

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Debra Piper,
Petitioner,

No. CR-24-0485

Dated: May 30, 2025

v.

Southbridge Retirement Board,
Respondent.

ORDER ALLOWING MOTION TO DISMISS

Petitioner Debra Piper appeals from a determination of the Southbridge Retirement Board (board) that she is not entitled to a retirement allowance. The board has filed a motion to dismiss, which Ms. Piper has not opposed. For the reasons that follow, dismissal is warranted on a basis somewhat different than the one articulated by the board.

The board's theory in its motion is that Ms. Piper's appeal was untimely. The applicable statute requires any appeal from an action or decision of a retirement board to be taken "within fifteen days of notification of [the] action or decision." G.L. c. 32, 16(4). This deadline is "jurisdictional," *Oxford v. Lawrence Ret. Bd.*, No. CR-18-5, 2023 WL 11806166 (Contributory Ret. App. Bd. May 17, 2023), meaning that "the reviewing [tribunal] has . . . no authority to enlarge [it]," *Commonwealth v. Claudio*, 96 Mass. App. Ct. 787, 792 (2020).

Not every communication from a retirement board counts as a "decision" in this context. It is well established that the fifteen-day clock is started only by a decision that "(1) expressly states that it is an appealable decision and (2) gives notice of the fifteen-day appeal period and to whom the appeal letter must be sent . . ." *Barnstable Cty. Ret. Bd. v. Public Emp. Ret. Admin. Comm'n*, No. CR-07-163, 2012 WL 13406336, at *5 (Contributory Ret. App. Bd. Feb. 17, 2012). The purpose of this rule is "to protect the rights of litigants who may not be aware of their appellate rights or of the short deadline." *Lutes v. Clinton Ret. Bd.*, No. CR-07-1100, 2012

WL 13406332, at *2 (Contributory Ret. App. Bd. Nov. 16, 2012). *See also Decie v. Essex Reg'l Ret. Bd.*, No. CR-09-862, 2013 WL 12629436, at *2 (Contributory Ret. App. Bd. Jan. 17, 2013).

Ms. Piper filed her appeal directly with the Contributory Retirement Appeal Board (CRAB) approximately on July 12, 2024. The communication that prompted the appeal was an email from a board employee dated June 7, 2024. *See generally Bartini v. Berkshire Cty. Ret. Bd.*, No. CR-22-18, 2024 WL 4493404, at *2 (Div. Admin. Law App. July 5, 2024). After describing the board's analysis of Ms. Piper's case, the email said: "[I]f you do not agree with the calculations provided . . . you can appeal your case to DALA." The email then reproduced DALA's address and telephone number.

What the email to Ms. Piper did not include was "notice of the fifteen-day appeal period." *Barnstable*, 2012 WL 13406336, at *5. That notice may be the most critical element of the *Barnstable* formula. The fifteen-day period is unusually demanding. Many litigants "may not be aware of . . . the short deadline." *Lutes*, 2012 WL 13406332, at *2. The *Barnstable* rule keeps the clock inactive until the board has notified the member that his or her appellate rights "are both live and fleeting." *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2021 WL 11680398, at *2 (Div. Admin. Law App. Oct. 22, 2021). *See also Rock v. Boston Ret. Syst.*, No. CR-19-180, at *2 (Div. Admin. Law App. Mar. 26, 2021).

It follows that the June 7, 2024 email to Ms. Piper was not an appealable decision. The consequences of that determination warrant additional discussion. Pertinent prior decisions have typically followed a simple approach: when a board has issued no "appealable" decision, DALA lacks jurisdiction, and the member's appeal must be dismissed. *See Rock, supra; In the Matter of Enrollment in Retirement Plus, supra; Chan v. Massachusetts Teachers' Ret. Syst.*, No. CR-17-823, at *6-7 (Div. Admin. Law App. June 26, 2020).

On close examination, two binding CRAB decisions call for a more involved analysis. The first decision is *Lutes, supra*, which was handed down a few months after *Barnstable*. The petitioner there received letters from the Clinton retirement board that did not state his appellate rights. He appealed to DALA a few days later. CRAB analyzed the situation as follows:

[T]he Clinton Board’s letters to Lutes were not appealable “decisions” under § 16(4). Had Lutes failed to file an appeal within fifteen days . . . his appellate rights would not be foreclosed, and he would still have the right to appeal within fifteen days from a later decision that did contain appellate rights. Alternatively, if Lutes . . . were to ask in writing for action by a board . . . and the board did not take action within one month, the petitioner would have the right to appeal fifteen days after the expiration of the one-month period.

