

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Peter West,
Petitioner,

Docket No.: CR-25-0500

v.

Dated: August 21, 2026

State Board of Retirement,
Respondent.

**ORDER GRANTING RECONSIDERATION,
VACATUR, AND DISMISSAL**

This is petitioner Peter West's appeal from a decision of the State Board of Retirement (board) declining to retire him for termination under G.L. c. 32, § 10(2). A final decision in Mr. West's favor issued on July 31, 2026. The board moves for reconsideration on the basis that the appeal was not timely filed. *See* standard rule 7(l).^{1,2}

Most arguments made as late in the day as the one presented here are forfeited. *See Hudson v. Boston Ret. Syst.*, No. CR-19-582, at *2 (Contributory Ret. App. Bd. Aug. 5, 2026). But the board's argument involves an exception to the rule. Binding case law treats the timely filing of an appeal as a precondition to the tribunal's jurisdiction. *See Lambert v. Massachusetts*

¹ The standard rules here under G.L. c. 30A, § 9, are the provisions of 801 C.M.R. § 1.01.

² The board simultaneously moved for a stay of its deadline to appeal from the July 31, 2026 decision to the Contributory Retirement Appeal Board. *See Shaw v. State Bd. of Ret.*, No. CR-25-550, at *2-3 (Contributory Ret. App. Bd. June 11, 2026) (declining to apply the usual tolling rule of standard rule 7(l) to appeals from DALA's decisions). The motion was denied on the basis that "a [trial-level tribunal] generally does not have the authority to enlarge . . . [an] appeal period . . . set by statute." *McNeff v. Cerretani*, 489 Mass. 1024, 1026 (2022). Thereafter, with an eye toward preserving DALA's authority to resolve the motion for reconsideration, the board waived its right to appeal from the July 31, 2026 decision. *See Quinn v. Gjoni*, 89 Mass. App. Ct. 408, 411 (2016); *Graves v. Principi*, 294 F.3d 1350 (Fed. Cir. 2002); *Cerullo v. Derwinski*, 1 Vet. App. 195 (1991).

Tchrs.' Ret. Syst., No. CR-09-74, 2012 WL 13406355, at *2 (Contributory Ret. App. Bd. Feb. 17, 2012). *See generally Commonwealth v. Claudio*, 96 Mass. App. Ct. 787, 791-92 (2020). Stated otherwise, if Mr. West's appeal was late, then DALA had no authority to take any action at all in this case. *See Phone Recovery Servs. v. Verizon of New England*, 480 Mass. 224, 230 (2018). A jurisdictional challenge to a tribunal's authority cannot be forfeited or waived, and "may be raised at any time." *Commonwealth v. Nick N.*, 486 Mass. 696, 702 (2021).

Turning to the substance of the timeliness issue, the board's decision letter bears the date August 4, 2025.³ Absent contrary evidence, of which there is none, the decision is presumed to have been delivered to Mr. West by August 7, 2025, a Thursday. *See* standard rule 4(c). Mr. West's last date to file a timely appeal was fifteen days later, G.L. c. 32, § 16(4), namely August 22, 2026, a Friday. On deadline day, Mr. West signed his notice of appeal and mailed it to DALA using United Parcel Service (UPS). The UPS envelope is preserved in the DALA case file.

This fact pattern implicates a peculiarity of the standard rules. If Mr. West had sent his notice of appeal by U.S. Mail, the notice would have been "deemed filed on the date contained in the . . . U.S. postmark." Standard rule 4(a). But a different rule applies to mailings by "all other means," including UPS: such mailings are "considered hand-delivered, and . . . deemed filed on the date received by the Agency." *Id.* *See also Stanton v. State Bd. of Ret.*, No. CR-18-399, 2021 WL 9697062, at *3 (Div. Admin. Law App. Aug. 20, 2021), *aff'd*, 2023 WL 11806178

³ Mr. West does not challenge the board's representation that the letter was mailed on the date stated there. Contrast *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2021 WL 11680398, at *1-2 (Div. Admin. Law App. Oct. 22, 2021).

