

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

KATHLEEN OXFORD,

Petitioner-Appellant

v.

LAWRENCE RETIREMENT BOARD,

Respondent-Appellee

CR-18-0005

DECISION

On November 18, 2022 the Division of Administrative Law Appeals (DALA) issued a decision affirming the Lawrence Retirement Board's May 2001 decision to deny Petitioner Kathleen Oxford's application for accidental disability retirement benefits. Due to a typographical error in the Petitioner's Attorney's address, this decision was returned to DALA and successfully reissued on January 3, 2023. The Contributory Retirement Appeal Board (CRAB) received an emailed notice of appeal from the Petitioner on January 19, 2023.

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). On January 26, 2023, CRAB issued an Order to Show Cause ordering Petitioner to provide "in writing or by email, on or before February 9, 2023, any and all reasons why this appeal should not be dismissed as untimely".

Through her counsel, Ms. Oxford submitted a response dated February 8, 2023. Petitioner's counsel attributed the delay in submitting a notice of objection to CRAB to "a clerical error" in marking the deadline fifteen days from receiving the decision on January 9, 2023. Upon noticing the error, Counsel diligently filed a notice of appeal on

January 19, one day after the statutorily mandated fifteen-day deadline. In response, the Appellee Lawrence Retirement Board filed a motion to dismiss.

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 a discretionary authority to suspend commencement of the fifteen-day appeal window. 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*, in this matter the Petitioner directly appeals DALA's administrative decision to CRAB. While semantically it may seem incongruent to apply different standards for appealing public employee retirement decisions at two levels, the plain language of the statute indicates greater flexibility when appealing a retirement board decision to DALA, "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, "which 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 the date of the DALA decision's issuance. *Carmel Credit Union v. Bondeson*, 55 Mass. App. Ct. 557, 560 (2002) (Statutes are to be interpreted in accordance with their plain words).

Despite Ms. Oxford's counsel's good faith effort to amend the error, 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 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).¹

While we commend Ms. Oxford 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



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

¹ *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

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Governor's Appointee

Patrick M. Charles

Patrick M. Charles, Esq.
Public Employee Retirement Administration Commission
Appointee

Date: May 17, 2023