

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

Kristine Kennedy,
Petitioner,

Docket No.: CR-23-0010

v.

Boston Retirement System and PERAC,¹
Respondent.

Appearances:

For Petitioner: Kristine Kennedy, pro se
For Respondent Boston Retirement System: Natacha Thomas, Esq.
For Respondent PERAC: Felicia McGinniss, Esq.

Administrative Magistrate:

Eric Tennen

ORDER GRANTING MOTION FOR SUMMARY DECISION

The Petitioner, Kristine Kennedy, timely appealed a decision by the Boston Retirement System denying her request for retroactive disability payments during a period when her payments were terminated. PERAC filed a motion for summary decision. Ms. Kennedy was given time to file a response, which she ultimately did not do.² PERAC's motion is now ripe for decision.

¹ The Boston Retirement System moved to have the Public Employee Retirement Administration Commission (PERAC) joined as a party. That request was allowed.

² During the litigation, Ms. Kennedy and her sister filed something on Ms. Kennedy's behalf. They both detailed some personal issues Ms. Kennedy was having that made it difficult for her to respond. Ultimately, these issues are not related to the legal questions on appeal, and she has not raised anything to suggest a disputed issue of fact. She was given multiple opportunities to file a response, including the most recent order, which set a deadline of July 18,

FINDINGS OF FACT

Based on the seven exhibits attached to PERAC's memorandum, the following facts are not in dispute:

1. The Petitioner was a former member of the Boston Retirement System who at some point was awarded accidental disability retirement. (Ex. 3.)
2. Someone receiving disability benefits has an obligation to provide an annual statement of earned income. Here, Ms. Kennedy failed to provide that for the years 2019, 2020, and 2021. (Exs. 1-4.)
3. Accordingly, the Boston Retirement System sent Ms. Kennedy notices that failure to file these statements could result in termination of her benefits. (Exs. 1-4.)
4. In December 2021, it sent Ms. Kennedy a notice to appear at a hearing to determine if her benefits should be terminated. She ultimately failed to appear, and the hearing examiner recommended termination. (Ex. 3.)
5. Around July 2022, after sending yet another notice asking her to file an annual statement, the Boston Retirement System terminated Ms. Kennedy's benefits. (Exs. 4 & 5; Joint Pre-Hearing memorandum.)
6. In December 2022, Ms. Kennedy filed her annual statement and her benefits were reinstated. (Joint Pre-Hearing memorandum.)
7. Sometime after that, she requested retroactive payment for the months of July and August, 2022. (Ex. 5.)

2025. DALA did not receive anything from her by then or since, including no communication asking for more time or other accommodations.

8. The Boston Retirement System denied the request, informing her that a member is not entitled to retroactive payments for any period during which their benefits were terminated.

(Ex. 5.)

DISUCSSION

Summary decision may be granted when “there is no genuine issue of fact relating to all or part of a claim.” 801 Code Mass. Regs. § 1.01(7)(h). “In such a circumstance, a hearing serves no useful purpose.” *Jordan v. State Bd. of Ret.*, CR-21-0201, 2022 WL 16921458 (Div. Admin. L. App., Feb. 18, 2022). This is such a case.

A member who receives disability retirement benefits has an obligation to show they are not earning excess payments. To fulfill this obligation, they are required to file a yearly statement “certifying the full amount of [their] earnings from earned income during the preceding year.” G.L. c. 32, § 91A. “Said forms and information shall be submitted on or before April fifteenth of each year.” *Id.* If a member fails to file these forms, they are offered a hearing to show if there was good cause for this failure. *Id.*; *Gambale v. Essex Ret. Bd. and PERAC*, CR-15-003 (Contributory Ret. App. Bd. May 31, 2019); *Harper v. Middlesex Cnty. Ret. Bd.*, CR-21-0067, 2022 WL 16921434 (Div. Admin. L. App. May 13, 2022).

The consequences of failing to file the forms, or showing good cause for such failure at a hearing, are “harsh.” *Gambale, supra*. In those situations, “[s]ection 91A prohibits [the member] from being reimbursed for the period during which [they were] out of compliance with the annual reporting requirement.” *Id.* However, if/when the member finally submits the required forms, “[t]he benefits start flowing again, but they don’t flow in reverse.” *Harper, supra*. This means that the member cannot collect benefits until the forms are filed, and there are no

retroactive benefit payments allowed.

Here, there is no dispute the Petitioner failed to file her annual forms, failed to appear at a hearing concerning termination of benefits, and in turn, failed to show good cause why she failed to file her forms. That resulted in the termination of her benefits. And, although she has now filed her annual statement and her benefits have been reinstated, under § 91A, she is not entitled to retroactive payments.

The Petitioner raised some issues in these proceedings that conceivably could be considered “good cause” for her failure to file the forms. But she raised these for the first time on appeal, and not at the hearing, which is the forum in which these issues must be raised. *See Harper, supra* (“If Mr. Harper had appeared at the November 16, 2020 hearing, had lost, and appealed to DALA, a hearing before DALA on *that* appeal would also have been a time for Mr. Harper to show good cause.”).

CONCLUSION AND ORDER

BRS’s decision denying the Petitioner’s request for retroactive payments is **affirmed**.

SO, ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Date: December 26, 2025

Eric Tennen

Eric Tennen
Administrative Magistrate