

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

JOHN GESWELL,  
Appellant

v.

B2-18-235

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant:

Brian Simoneau, Esq.  
550 Cochituate Road, Suite 25  
Framingham, MA 01701

Appearance for Respondent:

Patrick Butler, Esq.  
Human Resources Division  
100 Cambridge Street, Suite 600  
Boston, MA 02114

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

1. On December 3, 2018, the Appellant, John J. Geswell (Mr. Geswell), a Senior Fire Alarm Operator with the Boston Fire Department (BFD), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny his appeal in which he sought to have time spent "acting, out-of-grade", counted toward the education and experience (E&E) portion of a promotional examination for Principal Fire Alarm Operator.
2. On January 8, 2019, I held a pre-hearing conference which was attended by Mr. Geswell, his counsel, counsel for HRD, and co-counsel for the BFD.
3. At the pre-hearing conference, HRD argued that the Appellant's appeal to the Commission was not timely, as it was not filed with the Commission within seventeen days of HRD's denial notice, as required by G.L. c. 31, s. 24.
4. HRD subsequently filed a Motion for Summary Decision and the Appellant filed an opposition.

5. Based on the briefs, the following appears to be undisputed:

- I. On June 8, 2018, the Appellant sat for a promotional examination for the title of Principal Fire Alarm Operator.
- II. The examination score was based on the written examination (60%) and education and experience (E&E) (40%).
- III. On June 11, 2018, the Appellant timely completed and submitted the E&E portion of the promotional examination.
- IV. On July 13, 2018, HRD forwarded the Appellant his examination score.
- V. On July 20, 2018, the Appellant filed a timely appeal with HRD, contesting his E&E score.
- VI. On July 31, 2018, HRD notified the Appellant that his E&E appeal was denied.
- VII. Included in HRD's July 31, 2018 notification to the Appellant was the following statement regarding appeal rights to the Commission:

“Pursuant to Chapter 31, Section 24 of the Massachusetts General Laws (M.G.L.) provides that you may appeal to the commission from a decision of the administrator made pursuant to section twenty-three relative to (a) the marking of the applicant's answers to essay questions; (b) a finding that the applicant did not meet the entrance requirements for appointment to the position; or (c) a finding that the examination taken by such applicant was a fair test of the applicant's fitness to actually perform the primary or dominant duties of the position for which the examination was held. **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 and form and unless a decision on such request for review has 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.” (emphasis added)

- VIII. On December 3, 2018, the Appellant filed an appeal with the Commission.

## *Analysis*

The Appellant argues that his appeal to the Commission should not be dismissed on timeliness grounds as the language regarding appeal rights in HRD's July 31, 2018 notification was not sufficiently clear, as, among other things, it did not explicitly state that the applicant could appeal an HRD determination regarding E&E.

I disagree. HRD provided all exam applicants with the statutory language relied on by the Commission to allow applicants to file an E&E appeal with the Commission. While it may be more helpful for HRD to provide more of a lay person explanation of their appeal rights and step-by-step instructions on how to file an appeal with the Commission, providing applicants with the a copy of their statutory appeal rights at least meets the minimum requirements regarding appeal right notification.

Section 24 provides that certain appeals regarding tests may be made to the Commission but "such appeal shall be filed no later than seventeen days after the date of mailing of the decision of the administrator" and "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." Mass. Gen. Laws Chap. 31, § 24 (2014).

The Commission has reasoned, citing the appeals court, that "a fair reading of the entire statute indicated that . . . training and experience scores may be appealed under §24" and the seventeen day time limit should be applied. Healey v. Human Resources Division, 27 MCSR 610 (2014), *citing*, O'Neill v. Civil Service Commission, 10-P-384 (February 15, 2011; per Rule 1:28). Therefore, the Appellant is required to file an E&E appeal within seventeen days after receiving notice of HRD's decision.

The Appellant's appeal is untimely because he filed more than seventeen days after receiving notice of his E&E appeal from HRD. The Appellant received notice from HRD on July 13, 2018 of his E&E score and he sent an appeal response on July 20, 2018. After a review, HRD responded on July 31, 2018, noting that they were not going to change his initial score. As such, the Appellant was charged with filing an appeal to the Commission no later than the close of business on August 16, 2018. The Appellant never did so, waiting until December 3, 2018 to finally appeal his score. This makes his appeal untimely by over three months. The Appellant's appeal was not filed within the required seventeen days, and therefore must be summarily dismissed.

## *Conclusion*

For all of the above reasons, the Appellant's appeal is hereby *dismissed*.<sup>1</sup>

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<sup>1</sup> I did not overlook that HRD and the Appellant raised other issues in their briefs. However, as the Appellant's appeal to the Commission is not timely, and the Commission does not have jurisdiction to hear the appeal, I need not address them.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 12, 2019.

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.

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:

Brian Simoneau, Esq. (for Appellant)

Patrick Butler, Esq. (for Respondent)

Louis Scapicchio, Esq. (Boston Fire Department)