

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

NICHOLAS JAMIESON,
Appellant

v.

E-24-014

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Nicholas Jamieson

Appearance for Respondent:

Eamonn M. Sullivan, Esq.
Department of Correction
Division of Human Resources
50 Maple Street, 1st Floor
Milford, MA 01757

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the appeal of the Appellant for lack of jurisdiction as the Appellant is unable to show that has been harmed as his appeal relies on speculation regarding a potential future appointment. Further, the appeal relates to a collective bargaining seniority date, as opposed to a civil service seniority date.

DECISION ON RESPONDENT’S MOTION TO DISMISS

On February 4, 2024, the Appellant, Nicholas Jamieson (Appellant), a Correction Officer I / Head Cook (CO I / Head Cook) at the Department of Correction (DOC), filed a non-bypass equity appeal with the Civil Service Commission (Commission), seeking relief from what he anticipates will be an adverse decision by DOC regarding his seniority.

On March 5, 2024, I held a remote pre-hearing conference which was attended by the Appellant and counsel for DOC. DOC filed a motion to dismiss the Appellant's appeal and the Appellant did not file a reply.

The following is undisputed:

1. On February 18, 2017, the Appellant was appointed as a CO I at DOC.
2. At some point after his appointment, the Appellant began working in the position of Head Cook, with the functional title of CO I / Head Cook.
3. The Appellant never took the examination for the position of CO I / Head Cook.
4. For the reasons stated in [Shadd v. DOC](#), the Appellant and many other similarly situated employees were given the option of obtaining permanency in the title of CO I / Head Cook.
5. The Appellant opted to obtain permanency as CO I / Head Cook. The civil service seniority date for the Appellant, and all others who opted to become permanent in the title of CO I / Head Cook, remained their date of hire.
6. The Appellant has taken the recent examination for CO I.
7. At the time of the pre-hearing conference on March 5, 2024, the new eligible list for CO I had not been established.
8. A new eligible list for CO I was subsequently established on March 15, 2024. The Appellant is ranked 107th on that eligible list.

Rule Regarding Dismissal for Lack of Jurisdiction

The Presiding Officer may at any time, on his or her own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided. 801 CMR 1.01 (7)(g)(3).

Analysis

The Appellant, anticipating that he will be appointed as a CO I (as opposed to his current position of CO I / Head Cook) from the newly established eligible list, argues that, upon such appointment, he should be permitted to apply his time served as a CO I / Head Cook as time-in-grade for CO I. DOC argues that the appeal is premature because the Appellant is not an aggrieved person as it is undisputed that no actual harm has occurred at this time. Further, DOC argues that, should the Appellant be appointed as a CO I, his civil service seniority date will remain his original date of hire and issues related to time-in-grade are governed by the collective bargaining agreement, not civil service law.

The Appellant is unable to show that he is an aggrieved person as defined by G.L. c. 31, § 2(b) because the statute requires that aggrieved persons show that the person has already "been harmed." Using the past tense, the Legislature intended the statute to apply in cases where the harm has already occurred. Indeed, the Legislature appears to have determined that this principle is so important that it repeated and expanded upon it in the same section, stating that the appeal must show how the person's rights had already been "abridged, denied, or prejudiced in such a manner as to cause actual harm." It is not enough to speculate that harm may occur in the future.

Even if the Appellant is appointed as a CO I in the future, the Commission lacks jurisdiction over collective bargaining activities specific to seniority. *Civil Service* seniority is appropriately governed by civil service law and rules. *Contractual* seniority may only be determined by reference to such relevant dates as are bargained between a union and its employer. The collective bargaining seniority date for bidding and other matters may be different from the civil service seniority date and the Commission has no role in determining a

contractual seniority date. See Setters v. Department of Correction, CSC Case No. D-05-369 (2006) (Appellant’s appeal dismissed because Commission lacks jurisdiction over contractual seniority dates).

Conclusion

The Appellant’s appeal under Docket No. E-24-014 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on April 18, 2024.

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 to:
Nicholas Jamieson (Appellant)
Eamonn Sullivan, Esq. (for Respondent)