(Contributory Ret. App. Bd. Oct. 11, 2023). Mr. West’s notice was received and stamped by DALA three days after the filing deadline, on August 25, 2026. *See* standard rule 4(a). The stamped notice is also maintained in the case file.⁴

In support of the timeliness of the appeal, Mr. West’s papers theorize that the “15 days” allowed by statute may mean “15 business days.” The case law holds otherwise. “[T]he established meaning of ‘day’ [is] a calendar day when used without a modifier such as ‘business.’” *Commonwealth v. Springfield Terminal Ry. Co.*, 80 Mass. App. Ct. 22, 40 (2011). *See also In re Opinion of the Justs.*, 291 Mass. 572, 577 (1935). *Cf.* G.L. c. 4, § 9.

Mr. West also argues that the board, for its part, was late to comply with at least two deadlines in this case. But the deadlines pertinent to the board’s conduct were extendable or “directory” rather than jurisdictional. They were imposed by DALA magistrates, not by the Legislature. *See McNeff*, 489 Mass. at 1026. And they related to “steps in the carrying out of the appeal” after the appeal was properly “institut[ed].” *Pierce v. Board of Appeals of Carver*, 369 Mass. 804, 811 (1976). *See Schulte v. Director of Div. of Employment Sec.*, 369 Mass. 74, 79-80 (1975).

⁴ A deadline imposed not by the Legislature but by a regulation or a rule arguably may be waivable, forfeitable, or modifiable for good cause. *See Claudio*, 96 Mass. App. Ct. at 791-92 (surveying numerous cases, all to the effect that a “statutory” appeal period is jurisdictional). *See also Amberg v. Fed. Deposit Ins. Corp.*, 934 F.2d 681, 683-84 (5th Cir. 1991); *Oberstar v. Fed. Deposit Ins. Corp.*, 987 F.2d 494, 504 (8th Cir. 1993); *United States v. Three Sums Totaling \$612,168.23 in Seized United States Currency*, 55 F.4th 932, 937 (D.C. Cir. 2022). *Cf.* standard rule 4(e). It does not seem likely that a tribunal may similarly vary from a regulatory rule about when papers are deemed filed—even based on waiver, forfeiture, or good cause—when the consequence would be “an end-run around a jurisdictional deadline.” *Groves v. United States*, 941 F.3d 315, 322 (7th Cir. 2019). Regardless, Mr. West does not argue for such a maneuver.

Mr. West’s last argument is that a board employee led him to believe that his odds of success on an appeal to DALA would be slim. Under the doctrine of “equitable tolling,” the circumstances in which a “statute of limitations” may be extended include those where “the defendant . . . has affirmatively misled the plaintiff.” *Andrews v. Arkwright Mut. Ins. Co.*, 423 Mass. 1021, 1021 (1996). See *Halstrom v. Dube*, 481 Mass. 480, 485 (2019). It is unlikely that the board’s conduct may be viewed as involving such wrongdoing.⁵ Regardless, the law treats “statutes of limitations” differently from “statutory appeal periods.” See *Rossiter v. Potter*, 357 F.3d 26, 32 (1st Cir. 2004). It is specifically deadlines of the latter type that are considered to be jurisdictional, with the result that they remain immovable no matter how “equitable” an extension would be. See *Claudio*, 96 Mass. App. Ct. at 791-92.

In view of the foregoing, it is hereby ORDERED that the motion for reconsideration is ALLOWED, the July 31, 2026 decision is VACATED, and Mr. West’s appeal is DISMISSED.⁶

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals

⁵ It is also unsettled whether equitable tolling is invocable in administrative tribunals. See *Rochester Bituminous Products, Inc. v. Attorney Gen.*, No. LB-22-5, 2025 WL 3127157, at *9 n.9 (Div. Admin. Law App. Oct. 28, 2025) (collecting cases).

⁶ If the board should determine on its own accord that its analysis of Mr. West’s case was erroneous, it likely retains the authority to correct the error. See G.L. c. 32, § 20(5)(c)(2); *McGarry v. Bristol Cty. Ret. Bd.*, No. CR-20-409, 2023 WL 3614628, at *5 (Div. Admin. Law App. Jan. 27, 2023) (collecting cases).