

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

MARK HICKS

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-21-0254

DECISION

On August 18, 2023 the Division of Administrative Law Appeals (“DALA”) dismissed Petitioner Mark Hicks’ appeal of the State Board of Retirement’s (“SBR”) denial of the Petitioner’s request to purchase military service time pursuant to G.L. c. 32 § 4(1)(h). On September 12, 2023, DALA forwarded to the Contributory Retirement Appeal Board (“CRAB”) an email correspondence from Mr. Hicks stating his intentions to appeal.

We issued to Petitioner an Order to Show Cause on September 20, 2023 noting that CRAB’s “governing statute, G.L. c. 32, § 16(4) provides that the DALA magistrate’s decision “shall be final . . . *unless within fifteen days after such decision . . . either party objects to such decision, in writing, to the contributory retirement appeal board*” *Id.* (emphasis added)” and requested Petitioner provide the Board “any and all reasons why this appeal should not be dismissed as untimely”.

Petitioner filed a response to our Order stating that he had moved residences and that he did not receive the decision at his new residence until much later. The State Board of Retirement did not file a response.

As sympathetic as we may be to the circumstances presented in the Petitioner’s

filing, 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).¹

As with all appeals not timely filed, CRAB is jurisdictionally bound to enforce a fifteen-day deadline beginning the date of the DALA decision’s issuance and may not ignore the plain language of the statute. “We interpret the language of the statute ‘in accordance with its plain meaning, and if the language is clear and unambiguous, it is conclusive as to the intent of the legislature,’” *New England Auto Max, Inc. v. Hanley*, 494 Mass. 87, 91 (2024) (Statutes are to be interpreted in accordance with their plain words).

While we commend Mr. Hicks for his 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) (*aff’d* CRAB 1993) and *Petrillo v. Public Employee Retirement Administration*, CR-92-731 (DALA 1992) (*aff’d* CRAB 1993). This appeal must be dismissed as untimely.

SO ORDERED.

¹ *See Sears, Roebuck & Co. v. State Tax Comm’n*, 370 Mass. 127, 130 (1976) (board lacked jurisdiction to hear late appeal where time limit specified by statute); *Hanchett v. State Bd. of Retirement*, CR-07-1071 at 15 (DALA, Sept. 2, 2011) at 13-15 (no jurisdiction where attorney mistakenly sent appeal letter to retirement board, which did not forward it to DALA until three months later); *cf. Bowles v. Russell*, 551 U.S. 205, 209, 214 (2007) (where time limit was set by statute, Federal courts had no jurisdiction to allow appeal outside statutory limits despite clerk’s error in informing counsel of deadline).

CONTRIBUTORY RETIREMENT APPEAL BOARD

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Date: December 31, 2024