

Commonwealth of Massachusetts
Contributory Retirement Appeal Board

LORI LOWREY,

Petitioner-Appellee

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellant.

CR-19-202

DECISION

The respondent-appellant State Board of Retirement (Board) appeals from a decision of the Division of Administrative Law Appeals (DALA) reversing the Board's decision denying the request of petitioner-appellee Lori Lowrey (Ms. Lowrey) for Group 4 classification for her former position of Assistant Deputy Superintendent/Health Services at the Bristol County Sheriff's Office (Sheriff's Office). In addition, the Board appeals a related DALA order denying the Board's motion to dismiss Ms. Lowrey's appeal as untimely filed.¹ The magistrate held an evidentiary hearing on October 24, 2022 and admitted into evidence an affidavit from Ms. Lowrey and exhibits 1-8. Ms. Lowrey testified on her own behalf, and the

¹ The Board filed the motion to dismiss on October 6, 2022, and the DALA magistrate denied it in an October 17, 2022 order. The Board noted its objection to the denial of its motion to dismiss in its October 21, 2022 pre-hearing memorandum.

Board offered no witnesses. The DALA decision is dated October 28, 2022, and the DALA order denying the Board's motion to dismiss is dated October 17, 2022. The Board filed a timely appeal to us.

After reviewing the evidence in the record and the arguments presented by the parties, we vacate the October 28, 2022 DALA decision and dismiss Ms. Lowrey's appeal on the grounds that we lack jurisdiction over it because it was untimely filed. Because we are dismissing Ms. Lowrey's appeal, we do not reach the merits of the Board's objections to the October 28, 2022 decision.

Background. In March 2019, Ms. Lowrey requested that the Board classify her then-current position of Assistant Superintendent II/Finance in the Sheriff's Office as Group 4.² The Board denied Ms. Lowrey's request, and she timely appealed. On May 4, 2022, while Ms. Lowrey's appeal was pending, the Board filed an assented-to motion to stay the proceedings so that Ms. Lowrey could pursue "a 'pro-rate' to have a portion of her state service classified in Group 4, an action which may render the present appeal unnecessary." On May 5, 2022, the magistrate allowed the motion and instructed the parties to either move to dismiss or request additional time to do so within 45 days. The magistrate also stated that if the parties failed to resolve the appeal by agreement, an affidavit by Ms. Lowrey could be admitted into evidence in lieu of live testimony. On June 16, 2022, the Board filed an assented-to motion to extend the stay by an additional 45 days, stating that

² Ex. 1.

the Board was scheduled to consider Ms. Lowrey's updated classification applications at its June 30, 2022 meeting. The magistrate allowed the motion.

On June 30, 2022, the Board considered Ms. Lowrey's applications for pro-rated classification in Group 4 of two positions she previously held at the Sheriff's Office: Correction Officer and Assistant Deputy Superintendent/Health Services. By letter dated June 30, 2022, the Board notified Ms. Lowrey that it had approved her request for Group 4 classification of the Correction Officer position.³ By letter dated July 1, 2022, the Board notified Ms. Lowrey that it had denied her request that the Assistant Deputy Superintendent/Health Services be classified in Group 4.⁴ The July 1, 2022 letter stated:

If you are aggrieved by the decision of the Board you may appeal in writing pursuant to M.G.L. c. 32, §16(4), to Edward B. McGrath, Esq., Chief Administrative Magistrate, Contributory Retirement Appeal Board, 14 Summer Street, 4th Floor, Malden, MA 02148 within fifteen (15) days of the date of this letter.

On August 3, 2022, the Board filed by email a joint motion to extend the stay until September 2, 2022, informing the magistrate that "[t]he Board has rendered a decision with respect to Ms. Lowrey's requested pro-ration of two previous positions, and Ms. Lowrey (copied here) is presently consulting her husband and considering whether she wishes to continue with her appeal." The magistrate allowed the motion for the stay to be extended to September 2, 2022 and also stated that

³ Ex. 6.

⁴ Ex. 6.

“[n]otwithstanding the stay of proceedings, September 2, 2022 will also be the last date for Ms. Lowrey to file any affidavit in lieu of live testimony.”

On August 21, 2022, Ms. Lowrey submitted an affidavit in lieu of testimony in which she stated in relevant part that she wished “to appeal the Retirement Board’s decision with regard to my group classification of my time as an Assistant Deputy Superintendent from September 9, 1990 to January 31, 1995 while I was the Major of Health Services and in charge of the entire Medical department at the Bristol County Sheriff’s Office.” The Board responded to Ms. Lowrey’s affidavit on August 30, 2022, noting that it appeared that Ms. Lowrey no longer planned to contest the Board’s classification of her current position (Assistant Superintendent II/Finance), but rather was only contesting the Board’s denial of her request for Group 4 classification for her prior position of Assistant Deputy Superintendent/Health Services.⁵ The Board stated that it had “no objection to the consideration of this position as a part of this appeal, but does have some requests with respect to procedure in this matter.” The Board went on to object to a waiver of a hearing with respect to the Assistant Deputy Superintendent/Health Services position.

