

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

THOMAS J. CONNERS,  
Appellant

v. E-21-101

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant: *Pro Se*  
Thomas J. Connors

Appearance for Respondent: Patrick Butler, Esq.<sup>1</sup>  
Human Resources Division  
100 Cambridge Street: Suite 600  
Boston, MA 02114

Commissioner: Christopher C. Bowman

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

On May 19, 2021, the Appellant, Thomas Connors (Appellant) an Environmental Police Officer C (EPO C) at the Massachusetts Environmental Police (MEP), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to award him 6, as opposed to 9, points for his juris doctor degree as part of a recent promotional examination for EPO D.

On June 19, 2021, I held a remote pre-hearing conference which was attended by the Appellant and counsel for HRD. The parties stipulated to the following:

A. On February 20, 2021, the Appellant sat for the EPO D examination.

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<sup>1</sup> Subsequent to filing HRD’s Motion to Dismiss, Attorney Butler accepted a new position in another state agency. Notice of this decision will be sent to HRD General Counsel Michele Heffernan.

- B. The Appellant completed the E&E component of the examination in a timely manner.
- C. On April 9, 2021, the Appellant received his score from HRD.
- D. The Appellant received a written score of 84, an E&E score of 91, and a total score of 88.
- E. The Appellant filed a timely appeal with HRD, contesting his E&E score, arguing that he should have received 9 points, as opposed to 6, for his juris doctor degree.
- F. On April 28, 2021, HRD denied the Appellant's appeal.
- G. Twenty-one days later, on May 19, 2021, the Appellant filed an appeal of HRD's determination to the Commission.
- H. The Appellant is currently tied for second on the EPO D eligible list.

At the pre-hearing, I asked HRD to first determine if allowance of the Appellant's appeal would change his rank on the current eligible list. After review, HRD informed the Commission that allowance of the appeal would result in the Appellant being ranked second by himself, as opposed to tied for second. Thus, the issue of whether the Appellant filed a timely appeal with the Commission must be addressed. As referenced above, the Appellant's appeal with the Commission was filed twenty-one days after HRD's denial. [G.L. c. 31, s. 24](#) states that: an examination appeal to the Commission "shall be filed no later than seventeen days after the date of mailing of the decision of the administrator [HRD]." At the pre-hearing conference, the Appellant was unable to offer any explanation for his failure to file a timely appeal with the Commission. For these reasons, I provided HRD with thirty (30) days to file a Motion to Dismiss and the Appellant with thirty (30) days thereafter to file a reply. I received and reviewed both submissions.

### *Motion to Dismiss Standard*

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

### *Applicable Civil Service Law*

Section 2(b) of G.L. c. 31 addresses appeals to the Commission regarding persons aggrieved by "... any decision, action or failure to act by the administrator, except as limited by the provisions of section twenty-four relating to the grading of examinations ...." It provides, inter alia, "No decision of the administrator involving the application of standards established by law or rule to a fact situation shall be reversed by the commission except upon a finding that such decision was not based upon a preponderance of evidence in the record."

Section 22 of G.L.c.31 states that:

"In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held. In any examination, the applicant shall be allowed seven days after the date of such examination to file with the administrator a training and experience sheet and to receive credit for such training and experience as of the time designated by the administrator."

HRD is vested with broad authority to determine the requirements for competitive civil service examinations, including the type and weight given as credit for such training and experience as of the time designated by HRD. G.L. c. 31, § 22(1).

Section 24 of G.L. c. 31 provides that a person may appeal certain HRD actions regarding tests. Specifically:

Such appeal shall be filed no later than seventeen days after the date of mailing of the decision of the administrator .... The commission shall refuse to accept any petition for appeal unless the request for appeal, which was the basis for such petition, was filed in the required time frame and form and unless a decision on such request for review had been rendered by the administrator. In deciding an appeal pursuant to this section, the commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator.

### *Analysis*

It is undisputed that, based on the postmark of the appeal received by the Commission, the Appellant's appeal was not filed within the seventeen (17) days required by Section 24. The Appellant, in his opposition to HRD's Motion to Dismiss, offers the following argument. First, the Appellant argues that, as a first-time filer with the Commission, he was unclear about the statutory filing deadlines regarding an examination appeal, as evidenced by his submission of a "non-bypass equity appeal" form to the Commission, instead of the examination appeal form. Second, for the first time, the Appellant, in his written opposition, states that he placed the appeal in the outside mailbox of the Littleton post office on Saturday, May 15, 2021 (the filing deadline), but, according to the Appellant, staffing shortages due to COVID-19 resulted in the appeal not being postmarked until four days later, on Wednesday, May 19, 2021.<sup>2</sup>

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<sup>2</sup> The Appellant's brief also states that he mailed a "second appeal" to the Commission. To ensure that two separate events are not conflated, it is undisputed that the Appellant filed one appeal to the Commission and that appeal was solely submitted via first class mail.

While it is true that the Appellant is a first-time filer with the Commission, HRD denial's letter contained the language from Section 24 of the civil service law stating that any appeal to the Commission must be filed "no later than seventeen days after the date of the mailing of the decision of the administrator." The vast majority of examination appeals received by the Commission, including from those Appellants who do not possess a law degree, are received in a timely manner – using the correct "examination appeal" form.

Further, the Appellant's assertion, made for the first time, and submitted with no supporting documentation or affidavits, that there was a 4-day delay (from Saturday to Wednesday) in processing mail in Littleton, is not sufficient for the Commission to deem his appeal as timely.

#### *Conclusion*

For the above reasons, the Appellant's appeal with the Commission, is *dismissed* as it was not filed within the statutory timeframe for filing such an appeal.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 24, 2022.

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)(1), 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.

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 after receipt of 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Thomas J. Conners (Appellant)

Michele Heffernan, Esq. (for Respondent)