

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

John Thompson,
Petitioner

Docket No. CR-18-0676

Date Issued: September 13, 2024

v.

Middlesex County Retirement System,
Respondent

Appearance for Petitioner:

Leigh Panettiere, Esq.

Appearance for Respondent:

Thomas Gibson, Esq.

Administrative Magistrate:

Bonney Cashin

Summary of Decision

The decision of the Middlesex County Retirement System to deny Petitioner’s application for accidental disability retirement is final because his appeal was untimely. DALA thus has no jurisdiction to decide it.

DECISION

Following the Middlesex County Retirement System’s (Board) decision to deny his application for accidental disability retirement benefits, John Thompson filed an appeal by hand on December 27, 2018.

On January 13, 2021, I held a hearing using the Webex platform. I admitted Exhibits 1–25 in evidence. Mr. Thompson was the only witness. There is a recording of the hearing from

which the parties had a transcript prepared.¹ The record closed on April 19, 2022, after the parties submitted Post-Hearing Memoranda.

FINDINGS OF FACT

Based upon the testimony and other evidence in the record, the reasonable inferences drawn therefrom, and my assessment of the witness's credibility, I make the following findings of fact:²

1. Petitioner John Thompson is a former Police Officer for the Town of Burlington. He was employed from November 1999 until he resigned on February 24, 2017, effective June 30, 2017, as part of a Settlement and Separation Agreement. (Tr. 15; Exs. 10, 11.)

2. Mr. Thompson was on administrative leave from December 17, 2016, until his effective resignation date. (Tr. 26, 34; Ex. 10.)

3. On December 29, 2010, Mr. Thompson was involved in an altercation while arresting a suspect. The suspect tried to stab him with a knife; Mr. Thompson could not get to his gun. He was finally able to subdue the suspect. (Tr. 18-19.)

4. He suffered a serious hand injury that eventually needed surgery and was out on injured-on-duty paid leave for 90 days. (Tr. 19-20.)

5. Following the incident, Mr. Thompson had difficulty sleeping, experienced anxiety and relived the experience. He began drinking more heavily and while alone. He was "drinking to function." He did not know why he felt the way he did. (Tr. 20-21, 37, 43.)

6. Although he did not recognize it at the time, Mr. Thompson believes that he has been suffering from PTSD since the December 2010 incident. (Tr. 20-21.)

¹ Transcript page references are given for Mr. Medeiros's testimony for the reader's benefit. The digital recording controls should there be a conflict.

² I make these findings should CRAB decide that it has jurisdiction to decide the matter.

7. In June 2012, Mr. Thompson was arrested in New Hampshire for drunk driving. The Town terminated his employment, but he was reinstated following an arbitration hearing. (Tr. 22; Ex. 5, 6, 7, 8).

8. In October 2016, while off duty, he crashed his car after drinking all day. (Tr. 21-22).

9. He contacted the Town's stress line and saw a therapist for about three months. (Tr. 23, 28.)

10. At this point, Mr. Thompson believed that his supervisor knew of his psychological state. He did not file any written reports with the police department about his symptoms. (Tr. 20-21, 28, 35).

11. On December 16, 2016, after drinking all night and taking cold medicine and Klonopin (which he was prescribed) in the morning, he reported for duty. (Tr. 25.)

12. His behavior aroused suspicion among his coworkers. He failed a breathalyzer test, was taken home, and subsequently was placed on administrative leave. (Tr. 25-26.)

13. On December 23, 2016, Mr. Thompson voluntarily entered inpatient treatment at McLean Hospital for his alcohol misuse. He completed the residential program and continued in an outpatient group program. (Exs. 22, 23, 26).

14. Mr. Thomson has been sober for over five years. (Tr. 26.)

15. Mr. Thompson's McLean Hospital medical records show that he was diagnosed with PTSD. In addition to his alcohol abuse while a police officer, he experienced a traumatic incident when he was 8-11 years old. (Tr. 38-39; Exs. 19, 21.)