On October 6, 2022, the Board filed a motion to dismiss Ms. Lowrey’s appeal pursuant to 801 CMR 1.01(7)(g). The Board argued that Ms. Lowrey had not timely appealed the denial of her application for Group 4 classification for the Assistant Deputy Superintendent/Health Services position and that as a result, DALA lacked

⁵ Ex. 7.

jurisdiction to consider Ms. Lowrey's appeal of that decision. The Board acknowledged that in its reply to Ms. Lowrey's August 21, 2022 affidavit, it had "indicated that it was acceptable to proceed with such an appeal as part of her original appeal." However, the Board stated that when the record was compiled, it appeared that Ms. Lowrey's first appeal filing concerning the Assistant Deputy Superintendent/Health Services position was on August 21, 2022, which was more than 15 days after the Board's July 1, 2022 denial letter and therefore untimely under G.L. c. 32, § 16(4).

The magistrate issued an order denying the Board's motion to dismiss on October 17, 2022 and held an evidentiary hearing on October 24, 2022. On October 28, 2022, the magistrate issued a decision reversing the Board's denial of Ms. Lowrey's application for Group 4 classification for the Assistant Deputy Superintendent/Health Services position. The Board timely appealed to us.

Discussion. The first issue we address is whether DALA was correct to deny the Board's motion to dismiss. We conclude that it was not.

Under G.L. c. 32, § 16(4), a person aggrieved by a decision of a retirement board may appeal by filing a claim in writing within 15 days of notification of such decision. However, a written ruling by a retirement board is an appealable decision subject to the 15-day deadline in G.L. c. 32, § 16(4) only if: (1) it expressly states that it is appealable; and (2) gives notice of the 15-day appeal period and to whom an appeal letter must be sent in accordance with G.L. c. 32, § 16(4). *Barnstable County Retirement Board v. Public Employee Retirement Administration*

Commission, CR-07-163 (CRAB Feb. 17, 2012). The 15-day filing deadline is jurisdictional – that is, neither DALA nor CRAB have subject matter jurisdiction to adjudicate appeals that were not timely filed under G.L. c. 32, § 16(4). *E.g.*, *Lambert v. Massachusetts Teachers’ Retirement System*, CR-09-74 (CRAB Feb. 7, 2012). *See also Nissan Motor Corp. in U.S.A. v. Commissioner of Revenue*, 407 Mass. 153, 157 (1990) (“It has long been the law of this Commonwealth that, when a remedy is created by statute, and the time within which it may be availed is one of the prescribed conditions for relief, failure to meet that time limit deprives a judicial body, court, or administrative appeals board of jurisdiction to hear the case”)⁶; *McLaughlin v. Contributory Retirement Appeal Board*, No. SUCV2012-04354, Memorandum of Decision and Order (Suffolk Super. Ct. Jan. 13, 2014)(CRAB has no jurisdiction to hear late appeal from DALA). Whether we have jurisdiction is a matter of law; jurisdiction cannot be conferred by the parties’ waiver or consent. *E.g.*, *Flynn v. Contributory Retirement Appeal Board*, 17 Mass. App. Ct. 668, 670 (1984), *citing Second Bank – State St. Trust Co. v. Linsley*, 341 Mass. 113, 116 (1960).

⁶ The United States Supreme Court (Supreme Court) has stated that when it interprets statutes enacted by Congress, it will treat a time bar as jurisdictional – and therefore not subject to equitable exceptions – only if Congress clearly states that is. *E.g.*, *Harrow v. Department of Defense*, 601 U.S. 480, 483-84, 489 (2024)(60-day filing deadline to appeal from Merit Systems Protection Board to Court of Appeals for the Federal Circuit is not jurisdictional). However, the Supreme Court does treat statutory deadlines to appeal from one Article III court to another as jurisdictional. *Id.* at 489. Regardless, the Supreme Court cases dealing with statutes enacted by Congress do not control our analysis here, which is guided by longstanding decisions concerning interpretations of Massachusetts statutes.

Applying these general principles, we are compelled to conclude that DALA did not have jurisdiction over Ms. Lowrey's appeal and that it was error for DALA to deny the Board's motion to dismiss. The Board's July 1, 2022 notification letter to Ms. Lowrey was subject to the 15-day statutory appeal deadline because the letter stated that the Board's decision could be appealed, gave notice of the 15-day statutory appeal period, and provided the name and address of the person to whom an appeal letter should be sent. There is a rebuttable presumption that letters are received within three days of deposit in the U.S. mail. 801 CMR 1.01(4)(c). In this case, the July 1, 2022 notification letter would presumably have arrived at Ms. Lowrey's home no later than Thursday, July 7, 2022 (excluding Saturday, July 2, Sunday, July 3, and the July 4 holiday), and Ms. Lowrey did not rebut the presumption that she received the July 1, 2022 letter and was notified of the Board's decision in the normal course. Ms. Lowrey did not file with CRAB any written document that could be construed as an appeal of the Board's decision until August 21, 2022, when she filed her affidavit. Because August 21, 2022 is more than 15 days after July 7, 2022, it follows that Ms. Lowrey's appeal was untimely and that neither DALA nor CRAB had jurisdiction to adjudicate it.

