

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**KAREN O'BRIEN**

**Petitioner-Appellant**

**v.**

**MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,**

**Respondent-Appellee.**

**CR-18-0630**

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**DECISION**

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In a decision dated February 3, 2023, an administrative magistrate of the Division of Administrative Law Appeals (DALA) affirmed the Massachusetts Teachers' Retirement System's (MTRS) denial of Petitioner Karen O'Brien's application for accidental disability retirement. Through her counsel, Ms. O'Brien emailed the Contributory Retirement Appeal Board (CRAB) a notice of appeal on March 3, 2023.

On March 6, 2023, we issued to Petitioner an Order to Show Cause noting that CRAB's "governing statute, G.L. c. 32, § 16(4) provides that the DALA magistrate's decision "shall be final . . . *unless within fifteen days after such decision . . . either party objects to such decision, in writing*, to the contributory retirement appeal board . . . ." *Id.* (emphasis added)" and requested Petitioner provide the Board "any and all reasons why this appeal should not be dismissed as untimely".

Petitioner's counsel filed a response to our Order on March 18, 2023 in which he acknowledged that his office received a mailed copy of the DALA decision on February 6, 2023 and that a person in counsel's office scanned and emailed the decision to counsel. However, he himself "was completely unaware of [the decision's] existence until March 2, 2023" when he saw the email. Upon noticing the error, counsel diligently filed an appeal on behalf of the Petitioner the following day.

In response to CRAB's Show Cause Order, Petitioner cites *Kalu v. Boston Retirement*

*Bd. & Contributory Retirement Appeal Bd.*, 90 Mass. App. Ct. 501 (2016) as justification for accepting the March 3, 2023 emailed notice of appeal as timely filed because Petitioner did not receive notice of the DALA decision and her counsel was only made aware of the decision on March 2, 2023.<sup>1</sup> While the Appeals Court affirmed CRAB's determination that "[n]otifying counsel of the disposition of an application for benefits is essential to the preservation of the applicant's right to obtain benefits," *Kalu*, 90 Mass. App. Ct. at 506, this is not an analogous comparison to the issue before us. Unlike *Kalu* where the petitioner was appealing a retirement board's decision to DALA, the Petitioner in this matter is appealing DALA's administrative decision to CRAB. The plain language of the statute indicates greater flexibility when appealing a retirement board decision to DALA, stating "any person aggrieved...may appeal...within fifteen days of *notification of such action or decision* of the retirement board" G.L. c. 32 § 16(4) (emphasis added). The direct reference to "notification" differs from language concerning the appeal of a DALA decision to CRAB, which provides that it "shall be final and binding upon the board involved and upon all other parties...*unless within fifteen days after such decision*...either party objects to such decision, in writing, to the contributory retirement appeal board." *Id.* (emphasis added). In applying the plain language of the statute, CRAB is jurisdictionally bound to enforce a fifteen-day deadline beginning with the date of the DALA decision. *Carmel Credit Union v. Bondeson*, 55 Mass. App. Ct. 557, 560 (2002) (Statutes are to be interpreted in accordance with their plain words).

Here, we deem that Ms. O'Brien's counsel received the DALA decision on February 6, 2023 when a person in counsel's office scanned and emailed the decision to counsel. Since the DALA decision was dated February 3, 2023, Ms. O'Brien had until February 21, 2023 to file a notice of appeal to CRAB.<sup>2</sup> Despite his good faith effort to amend the error and the argument presented in the Response to the Order to Show Cause, CRAB is jurisdictionally prohibited from taking up this appeal as a matter of law. As sympathetic as we may be to the circumstances presented by this case, we must be mindful that attempts to

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<sup>1</sup> Petitioner Response to Order to Show Cause at \*1-2.

<sup>2</sup> Fifteen days from the date of the DALA decision was February 18, 2023. That day fell on a Saturday and since Monday, February 20, 2023 was a holiday, the deadline to file a notice of appeal fell to the following business day, February 21, 2023.

institute judicial appeals “after expiration of the period limited by a statute” are “repugnant to the procedural scheme.” *Schulte v. Director of the Div. of Employment Sec.*, 369 Mass. 74, 79 (1975). In addition, we must recognize that “time limits have particular significance in the context of administrative appeals due to the extremely large volume of such cases. Retirement boards need to know with reasonable certainty which cases are still subject to appeal in order to anticipate their potential liability for benefits.” *Jane Seibecker v. Teachers’ Retirement Syst.*, CR-14-773 (CRAB July 25, 2017) citing *McLaughlin v. Contributory Retirement Appeal Bd.*, No. SUCV2012-04354, Memorandum of Decision and Order (Suffolk Superior Ct. Jan. 13, 2014) (CRAB has no jurisdiction to hear late appeal).<sup>3</sup>

While we commend Ms. O’Brien for her years of 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 Early v. State Board of Retirement*, 420 Mass. 836 (1995) (DALA 1992) (*aff’d* CRAB 1993) and *Petrillo v. Public Employee Retirement Administration*, CR-92-731 (DALA 1992) (*aff’d* CRAB 1993). The decision of the DALA magistrate is affirmed.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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Uyen M. Tran  
Assistant Attorney General  
Chair  
Attorney General’s Appointee



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<sup>3</sup> *See Gordon v. State Building Code Appeals Bd.*, 70 Mass. App. Ct. 12, 13, 20 (2007) (board’s authority limited by statute that provided remedy; where party filed late appeal, board lacked authority to hear appeal); *Sears, Roebuck & Co. v. State Tax Comm’n*, 370 Mass. 127, 130 (1976) (board lacked jurisdiction to hear late appeal where time limit specified by statute); *Hanchett v. State Bd. of Retirement*, CR-07-1071 at 15 (DALA, Sept. 2, 2011) at 13-15 (no jurisdiction where attorney mistakenly sent appeal letter to retirement board, which did not forward it to DALA until three months later); *cf. Bowles v. Russell*, 551 U.S. 205, 209, 214 (2007) (where time limit was set by statute, Federal courts had no jurisdiction to allow appeal outside statutory limits despite clerk’s error in informing counsel of deadline).

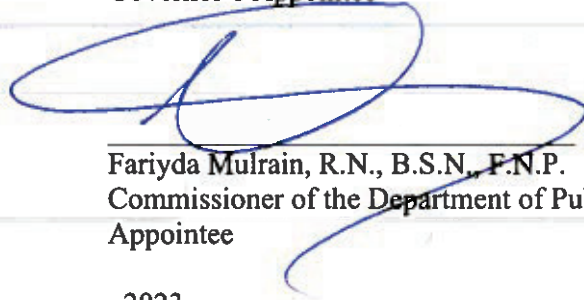
Nicolle M. Allen, Esq.  
Governor's Appointee

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Fariyda Mulrain, R.N., B.S.N., F.N.P.  
Commissioner of the Department of Public Health  
Appointee

Date: October 19, 2023

Nicolle M. Allen, Esq.  
Governor's Appointee



Fariyda Mulrain, R.N., B.S.N., F.N.P.  
Commissioner of the Department of Public Health  
Appointee

Date: October 19, 2023