

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place Room 503

Boston, MA 02108

(617) 727-2293

CONOR GALGAY,
Appellant

E-08-288

v.

HUMAN RESOURCES DIVISION

Respondent

Appellant's Attorney:

Pro Se

Conor Galgay

Human Resources Division's Attorney:

Lidia Rincon, Esq.

Human Resources Division

One Ashburton Place: Room 211

Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON MOTION TO DIMISS BY HUMAN RESOURCES DIVISION

Procedural Background

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Conor Galgay (hereinafter "Galgay" or "Appellant"), filed an appeal with the Civil Service Commission (hereinafter "Commission") stating that he was harmed by an inaction of the state's Human Resources Division (HRD). Specifically, the Appellant argued that HRD failed to notify him of the date and time of a Physical Abilities Test (PAT), thus preventing him from having his name included on an eligibility list for the position of firefighter. He is seeking an order that would allow him to take a "make-up" PAT.

A pre-hearing conference was conducted at the offices of the Commission on December 18, 2008, which was attended by the pro se Appellant and counsel for HRD. HRD subsequently filed a Motion to Dismiss and the Appellant filed a brief reply stating that he opposed HRD's motion. A motion hearing was conducted on February 23, 2009. Both parties agreed that the Commission should enter an order based on the information provided as part of the pre-hearing conference and motion hearing, since a full hearing would not provide any additional information.

Based on the statements made at the pre-hearing conference and motion hearing, the following facts appear to be undisputed:

1. To be placed on the eligibility list for appointment as an entry level firefighter position, all candidates must take and pass the Entry-Level Firefighter examination. The examination consists of two components: a written examination and the PAT.
2. The written examination was held on April 26, 2008. The PAT was administered throughout the Commonwealth beginning in July 2008.
3. On March 15, 2008, the Appellant logged onto HRD's "Standings and On-line Applicant Record Information System (SOARIS) website and created a user account number under the email address [REDACTED]
4. On June 18, 2008 at 2:57 P.M. an email was sent to the Appellant inviting him to attend a free Open House (Walk-Through) of the PAT. This email invitation was sent to [REDACTED]. The Appellant remembers receiving this invitation, but did not attend the Open House.
5. On July 22, 2008, the Appellant submitted his online application to take the PAT.

6. That same day, the HRD PAT Administrator sent Mr. Galgay an email acknowledging his application and informing him to expect another email with the date, time and location of his PAT.

The Appellant stated that he does remember receiving the acknowledgment form referenced above, but can not recall if it informed him to expect another email with the date, time and location of his PAT. Attachment E to HRD's Motion to Dismiss is a copy of the July 22, 2008 Acknowledgement email in question. It states, in its entirety:

Dear GALGAY, CONOR M:

Thank you for submitting your application to the PAT component of the 2008 Firefighter Examination. An email will be sent between 1 to 4 days of your application to advise you of the date, time and location of your upcoming PAT.

Please periodically log into Standings and On-line Applicant Record Info System (SOARIS) to check for updates. Should you require additional assistance, please contact the PAT.Administrator@hrd.state.ma.us.

Sincerely,

PAT Administrator

According to HRD, an email was then sent to the Appellant one day later, on July 23, 2008, telling him that he was scheduled to take the PAT on July 31, 2008 at 3:00 P.M. in Medford, MA. Also according to HRD, this information was posted on SOARIS and his account was updated accordingly. Attachment F to HRD's Motion to Dismiss is a copy of the email which includes the above-referenced information.

The Appellant stated during the pre-hearing conference and the motion hearing that:

- 1) he never received the email in question; and 2) he regularly checked the SOARIS

system after receiving the email acknowledgment and did not see the update referenced above.

Attachment G to HRD's Motion to Dismiss is a SOARIS log-in history for the Appellant. According to this log-in history, the Appellant logged into SOARIS on July 22, 2008 (the day he completed his PAT application) and then did not log-in again until November 7, 2008.

On November 7, 2008, it is undisputed that the Appellant contacted HRD and informed HRD that he had not been notified about a date to take the PAT. On November 11, 2008, the Appellant was mailed his Pass / Fail Notice telling him he did not pass the 2008 Firefighter Entry-Level Examination because he did not take the PAT.

Although this appeal did not proceed to a full evidentiary hearing, the motion hearing was conducted in part to determine if the Appellant had any information that could possibly lead the Commission to conclude that: 1) he did not receive the email notifying him of the time and location of the PAT; 2) he did regularly inquire on the SOARIS system which provided no information regarding the time and location of the PAT. The Appellant's statements regarding these two issues were, at best, equivocal. At both the pre-hearing conference and the motion hearing, the Appellant appeared uncertain, particularly in regard to whether he regularly checked the SOARIS system regarding his status. The Appellant's uncertainty, coupled with the overwhelming documentary evidence presented by HRD, leads me to the following conclusions:

1. The Appellant did receive an email notification informing him of the date, time and location of his PAT;
2. The SOARIS system was updated with this information in a timely manner;

3. The Appellant failed to log on to the SOARIS system until months after he received his acknowledgment form which specifically informed him that an email would be sent to him within 1 – 4 days.
4. As a result of either disregarding the email and/or failing to check the SOARIS system in a timely manner, the Appellant failed to appear for the PAT.

G.L. c. 31, § 2(b) states in part:

No person shall be deemed to be aggrieved under the provisions of this section unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.

Further, in order for the Commission to grant relief to an Appellant under Chapter 310 of the Acts of 1993, the Appellant must show that his employment status was harmed through no fault of his own.

For all of the above reasons, the Appellant has not shown that he is an aggrieved person or that his employment status was harmed through no fault of his own.

Therefore, the Appellant's appeal under Docket No. E-08-288 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on March 5, 2009.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice:

Conor Galgay (Appellant)

Lidia Rincon, Esq. (for HRD)

John Marra, Esq. (HRD)