<sup>2</sup> Consistent with a factfinder’s general prerogative to credits all, some, or none of a witness’s testimony, I see no reason to conclude that a DALA magistrate would be *precluded* from crediting a witness’s bare, self-serving testimony concerning the sending or receiving of mail. That said, as a practical matter, such testimony is not likely to be persuasive.

testified that he retained copies of the original supporting documents accompanying the mailing, but he could not explain the issuance date of his wife's birth certificate. It is not impossible that a satisfactory explanation might exist, but none was provided.

In sum, regardless of whether filing requires actual receipt of the retirement application or occurs upon mailing, Mr. Gibbons has not established by a preponderance of the evidence that his application was filed any earlier than July 9, 2024. Accordingly, the Board's decision to set Mr. Gibbons's retirement date as July 24, 2024, which is 15 days after he filed the retirement application that the Board received is consistent with the requirements of § 10(3).

For the foregoing reasons, the Board's decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

***/s/ Timothy M. Pomarole***

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Timothy M. Pomarole, Esq.  
Administrative Magistrate

Dated: March 6, 2026