COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

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**ROBIN FERNANDES,** Docket No. CR-17-942

Petitioner

*v.*

**STATE BOARD OF RETIREMENT,**

Respondent

**Representative for Petitioner**:

*Pro se*

66 East Water Street

Taunton, MA 02780

**Attorney for Respondent**:

Melinda E. Troy

State Board of Retirement

One Winter Street

Boston, MA 02108-4747

**Administrative Magistrate**:

Angela McConney Scheepers

**SUMMARY OF DECISION**

http://sll.gvpi.net/images/1x1.png The Petitioner’s appeal for reclassification must be dismissed for lack of jurisdiction[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab15j-41&type=hitlist&num=108#hit4) because she failed to file it within the statutorily prescribed time. *See* G.L. c. 32, § 16(4).

**RULING ON MOTION TO DISMISS**

*Introduction*

On May 18, 2018, the Respondent, State Board of Retirement (Board), filed a Motion to Dismiss on the grounds that the Board was entitled to prevail as a matter of law pursuant to G.L. c. 32, § 16(4). As grounds for its Motion, the Board argues that because the Petitioner failed to file her appeal within fifteen days of notification of its decision, her appeal was not timely.

DECISION

http://sll.gvpi.net/images/1x1.png On November 2, 2017, Ms. Fernandes appealed the June 29, 2017 decision of the Respondent, State Board of Retirement (Board), that resulted in the denial of her application for Group 2 classification for her position of Clinical Director. On January 25, 2018, she filed a Motion to Expedite her hearing. On March 9, 2018, the Division of Administrative Law Appeals (DALA) allowed her motion and issued a First Pre-Hearing Order, directing that the parties address certain issues, among them DALA’s jurisdiction to hear the appeal based on the timeliness of the Petitioner’s appeal.

Ms. Fernandes submitted her pre-hearing memorandum on or about April 11, 2018, but did not address the issue of jurisdiction. The Board http://sll.gvpi.net/images/1x1.png submitted a Motion to Dismiss for [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab15j-41&type=hitlist&num=108#hit3)Lack of Jurisdiction[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab15j-41&type=hitlist&num=108#hit7) on May 18, 2018, and Ms. Fernandes submitted addenda to the pre-hearing memorandum on May 21 and 25, 2018, whereupon the administrative record closed. I considered Ms. Fernandes’ pre-hearing responses, which I marked “A” for identification. I marked the Board’s Motion “B” for identification.http://sll.gvpi.net/images/1x1.png

After carefully reviewing the evidence, I have determined that there are no disputed issues of material fact and that relief cannot be granted on this claim as a matter of law. I therefore decide the motion pursuant to 801 CMR 1.01(7)(g)(3).

FINDINGS OF FACT

http://sll.gvpi.net/images/1x1.pngBased on the evidence presented by the parties, I make the following findings of fact:

http://sll.gvpi.net/images/1x1.png 1.http://sll.gvpi.net/images/1x1.png On November 22, 2016, the Board denied Ms. Fernandes’ application for accidental disability benefits. However, the Board approved her ordinary disability application. (Exhibit 1.)

2. In a letter dated December 16, 2016, Ms. Fernandes’ then-counsel accepted the Board’s award of ordinary disability benefits and stated that there would be no appeal of the denial of accidental disability benefits. (Exhibit 2.)

3. On June 29, 2017, Board denied Ms. Fernandes’ request for reclassification to Group 2 for her position of Clinical director. The Board informed her of its decision in a letter dated July 3, 2017, sent to the address of 66 East Water Street, Taunton, MA 02780. (Exhibit 3.)

4. Ms. Fernandes’ ordinary disability benefit was first paid on July 31, 2017. Her initial payment was retroactive to December 23, 2015, the effective date of her retirement. (Exhibits 4 and 5.)

5. In a letter dated October 18, 2017, Melinda Troy responded to Ms. Fernandes’ inquiry about pending matters before the Board. Ms. Troy informed her that there were no pending matters before the Board. (Exhibit 5.)

6. On November 2, 2017, DALA received Ms. Fernandes’ appeal of the Board’s denial for reclassification. The postmark was dated October 31, 2017. In the appeal, Ms. Fernandes asserted she learned for the first time of her classification denial in the Board’s October 18, 2017 response to her inquiry. Ms. Fernandes’ address in the DALA appeal was the same address used by the Board in its correspondence with her. (Exhibit 6.)

7. In a letter dated November 20, 2017, Ms. Troy responded to Ms. Fernandes’ further inquiry about matters pending before the Board. Ms. Troy informed her that there were no pending matters, and enclosed a copy of the Board’s October 18, 2017 letter. (Exhibits 5 and 7.)

CONCLUSION AND ORDER

Ms. Fernandes’ appeal is dismissed for [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab15j-41&type=hitlist&num=108#hit9)lack of jurisdiction[Next Hit](http://sll.gvpi.net/document.php?id=crab:crab15j-41&type=hitlist&num=108#hit13), because she failed to file his appeal within fifteen days of receiving notice of the decision complained of.

As a general matter, DALA’s jurisdiction over retirement appeals is determined pursuant to G.L. c. 32, § 16(4), which provides:

... [A]ny person when aggrieved by any action taken or decision of the retirement board or the public employee retirement administration commission rendered, or by the failure of a retirement board or the public employee retirement administration commission to act, 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 or the commission ... .

Ms. Fernandes is appealing the Board’s June 29, 2017 denial of her request for reclassification. She asserts that she first learned of the Board’s decision via its October 18, 2017 letter, after she had inquired about pending matters before the Board. The Board sent its October 18, 2017 letter to Ms. Fernandes’ current address, which is the same address it used for its July 3, 2017 denial, and the same address Ms. Fernandes used in her DALA appeal.

In Massachusetts, the regular course of the mails is presumed. *See Holiver v. Dep't of Public Works*, [333 Mass. 18](http://sll.gvpi.net/document.php?id=sjcapp:333_mass_18), 21 (1955); *Federal Ins. Co. v. Summers*, 403 F.2d 971, 975 (1968) (Massachusetts law does not require evidence or judicial notice of regularity of mails because it is presumed). Therefore, evidence of mailing raises the presumption that it was received. *See Anderson v. Inhabitants of Town of Billerica*, [309 Mass. 516](http://sll.gvpi.net/document.php?id=sjcapp:309_mass_516), 518 (1941). This presumption may only be rebutted by the presentation of evidence that the mail in question was not received. *Id.*; *Huntley v. Whittier*, 105 Mass. 391 (1870). Ms. Fernandes has presented no evidence to suggest that she did not receive the Board’s July 3, 2017 denial of her request for reclassification; I therefore conclude that she did indeed receive it.

Consequently, Ms. Fernandes’ appeal was not filed within the required fifteen-day time limit and was therefore untimely. As a result, DALA is without jurisdiction to hear the appeal. G.L. c. 32, § 16(4). Accordingly, the Board’s Motion to Dismiss is therefore granted, and Ms. Fernandes’ appeal is dismissed for [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab15j-41&type=hitlist&num=108#hit12)lack of jurisdiction.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Angela McConney Scheepers

Administrative Magistrate

DATED: June 1, 2018