16. On May 9, 2018, Mr. Thompson applied for Accidental Disability Retirement. He previously had applied for and is receiving superannuation retirement. (Exs.12-15).

17. The Board's denial of his ADR application is dated November 19, 2018. (Ex 16).

18. Mr. Thompson's appeal was delivered by hand to DALA and is dated December 27, 2018. (Ex. 17).

19. Mr. Thompson explained that he did not have a mailbox at his house. He used a "community mailbox" that he checked once or twice a month. When he picked up the Board's decision, the appeal deadline had passed. He went to the Retirement Board and spoke with a receptionist who "got a timestamp on it and registered it." (Tr. 27).

20. The appeal letter represents that Mr. Thompson received a decision from the Board denying his application on December 13, 2018, and a copy of the denial was attached. That denial is dated November 19, 2018. (Ex. 17).

DISCUSSION

Mr. Thompson's appeal of the Board's decision is untimely. The 15-day statutory time limit to appeal a retirement board's decision is jurisdictional, meaning that if it is not satisfied, DALA has no authority to extend the deadline or take any other action. *Lambert v. Mass. Teachers' Retirement Sys.*, CR-09-74 (CRAB, Feb. 17, 2012); *see Bevilacqua v. Rodriguez*, 460 Mass. 762, 780 (2011) (complaint dismissed for lack of jurisdiction is not an adjudication on the merits; inappropriate to attach preclusive effects to dismissal beyond the matter decided, lack of subject matter jurisdiction.)

The Board's letter satisfied the notice requirements and is an appealable decision. *Barnstable County Retirement Bd. v. Public Employee Retirement Admin. Comm'n*, CR-07-0163, (Feb. 1, 2012). The only question is when Mr. Thompson received "notification" of the decision within the meaning of G.L. c. 32, § 16(4). A petitioner receives "notification" of a decision when the decision "is delivered to the petitioner's home or *is available to the petitioner.*" *Bailey v.*

State Bd. of Retirement, CR-07-724, at *5 (CRAB, Nov. 16, 2012) (emphasis added). Mr. Thompson was notified once the Board's decision letter was placed in the "community mailbox" where he could have picked it up at any time. Instead, he checked for mail infrequently.

The only appealable decision of the Board in evidence is the one dated November 19, 2018. Whatever arrangement Mr. Thompson made with the Board's receptionist is of no import. Even the re-issuing of a denial letter, if based on the same facts and the same rationale, cannot enlarge the time for filing an appeal. *Sanphy v. Mass. Teachers' Retirement. Sys.*, CR-11-0510 (CRAB, Mar. 29, 2013) citing *Lospennato v. State Bd. of Retirement*, CR-08-614 (DALA, Jun. 15, 2012) (fifteen-day appeal period ran from the date the retirement board first denied request, not from date five years later when board denied a subsequent request based on the same facts.)

As the Massachusetts Appeals Court has instructed, "[it] is our duty to note and decide a jurisdictional question, regardless of the point at which it was first raised, and whether any party has raised it." *Flynn v. Contributory Retirement Appeal Bd.*, 17 Mass App. Ct. 668, 670 (1984) (citations omitted.)

Given my conclusion that the appeal is untimely, no decision is possible on the merits of Mr. Thompson's appeal. *Smith Joe v. Essex Retirement. Bd*, CR-19-0444, (DALA, Nov. 1, 2019). See *Karbowski v. Bradgate Assoc., Inc.*, 25 Mass. App. Ct. 526, 528 (1987) (finding District Court had no jurisdiction to vacate an arbitrator's award and annulling the Court's ruling); see also *Bailey v. Contributory Retirement Appeal Bd.*, BR CV 2012-1405 (Sup. Ct. Sept. 30, 2013) (where appeal not filed timely, finding on the merits of the appeal is a nullity.)

CONCLUSION

Mr. Thompson's appeal is dismissed as untimely. The Board's decision is final.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin
Administrative Magistrate

DATED: September 13, 2024