

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

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Richard Kelley,  
Petitioner

v.

Docket No. CR-25-0456

State Board of Retirement,  
Respondent

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**ORDER OF DISMISSAL**

Richard Kelley is seeking to purchase prior service he rendered at the Department of Elementary and Secondary Education while he was employed by Wessex Associates International. He applied in May 2017. The Board denied his application because he was employed by a third-party contractor during that period.

Mr. Kelley claims that he did not receive decision letters dated August 11, 2020, and May 13, 2021, from the Board. Mr. Kelley also claims to have obtained a copy of the Board's May 13, 2021 letter on August 1, 2025. The May 13, 2021 letter directed Mr. Kelley to file a "formal letter of appeal" with the State Board so that it could be placed on its agenda for a final decision. The letter did not provide appeal rights to CRAB or DALA.

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On September 3, 2025, DALA issued a scheduling order. Part of it ordered Mr. Kelley to submit all evidence that his appeal was timely, as appeals of retirement board

decisions must be made within 15 days of notification of the decision. See G.L. c. 32, § 16(4). Mr. Kelley initially admitted that his appeal was not timely. Later, he asserted that it *was timely* because the Board's decision letter did not list an appeal period. The Board contests the timeliness of Mr. Kelley's appeal.

On April 22, 2026, I ordered Mr. Kelley to submit copies of the decision letters which had not been submitted, including the August 1, 2025 letter that triggered this appeal, along with any explanation why he would not have received any mail or other communications from the retirement board when the letters were originally sent. I advised Mr. Kelley that if he could not prove that his appeal was timely filed, I would dismiss it for lack of jurisdiction. The deadline was May 1, 2026. Mr. Kelley did not respond.

On May 6, 2026, I ordered Mr. Kelley to show cause why he did not respond to my April 22, 2026 order. I advised him again that if he did not produce the documents that I ordered, I would conclude that DALA does not have jurisdiction and that he no longer wished to prosecute his appeal, and dismiss it. The deadline was May 15, 2026. Mr. Kelley did not respond. I therefore conclude that he no longer wishes to prosecute his appeal.

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I also conclude that, based on the documents submitted and Mr. Kelley's failure to submit the documents I ordered, DALA does not have jurisdiction over this appeal. See *Sullivan v. State Bd. of Ret.*, CR-19-435, at \*1-2 (Contributory Ret. App. Bd. Feb. 8, 2021) (citing *Flynn v. Contributory Ret. App. Bd.*, 17 Mass. App. Ct. 668, 370 (1984)) (a

tribunal must assure itself of its own jurisdiction). For DALA to have jurisdiction, the decision of a retirement board must “(1) expressly inform[] the parties that it is an appealable decision and (2) give[] notice of the parties’ right to appeal, including the time for appeal and to whom the appeal must be sent, pursuant to G.L. c. 32, § 16(4).” *Barnstable County Ret. Bd. v. Pub. Emp. Ret. Admin. Comm’n*, Decision on Remand from Superior Court, CR-07-163, at \*1-2 (Contributory Ret. App. Bd. Feb. 17, 2012). These requirements protect litigants from missing deadlines of which they are unaware and losing their appeal rights as a result. *Lutes v. Clinton Ret. Bd.*, CR-07-1100, at \*2 (Contributory Ret. App. Bd. Nov. 16, 2012).

After reviewing the submitted papers, I conclude that the Board did not issue a final decision that was appealable to DALA. The letters in evidence direct Mr. Kelley to file an appeal of the Board’s (in effect) preliminary decision to the Board itself for inclusion on its agenda and an eventual final decision after a Board vote. Mr. Kelley never appealed the Board’s preliminary decision, and none of the Board’s letters included appeal rights to CRAB or DALA. Thus, it appears that Mr. Kelley could still request from the Board a final decision with appeal rights and then timely appeal that final decision to DALA.

Accordingly, this matter is hereby DISMISSED for lack of jurisdiction and for failure to prosecute.

Dated: May 29, 2026

*/s/ Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

Notice sent to: Richard Kelley  
Matthew Szafranski, Esq.