

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

ELAINE PALERMO,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee

CR-19-0360

DECISION

On December 23, 2022 the Division of Administrative Law Appeals (DALA) dismissed Petitioner Elaine Palermo's appeal of a May 2001 decision by the State Board of Retirement denying her application for a retirement allowance. The Contributory Retirement Appeal Board (CRAB) received a notice of appeal from the Petitioner on January 13, 2023 that was postmarked January 12, 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. Palermo submitted a response dated February 1, 2023 to our Order. Petitioner's counsel alleged that he did not see the DALA decision until after the fifteen-day deadline as "mail is generally slow during the holiday season and delayed." Mail is presumed delivered three days after being sent. 801 CMR 1.01(4)(c). Counsel presented no evidence or affidavits that rebuts this presumption. *See Dunner v. Boston Retirement Board*, CR-12-552 (CRAB, Dec. 2, 2015). Moreover, in the case of

Hobart Farrell Plumbing and Heating Co., Inc. v. Klayman, et. al., 19 N.E.2d 805, 807 (1939), the Supreme Judicial Court held that “a letter properly addressed and postpaid does not merely create a ‘presumption’ but rather constitutes ‘*prima facie* evidence’ of delivery to the addressee in the ordinary course of mail.” *Patricia Barry v. Teachers’ Retirement Board*, CR-01-933 (2002) (Frieman-Fink, A.M.) citing *Hobart-Farrell*, *supra*.

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

Thus, if an appeal to CRAB from DALA is filed more than fifteen (15) days after the date of the DALA decision, it must be dismissed for lack of subject matter jurisdiction. The date of filing is the date on which the objection letter was delivered to CRAB or, if it bears a United States Post Office postmark, the date on which it was mailed. CRAB Standing Order 2008-1, ¶ 4.a.1.

Even had the Petitioner met the statutory deadline for objecting to the DALA

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).

decision, her appeal would fail on the merits. The initial decision of the State Board of Retirement denying Ms. Palermo's request for a retirement allowance was issued in 2001. The Petitioner appealed this decision in 2019, eighteen years after the initial determination and has made no claim that she did not receive notification or was unaware of the 2001 decision. The record, in fact, shows that upon receiving a second copy of the 2001 decision in May 2019, Petitioner did not file an appeal with DALA until July 2019, nearly two months later. An appeal from a retirement board's decision must be filed within fifteen days after the member is notified of the decision. G.L. c. 32, § 16(4).

While we commend Ms. Palermo 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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