

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Noah Nazarian,
Petitioner

v.

State Board of Retirement,
Respondent

Division of Administrative Law Appeals
14 Summer Street, 14th Floor
Malden, MA 02148
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www.mass.gov/dala
Docket No: CR-24-0504

Date: 6/27/24

ORDER OF DISMISSAL

Mr. Nazarian is attempting to appeal the State Board of Retirement's decision that he had G.L. c. 32, § 91A overearnings in calendar year 2017 and the Board's subsequent decision to terminate his accidental disability retirement benefits until it recovers the amount of the excess earnings.

The Board has moved the Division of Administrative Law Appeals (DALA) to dismiss the appeal because it was untimely filed. The Board filed its motion and several attached exhibits on March 3, 2025. That same day, DALA ordered Mr. Nazarian to file his response no later than April 2, 2025. Mr. Nazarian has not filed a response.

The following facts are undisputed. Mr. Nazarian was employed as a correction officer for approximately 10 years, until he was injured in an altercation at work in 2012. He was awarded accidental disability retirement as of April 30, 2015.

By letter dated June 26, 2023, the Public Employee Retirement Administration Commission (PERAC) notified Mr. Nazarian that he had excess earnings for calendar year 2017 under G.L. c. 32, § 91A. By letter dated May 23, 2024, the Board also notified Mr. Nazarian that PERAC had determined that he had excess earnings and advised him that he could either pay the amount of the excess earnings or request a hearing on the suspension of his allowance. Otherwise, his retirement allowance would be suspended until he has paid back all of the excess earnings. Mr. Nazarian neither paid the overearnings nor requested a hearing with the Board.

So, on June 24, 2024, by certified mail, the Board notified Mr. Nazarian that his retirement allowance payments would be terminated beginning with his July 2024 monthly payment and continuing until he either paid the full amount of the excess or the Board had withheld enough of his allowance to cover the excess. The Board informed him that he could appeal his decision within 15 days.

Electronic Post Office records reveal that the Board's letter was delivered in hand on Friday, June 28, 2024. Through counsel, Mr. Nazarian mailed his appeal letter on July 19, 2024.

An appeal from a retirement board's decision must be filed "within fifteen days of notification of such . . . decision." G.L. c. 32, § 16(4). The statutory deadline is "jurisdictional," meaning that DALA has no authority to extend it. *Lambert v. Mass. Teachers' Ret. Sys.*, CR-09-74 (Contributory Ret. App. Bd. Feb. 17, 2012). A petitioner receives "notification" of a board's decision as soon as the decision "is delivered to the petitioner's home or is available to the petitioner." *Bailey v. State Bd. of Ret.*, CR-07-724, at *5 (Contributory Ret. App. Bd. Nov. 16, 2012). An appeal filed by a petitioner by U.S. mail is deemed filed as of the date of the postmark. 801 CMR 1.01(4)(a)(3).

Taken together, these rules mean that Mr. Nazarian filed his appeal 21 days after he received the Board's decision. The appeal was therefore untimely. The only proper course of action available to an agency lacking jurisdiction is "dismissing the cause." *Phone Recovery Servs., LLC v. Verizon of New England, Inc.*, 480 Mass. 224, 230 (2018).

Accordingly, this matter is hereby **DISMISSED**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

Notice sent to: Noah Nazarian
John Durgin, Esq.