We do not agree with the magistrate's rationales for denying the Board's motion to dismiss. The magistrate first stated that the "implicit premise" of the Board's motion was that the Board's July 1, 2022 letter was "procedurally detached from the board's original decision of April 2019," but that "[t]he parties' course of conduct has not reflected that premise." The magistrate then reasoned that because

the parties' submissions had implied that successful proration requests by Ms. Lowrey for the Correction Officer and Assistant Deputy Superintendent/Health Services position would resolve her underlying appeal (i.e., of the April 2019 denial of Group 4 classification for her Assistant Superintendent II/Finance position), "it would not be appropriate to view the board's July 1, 2022 letter as a distinct decision requiring a standalone G.L. c. 32, § 16(4) appeal." The magistrate continued: "That letter is better construed as a revision or clarification of the board's already-timely-appealed April 2019 decision. In turn, Ms. Lowrey's August 2022 affidavit is best construed as an amendment to her original appeal letter. See 801 CMR § 1.01(6)(f)."

We do not accept the magistrate's analysis. First, the Board's July 1, 2022 letter was distinct – both as a matter of substance and process – from its April 2019 decision. Although both communications concerned group classification, the April 2019 decision was in response to Ms. Lowrey's March 2019 application for Group 4 classification for the Assistant Superintendent/Finance position, and the July 1, 2022 letter was in response to Ms. Lowrey's subsequent May 2022 request for pro-rated Group 4 classification for an entirely different position. That the parties might – in their own minds – have linked resolution of Ms. Lowrey's initial 2019 appeal to her 2022 pro-ration applications does not and cannot alter how G.L. c. 32, § 16(4) works. The July 1, 2022 letter was a separate appealable decision from the April 2019 decision, and, as noted in the letter itself, Ms. Lowrey had 15 days to appeal it.

She did not do so, and as a result, CRAB and DALA have no jurisdiction over Ms. Lowrey's appeal, regardless of any private understanding shared by the parties.

We also disagree with the magistrate's statement, in which he cited 801 CMR § 1.01(6)(f), that Ms. Lowrey's August 21, 2022 affidavit is best construed as an amendment to her original appeal letter. The regulation cited by the magistrate provides in relevant part that "[t]he Presiding Officer may allow the amendment of any pleading previously filed by a Party upon conditions just to all parties, and may order any Party to file an Answer or other pleading, or to reply to any pleading." 801 CMR § 1.01(6)(f). Although the regulation gives the Presiding Officer (in this case, the magistrate), the authority to allow amendments to the pleadings, the regulation cannot be interpreted to permit parties to add claims for which the statutory filing deadline has passed and over which the adjudicatory body does not have jurisdiction. The regulation says nothing about permitting parties to amend pleadings to bring appeals for which the filing deadline has passed, and even if it did, such a regulation would not trump the clear filing deadline in the statute (i.e., G.L. c. 32, § 16(4)).⁷

⁷ We note that in the context of civil litigation, an amendment relates back to an original pleading for statute of limitations purposes if the amendment may enable the plaintiff "to sustain the action for the cause or for recovery for the injury for which the action was intended to be brought." G.L. c. 231, § 51. *See also* Massachusetts Rule of Civil Procedure 15(c) (amendment relates back to original pleading if new claim "arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading"). Analogizing the filing deadline in G.L. c. 32, § 16(4) to a statute of limitations and applying the general principles undergirding G.L. c. 231, § 51 and Rule 15(c) here, even if one were to regard Ms. Lowrey's August 2022 affidavit as an attempted amendment to her April 2019 appeal, the amendment would not, in the context of civil litigation, "relate

While we commend Ms. Lowrey for her service and sympathize with her circumstances, DALA and CRAB do not have the authority to provide equitable relief where it contravenes the retirement law. *See Petrillo v. Public Employee Retirement Administration*, CR-92-731 (CRAB Oct. 22, 1993). Ms. Lowrey's appeal must be dismissed as untimely.

Conclusion. We vacate the DALA decision reversing the Board's denial of Ms. Lowrey's request for Group 4 classification for her former position of Assistant Deputy Superintendent/Health Services, and we dismiss Ms. Lowrey's appeal as untimely under G.L. c. 32, § 16(4), which in turn deprives us of subject matter jurisdiction over it. ***Vacate and dismiss.***

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Did not participate

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Chair
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back" to her April 2019 filing for purposes of the filing deadline because the August 2022 affidavit does not seek relief for the same conduct, transaction, or occurrence set forth in her April 2019 filing. *See, e.g., Weber v. Community Teamwork*, 434 Mass. 761, 784 (2001). We include this commentary not to equate G.L. c. 32 § 16(4)'s filing deadline with a statute of limitations or to imply that G.L. c 231, § 51 and Rule 15(c) in fact govern here. Rather, since civil litigation principles often apply in the administrative context, our intent is simply to show that in civil litigation, Ms. Lowrey's August 2022 affidavit would not relate back to her April 2019 appeal for statute of limitations purposes.

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Date: February 19, 2026