

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

MOHAMMED KHAN,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-14-524

ORDER DENYING MOTION FOR RECONSIDERATION

Petitioner Mohammed Khan has moved pursuant to 801 C.M.R. 1.01(7)(I) for reconsideration of our decision dated June 3, 2024. That section provides:

Motion for Reconsideration. After a decision has been rendered and before the expiration of the time for filing a request for review or appeal, a Party may move for reconsideration. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A, § 14(1) for the purposes of tolling the time for appeal.

Mr. Khan argues that the Contributory Retirement Appeal Board (CRAB) failed to follow the Order of the Superior Court to remand this matter back to CRAB “to consider whether the discovery rule tolls the statute of limitations here.”¹ Specifically, Mr. Khan claims that CRAB neglected to determine when the six-year statute of limitations applied and also failed to remand this matter back to the Division of Administrative Law Appeals (DALA) for an evidentiary hearing to determine how much the State Board of Retirement (SBR) may recoup from Mr. Khan as a result of our decision of June 3, 2024.

¹ *Khan v. Contributory Retirement Appeal Bd. and State Bd. of Retirement*, Superior Court Civil Action No. 2284CV01223, at 12 (Aug. 31, 2023, J.Connolly).

We conclude that Mr. Khan's motion does not identify a clerical or mechanical error. We further conclude that the motion does not present "a significant factor" that was previously overlooked. The Superior Court remanded the matter back to CRAB for consideration of one limited issue – whether the discovery rule tolls the statute of limitations in this matter. *Khan v. Contributory Retirement Appeal Bd. and State Bd. of Retirement*, Superior Court Civil Action No. 2284CV01223 at 12 (Aug. 31, 2023, J.Connolly). CRAB complied with this Order and addressed this issue in our Decision After Remand from Superior Court.² The Superior Court did not Order CRAB to establish the effect of the statute of limitations as argued by Mr. Khan. Khan Motion, at 2. As stated above, the scope of the Superior Court's order on remand was limited to the sole issue of "whether the discovery rule toll[ed] the statute of limitations." Superior Court Decision, at 11.

As to the issue of failing to remand this matter back to the Division of Administrative Law Appeals (DALA) for an evidentiary hearing to determine how much the State Board of Retirement (SBR) may recoup from Mr. Khan, we note that the Superior Court did not order remanding the case to DALA or for conducting an evidentiary hearing for additional fact finding. Secondly, CRAB addressed the issue of how much SBR may recoup in our decision of May 30, 2024. We stated that "[t]he Appeals Court has determined that a Board has authority to recoup excess earnings through either future offsets or through a direct claim for repayment under the broad statutory authority granted it by G.L. c. 32, § 20(5). See *Flanagan v. CRAB*, 51 Mass. App. Ct. 862, 866-69 (2001)(retirement boards "shall have such other powers and shall perform such other duties and functions as are necessary to comply with such provisions [of the retirement statute]"). Khan, CR-14-524 *2. Lastly, To the extent the Superior Court determined that the SBR sought recoupment of excess earnings through an action in contract, we determined that the discovery rule applies here, making the contract action sought by the SBR within the statute of limitations. Accordingly, we concluded that the SBR is not barred by the six-year statute of limitations in its recoupment of excess earnings from Mr. Khan. Khan, CR-14-524 *4.

As we have already considered these issues in our May 30, 2024 decision, the motion for reconsideration is denied.

SO ORDERED.

² *Khan v. State Bd. of Retirement*, CR-14-524, * 2-3 (CRAB May 30, 2024).

CONTRIBUTORY RETIREMENT APPEAL BOARD

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Date: May 20, 2025