

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Michael Kelly,
Petitioner,

No. CR-23-0271

Dated: May 23, 2025

v.

**State Board of Retirement and Public
Employee Retirement Administration
Commission,**
Respondents.

ORDER OF DISMISSAL

Petitioner Michael Kelly is a retired member of the retirement system administered by respondent the State Board of Retirement (board). In two decisions, the board found that Mr. Kelly had exceeded his post-retirement earnings caps under G.L. c. 32, § 91A. The board meant for its decisions to address Mr. Kelly's earnings in 2021 and 2022, respectively. Both decisions announced suspensions of Mr. Kelly's retirement allowance.

On Mr. Kelly's ensuing appeal, the parties filed memoranda and exhibits during 2024. Certain issues presented by those submissions were addressed in a memorandum and order dated December 3, 2024. Among other things, I concluded there that the board's decision about Mr. Kelly's earnings in 2021 was too ambiguous to serve as an effective and appealable decision.¹

The parties then asked for the proceedings to be stayed. The board expressed an interest in issuing a new decision about Mr. Kelly's earnings in 2021. As for Mr. Kelly, his submissions about 2022 were (and remain) both incomplete and arguably premature. He presented no detailed analysis of his income in that year, explaining in part that his accountants are preparing

¹ In a nutshell, the decision twice misidentified the pertinent year of earnings as 2022.

amended tax returns with respect to it. Mr. Kelly's request for a stay indicated that he hopes to complete the amended returns and to update his submissions accordingly.

The motions for a stay were allowed in an order by email dated January 3, 2025. To keep the appeal on track for a speedy and fair disposition, the order included the following instructions: "Starting in March 2025, [Mr. Kelly] shall file monthly status reports due by the end of each month. Each report shall describe the progress of the parties' efforts to get the appeal into adjudicable shape and shall estimate when those efforts are likely to be complete." The order warned Mr. Kelly that his "failure to timely file any status report may result in prompt dismissal with or without further notice."

Mr. Kelly filed no status report for March 2025. When he was ordered to show cause for that omission, he did not respond. When April 2025 came and went, Mr. Kelly again filed no report. All in all, he has not addressed any orders or any submissions by the board since the stay commenced. Mr. Kelly's consistent non-responsiveness demonstrates clearly enough an "intention not to continue with the prosecution of [his] claim." 801 C.M.R. § 1.01(7)(g)(2).

In view of the foregoing, it is hereby ORDERED that the remaining claims in this appeal are DISMISSED. The findings and rulings of the memorandum and order dated December 3, 2024 remain unchanged, are incorporated into this order, and are appealable as of this date.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate