

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

LEO HAROUTUNIAN,
Appellant

v.

C-15-98

DEPARTMENT OF REVENUE,
Respondent

Appearance for Appellant:

Pro Se
Leo Haroutunian

Appearance for Respondent:

Elisabeth M. Baker, Esq.
Department of Revenue
100 Cambridge Street, Suite 600
P.O. Box 9553
Boston, MA 02114-9553

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL & REMAND

On May 21, 2015, the Appellant, Leo Haroutunian (Mr. Haroutunian), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny his request for reclassification from Tax Examiner III (TE III) to Tax Examiner IV (TE IV) at the Massachusetts Department of Revenue (DOR).

On June 9, 2015, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Haroutunian and counsel for DOR.

Based on the documents submitted and the statements of the parties, the following appears to be undisputed:

1. On April 9, 2014, Mr. Haroutunian, while serving in the title of TE III¹, filed a request with DOR, seeking to be reclassified to the title of TE IV.
2. Effective September 21, 2014, Mr. Haroutunian was promoted to the position of Tax Auditor I (TA I), which is a higher grade than a TE IV.

¹ Mr. Haroutunian previously served as a TE II, but was subsequently reclassified to the position of TE III.

3. On March 18, 2015, DOR denied Mr. Haroutunian's previously filed reclassification appeal.
4. Shortly after March 18, 2015, Mr. Haroutunian appealed DOR's denial to HRD.
5. On May 14, 2015, without conducting a hearing, HRD affirmed DOR's decision and denied Mr. Haroutunian's appeal.
6. On May 21, 2015, Mr. Haroutunian appealed HRD's decision to the Commission.

At the pre-hearing conference, Mr. Haroutunian stated that he is seeking a retroactive reclassification from TE III to TE IV from April 9, 2014 to September 21, 2014. Further, he stated that the primary reason for his appeal was that he did not receive any specific reasons from HRD to justify their denial.

G.L. c. 30, § 49 provides in pertinent part: "[a]ny manager or employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator *and shall be entitled to a hearing upon such appeal.*" (*emphasis added*) See Bowen v. Civ. Serv. Comm'n, Suffolk Sup. Ct. No. 2012-0197 (2013).

Mr. Haroutunian was not given a hearing by HRD, which would have resulted in a substantive decision containing the detailed reasons he seeks. For this reason, Mr. Haroutunian's appeal with the Commission is *closed*² and hereby *remanded* to HRD to conduct a hearing and issue appropriate findings and conclusions regarding this appeal.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on June 25, 2015.

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.

²In the event that HRD, after a hearing, denies Mr. Haroutunian's appeal, he should give serious consideration as to whether a subsequent appeal to the Commission is appropriate -- or not. In his relatively short career with state government, Mr. Haroutunian has been reclassified and promoted, resulting in a 5-step increase in grade. At the pre-hearing conference, he stated that his instant appeal is more about "principle" than anything else. I would respectfully suggest that Mr. Haroutunian can't see the forest for the trees here, particularly given the limited resources of all state agencies, including DOR, HRD and the Commission.

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 to:

Leo Haroutunian (Appellant)

Elisabeth M. Baker, Esq. (for Respondent)

John Marra, Esq. (HRD)