Here, however, Lutes did file an appeal within fifteen days from the date he was notified . . . of the Clinton Board’s actions. . . . [A] person aggrieved may, in circumstances such as these, file a timely appeal from a board’s . . . “action,” or from a failure to act, notwithstanding the fact that the notice of the action or lack of action on which the appeal is based does not expressly state that it is an appealable decision.

2012 WL 13406332, at *2. Otherwise stated, under *Lutes*, a board letter not compliant with *Barnstable* leaves the member with two ways to trigger DALA’s jurisdiction. Within fifteen days, the member may take an appeal from the “action” reflected in the board’s letter. *See* G.L. c. 32, § 16(4). And at any subsequent time, the member may re-alert the board to his or her original request, with a fifteen-day appeal period commencing one month after that (unless the board has responded in the meantime). *See also McKenna v. Plymouth Ret. Bd.*, No. CR-20-126, 2023 WL 2535785, at *2 (Div. Admin. Law App. Mar. 10, 2023).¹

¹ The portion of G.L. c. 32, § 16(4), pertinent to this second option states that an aggrieved member may take an appeal “within fifteen days after the expiration of one month following the date of filing a written request with the board.” An appeal lodged before the end of the one-month period arguably may also land within DALA’s jurisdiction. *See Springfield Empowerment Zone P’ship, Inc. v. Massachusetts Teachers’ Ret. Syst.*, No. CR-22-0297, at *7-8 (Div. Admin. Law App. May 23, 2025); *Kelly v. State Bd. of Ret.*, No. CR-23-271, at *5 (Div. Admin. Law App. Dec. 3, 2024).

The framework outlined in *Lutes* has not been implemented often since. But the second pertinent CRAB decision was issued recently, in *Massachusetts Teachers' Ret. Syst. v. Blue Hills Reg'l Sch. Ret. Bd.*, No. CR-19-226 (Contributory Ret. App. Bd. Dec. 23, 2024). That matter involved consolidated disputes between the Massachusetts Teachers' Retirement System (MTRS) and several respondent systems. Most of the appeals challenged letters or invoices not compliant with *Barnstable*.² CRAB discussed the point only with respect to a letter issued by the Needham retirement system. Nine months after receiving that letter, MTRS asked the Needham system to reconsider; forty-five days after that, not having heard back, MTRS lodged an appeal. Citing *Lutes*, CRAB wrote:

The [decision letter] does not state that the decision is appealable, give notice of the appeal period, or identify where an appeal should be filed. Accordingly, the letter did not trigger any obligation to appeal, and MTRS's appeal . . . was timely filed after the Needham Retirement System did not act on MTRS's subsequent letter.

Id. at *1-2 (citation omitted). With respect to the other systems' non-*Barnstable*-compliant letters, CRAB implicitly treated the appeals as arising from appealable "actions."³ *Blue Hills* thus reconfirms both of *Lutes*'s proposed lines of appellate attack on "unappealable" decisions.

Returning to Ms. Piper's case, the board's non-*Barnstable*-compliant email did not activate a jurisdictional fifteen-day clock. Ms. Piper nonetheless could have taken an appeal within fifteen days, on the theory that the board's email notified her of a board "action." Because the appeal followed the board's letter by longer than that (i.e., by approximately thirty-

² The details are described in the underlying DALA decision, *Massachusetts Teachers' Ret. Syst. v. Blue Hills Reg'l Sch. Ret. Bd.*, No. CR-19-226, 2022 WL 16921463, at *3 (Div. Admin. Law App. Jan. 14, 2022).

³ The underlying DALA decision had suggested that DALA and CRAB might possess jurisdiction on the theory that the *Barnstable* rule does not reach disputes between retirement systems. That theory is foreclosed by CRAB's analysis of the Needham system's letter.

five days), the appeal was not timely under *Lutes*'s first prong. Ms. Piper retains the option of asking the board to act again on her case in accordance with *Lutes*'s second prong.

In view of and subject to the foregoing, it is hereby ORDERED that the motion to dismiss is ALLOWED and this appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate