

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kenneth R. Zanetti,
Petitioner,

No. CR-21-0176

Dated: June 9, 2023

v.

Boston Retirement System,
Respondent.

Appearance for Petitioner:

Kenneth R. Zanetti (pro se)
Duxbury, MA 02331

Appearance for Respondent:

Timothy J. Smyth, Esq.
Boston, MA 02201

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner did not file his appeal “within fifteen days of notification of [the pertinent] action or decision of the retirement board.” G.L. c. 32, § 16(4). DALA therefore lacks jurisdiction.

DECISION

Petitioner Kenneth Zanetti appeals from a decision of the Boston Retirement System (board) recalculating his monthly retirement benefits. The appeal was submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence the board’s exhibits marked A-E and the petitioner’s exhibits marked A-J.

Findings of Fact

I find the following facts.

1. Mr. Zanetti retired effective November 2019. The board provided him with an estimate of his likely retirement allowance at around that time. (Board Exhibit B.)

2. In January 2021, the board notified Mr. Zanetti that, according to its new calculations, Mr. Zanetti was being overpaid by approximately \$165 per month.¹ The board's notice directed Mr. Zanetti to repay approximately \$2,158. It did not describe Mr. Zanetti's appellate rights. (Zanetti Exhibit A.)

3. Mr. Zanetti received another letter from the board dated March 26, 2021. That letter restated the board's position regarding Mr. Zanetti's retirement benefits. It also invited Mr. Zanetti to apply for a waiver of repayment. This time, the board recited Mr. Zanetti's appellate rights, stating: "In the event you believe you are aggrieved by this action . . . you may 'appeal to [the] contributory retirement appeal board by filing therewith a claim in writing within fifteen days of notification of such action or decision of the retirement board.'" (Zanetti Exhibit D.)

4. Mr. Zanetti applied for a waiver of repayment on April 6, 2021. The board granted the application on April 28, 2021. Two days later,² Mr. Zanetti filed this appeal, which challenges the board's recalculation of his benefits going forward. (Zanetti Exhibit H.)

Analysis

An appeal from a retirement board's decision must be filed "within fifteen days of notification of [the] . . . decision." G.L. c. 32, § 16(4). The board here first issued an appealable decision on March 26, 2021. *See Barnstable City Ret. Bd. v. PERAC*, No. CR-07-163 (CRAB Feb. 17, 2012) (a retirement board's decision is appealable only if it states the member's appellate rights). Mr. Zanetti did not file his appeal until 35 days later.

¹ The board's reasoning was that Mr. Zanetti had terminated his retirement-system membership in 2002, that he had returned to service after 2012, and that his benefits thus should have been calculated based on a five-year (not three-year) period. *See* G.L. c. 32, § 5(2)(a).

² It appears that Mr. Zanetti attempted to file his appeal on April 29, 2021, but misspelled DALA's email address on that first attempt.

Mr. Zanetti does not dispute that he received the board's decision soon after its issuance. *See also Commonwealth v. Barboza*, 68 Mass. App. Ct. 180, 185 (2007) (the mails are presumed to operate effectively). He claims, in essence, that he expected his request for a waiver of repayment to toll the appeal period. But the board's decision was not the least bit "misleading" on this point. *See Caton v. State Bd. of Ret.*, No. CR-16-470, at 11-12 (DALA June 14, 2019). The decision stated unequivocally that the statutory fifteen-day appeal period would begin to run upon delivery. The board's subsequent ruling granting Mr. Zanetti's request for a waiver did not change the board's prior recalculation of Mr. Zanetti's entitlements or otherwise restart the clock on the statutory appeal period. *Cf.* 801 C.M.R. § 1.01(7)(l) (a motion for reconsideration tolls the time for an appeal).

Mr. Zanetti apparently misunderstood the applicable appeal period in good faith. But the appeal period is jurisdictional, *Sanphy v. MTRS*, No. CR-11-510, at 3 (CRAB Mar. 29, 2013), and a tribunal lacking jurisdiction has "no authority to enlarge the appeal period," *Commonwealth v. Claudio*, 96 Mass. App. Ct. 787, 791-92 (2020). Indeed, such a tribunal cannot take any action other than "dismissing the cause." *Phone Recovery Servs. v. Verizon of New England*, 480 Mass. 224, 230 (2018).

Conclusion and Order

For the foregoing reasons, the appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate