

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Taska Watts,
Petitioner,

No. CR-24-0539

Dated: March 14, 2025

v.

Boston Retirement System,
Respondent.

ORDER OF DISMISSAL

This is an appeal from a decision of the Boston Retirement System (board) to deny petitioner Taska Watts’s application to retire for accidental disability. The board has filed a motion to dismiss the appeal as untimely. In the unhappy circumstances presented, the motion is meritorious.

Taking the petitioner’s pleadings as true and drawing all reasonable inferences in her favor, the essential facts are as follows. The petitioner filed her accidental disability retirement application in November 2021. A regional medical panel returned certificates supportive of the application. In May 2023, a hearing officer conducted an evidentiary hearing on the board’s behalf. In March 2024, the board issued a decision denying the application.

In the proceedings before the board, the petitioner was represented by an attorney. The board mailed copies of its decision both to the petitioner herself and to her attorney by certified mail, signature confirmation requested. The receptionist at the attorney’s law firm received the board’s mailing and signed for it; but the receptionist did not inform the attorney about the mailing’s arrival until August 2024. This appeal followed soon thereafter.

An appeal from a retirement board’s decision must be filed “within fifteen days of notification of such . . . decision.” G.L. c. 32, § 16(4). “Notification” in this context is accomplished when a “notification letter is delivered to the petitioner[] . . . or is available to the

petitioner.” *Bailey v. State Bd. of Ret.*, No. CR-07-724, 2012 WL 13406339, at *2 (Contributory Ret. App. Bd. Nov. 16, 2012). “[T]he petitioner may not avoid receiving notification by failing to collect or open mail that is available to him.” *Id.* In the case of a member represented by counsel, the analysis focuses on the date of notification to the attorney. *See Kalu v. Boston Ret. Bd.*, 90 Mass. App. Ct. 501, 504-07 (2016).

The essential question presented is whether the board’s decision was “delivered to” or “available to” the petitioner’s attorney upon being accepted by the law firm’s receptionist. The answer is yes. The Postal Service brought the decision successfully to the attorney’s up-to-date business address. The decision was given there to an employee whose job it was to process incoming mail. These facts arguably would have satisfied even the rules applicable to formal service in court actions. *See* Mass. R. Civ. P. 5(b); *United States v. Ayer*, 857 F.2d 881, 887 (1st Cir. 1988); *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988); *Southern Cal. Darts Ass’n v. Zaffina*, 762 F.3d 921, 928 (9th Cir. 2014). *See also Wilfert Bros. Realty Co. v. Commonwealth Comm’n Against Discrimination*, 15 Mass. L. Rptr. 388, 389-90 (Super. Ct. 2002). And once a decision has been delivered effectively, good faith processing errors do not affect the timeliness analysis. *See O’Brien v. Massachusetts Teachers’ Ret. Syst.*, No. CR-18-630, 2023 WL 11806165 (Contributory Ret. App. Bd. Oct. 19, 2023); *Oxford v. Lawrence Ret. Bd.*, No. CR-18-5, 2023 WL 11806166 (Contributory Ret. App. Bd. May 17, 2023). In essence, an attorney’s access to mail held by her employee may be treated as the rough equivalent of any person’s access to items sitting in his or her mailbox.

It may be disheartening for the petitioner’s appeal to be defeated by a misstep on the part of her attorney’s staff. But the fifteen-day deadline under G.L. c. 32, § 16(4), is jurisdictional, meaning that this tribunal cannot extend it no matter how sympathetic the circumstances may be.

See Briggs v. Essex Reg'l Ret. Bd., No. CR-19-182, 2020 WL 14009730, at *2 (Contributory Ret. App. Bd. Aug. 10, 2020); *Lambert v. Massachusetts Teachers' Ret. Syst.*, No. CR-09-74, 2012 WL 13406355, at *2-3 (Contributory Ret. App. Bd. Feb. 17, 2012). The only course of action available to here is “dismissing the cause.” *Phone Recovery Servs., LLC v. Verizon of New England, Inc.*, 480 Mass. 224, 230 (2018).

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

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate