

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Linda Mondschein,
Petitioner,

No. CR-24-0462

Dated: March 21, 2025

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

ORDER OF DISMISSAL NISI

This is an appeal from a decision of the Massachusetts Teachers' Retirement System (board) denying petitioner Linda Mondschein's application to purchase retirement credit for a period of pre-membership service. The board has filed a motion to dismiss the appeal as untimely, which Ms. Mondschein has opposed.

The retirement statute requires appeals from the retirement boards' decisions to be filed "within fifteen days of notification of [the] . . . decision." G.L. c. 32, 16(4). Notification in this context is accomplished when a "notification letter is delivered to the petitioner[] . . . or is available to the petitioner." *Bailey v. State Bd. of Ret.*, No. CR-07-724, 2012 WL 13406339, at *2 (Contributory Ret. App. Bd. Nov. 16, 2012). "[T]he petitioner may not avoid receiving notification by failing to collect or open mail that is available to him." *Id.*

Ms. Mondschein filed her notice of appeal by fax on Wednesday, July 10, 2024. The appeal was therefore timely *if* Ms. Mondschein was notified of the board's decision on or after Tuesday, June 25, 2024. The merits of the board's motion revolve around that pivotal date. *See Brien v. State Bd. of Ret.*, No. CR-23-126, 2024 WL 5112213, at *2 (Contributory Ret. App. Bd. Oct. 30, 2024).

The board issued its decision on Wednesday, June 12, 2024. It is reasonable to assume that the decision arrived at Ms. Mondschein's home no later than Monday, June 17, 2024. *See Geary v. Plymouth Cty. Ret. Bd.*, No. CR-09-567, at *3 (Contributory Ret. App. Bd. Sept. 15, 2011). Ms. Mondschein asserts that she was "traveling with her family" at that time and that her mail was being "held by a neighbor." For present purposes, those assertions are taken as true. *See White v. Somerville Ret. Bd.*, No. CR-17-863, at *5 (Div. Admin. Law App. Nov. 16, 2018).

It is not entirely clear whether a decision letter is considered to be "available" to a member who is away from home voluntarily. The opinion in *Bailey, supra*, states that "[i]f the petitioner is not . . . at the address to which the notification is sent, in general it will be concluded that [he or she] has not yet received it." 2012 WL 13406339, at *2. But *Bailey* relies in part on *Geary, supra*, at *3, where "notification was effected" three days after the board mailed out its decision, even though the member was then away on vacation. *See also Brien*, 2024 WL 5112213, at *2.

The interrelationship between the foregoing holdings might have required further exploration *if* Ms. Mondschein had remained on vacation until on or after June 25. But that is not necessarily Ms. Mondschein's claim. In her notice of appeal, she wrote: "We were gone for summer vacation, then came back to Covid" Ms. Mondschein added in her opposition to the motion to dismiss: "Petitioner returned home ill with Covid-19, and did not learn of the communication from MTRS until approximately July 10, 2024."

Ms. Mondschein's illness stands on a different footing from her travels. When a member receives a copy of the board's decision while ill, it is clear that notice has been accomplished. *See DiBaro v. State Bd. of Ret.*, No. CR-23-279, 2024 WL 5112214 (Contributory Ret. App. Bd.

Oct. 30, 2024); *Taylor v. State Bd. of Ret.*, No. CR-09-45, 2012 WL 13406352 (Contributory Ret. App. Bd. Nov. 16, 2012). Ms. Mondschein's submissions do not address the question whether, as of the crucial date of June 25, she was still traveling or ill but home.

"It is the petitioner's burden to prove the facts supporting jurisdiction." *Cameron v. Boston Ret. Bd.*, No. CR-13-118, 2013 WL 12629467, at *2 (Contributory Ret. App. Bd. Dec. 11, 2013). The governing jurisdictional principles are described clearly enough in the board's motion and in the authorities cited there. But Ms. Mondschein has not claimed in response to the motion or in other papers that she remained away from her home through June 25. She has described no testimony or other evidence that could so demonstrate. The matters pleaded by Ms. Mondschein thus do not state a claim upon which relief can be granted. *See* 801 C.M.R. § 1.01(7)(g)(3).

A dismissal based on a short period of lateness is a harsh result. Ms. Mondschein has suffered an additional inconvenience in the sense that the jurisdictional issue was noted by the board only after Ms. Mondschein had filed a labor-intensive memorandum and exhibits. But lack of jurisdiction is a fatal problem. It means that the tribunal is legally unauthorized to decide the dispute, extend any filing deadline, or take any other action other than dismissing the case. *See Oxford v. Lawrence Ret. Bd.*, No. CR-18-5, 2023 WL 11806166 (Contributory Ret. App. Bd. May 17, 2023); *Briggs v. Essex Reg'l Ret. Bd.*, No. CR-19-182, 2020 WL 14009730, at *2 (Contributory Ret. App. Bd. Aug. 10, 2020). One consequence of jurisdiction's fundamental nature is that a jurisdictional defect cannot be forfeited and may be raised at any time. *See Flynn v. Contributory Ret. Appeal Bd.*, 17 Mass. App. Ct. 668, 670 (1984).

In view of the foregoing, it is hereby ORDERED as follows:

1. The motion to dismiss is ALLOWED.
2. The appeal is DISMISSED effective fourteen days from today. If Ms.

Mondschein has only inadvertently failed to assert that she remained away from her home through June 25, 2024, then she may move for reconsideration on that basis before the effective date of dismissal, attaching any supportive documents and affidavits. Contrast 801 C.M.R. § 1.01(7)(l); *Barker v. State Bd. of Ret.*, No. CR-07-155, at *1-2 (Contributory Ret. App. Bd. n.d.).

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate