

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293

DANNY R. BRITO,
Appellant

v.

B1-13-253

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Danny R. Brito
Pro Se

Appearance for Respondent:

Melinda Willis, Esq.
Human Resources Division
Legal Department
One Ashburton Place, 2d Floor
Boston, MA 02108

Commissioner:

Cynthia A. Ittleman, Esq.

DECISION ON RESPONDENT’S MOTION TO DISMISS

Danny Brito (“Appellant”) filed this appeal on November 23, 2013 seeking training and experience credit for the 2013 Municipal Police Officer and State Police examination which credit the Human Resources Division (“HRD”) did not allot him. A prehearing conference in this case was held on December 17, 2013 at which the Appellant indicated he took the exam to obtain a position as a State Trooper and not an entry-level position within a municipality other than Lowell, where he is currently employed. HRD filed a Motion to Dismiss (“Motion”) the appeal on January 6, 2014. I emailed the parties, informing the Appellant that his written opposition to the Motion was due January 20, 2014.

By notice dated January 8, 2014, the parties were informed that a hearing would be held on the Motion on February 19, 2014 beginning at 9:30 a.m. Not having received the Appellant’s opposition, on January 23, 2014, I sent the Appellant an email message stating that even if he did not submit a written opposition, the Appellant could orally argue the Motion at the February 19 hearing. This email message also asked the Appellant to confirm that he would attend the hearing. The Appellant did not respond to the email message or otherwise inform the Commission whether he would attend the hearing. On February 19, the Appellant failed to

appear at the hearing at 9:30 a.m. or within the customary one-half hour waiting period thereafter.

I take administrative notice of any and all matters filed in this case. HRD's Motion avers that the Appellant is not "aggrieved," as required under G.L. c. 31, § 2(b) because he took the exam to obtain a position as a State Trooper. Pursuant to G.L. c. 22C, § 10, a statute relating to the appointment of State Troopers, "... [t]he appointments of the officers herein provided for shall be by enlistment and such appointees shall be exempt from the requirements of chapter thirty-one" *Id.* Consequently, training and experience credit is not available for people seeking appointment as a State Trooper, the Commission lacks jurisdiction over this matter, and the Appellant has failed to state a claim upon which relief may be granted. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008); and 801 CMR 1.01(7)(g)(3). Moreover, HRD asserts and I find that even if the credit was available in such circumstances, the Appellant failed to timely provide all of the information required, as indicated in the exam materials. *See* G.L. c. 31, §§ 22 – 24.

In view of the foregoing, which is undisputed, the Motion is granted and the appeal is *dismissed*.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners on March 6, 2014.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision as stated below.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days from the effective date specified in this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Danny R. Brito (Appellant)
Melinda Willis, Esq. (for Respondent)
John Marra, Esq. (HRD)