

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

DIRK WILLIAM MacEACHERN,
Appellant

G2-16-090

v.

DEPARTMENT OF CONSERVATION AND RECREATION,
Respondent

Appearance for Appellant:

Pro Se
Dirk William MacEachern

Appearance for Respondent:

Frank Hartig, Esq.
Assistant General Counsel
Department of Conservation & Recreation
251 Causeway Street: 9th Floor
Boston, MA 02114-2136

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On May 6, 2016, the Appellant, Dirk William MacEachern (Mr. MacEachern), who currently serves in the labor service position of “Recreation Facility Repairer” at the Department of Conservation and Recreation (DCR), filed a bypass appeal with the Civil Service Commission (Commission), contesting the “promotion” of a “Ranger” to the position of “Forest and Parks Supervisor II”, an official service position.
2. On May 31, 2016, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. MacEachern, counsel for DCR and two (2) DCR representatives.
3. According to DCR, a “Ranger II” was “laterally transferred” from a Ranger II position at the State House to a Forest and Park Supervisor II position at Myles Standish Park.
4. According to DCR, the “transfer” was possibly related to a request for accommodation and was done after consultation with and the assent of that employee’s union.
5. At the conclusion of the pre-hearing conference, I requested that DCR provide the following information to the Commission: a) information regarding whether the title of Ranger II is a civil service position; b) confirmation that the action here was the result of an

accommodation request; and c) any other information related to the subject matter of this appeal.

6. DCR was to provide this information to the Commission, with a copy to Mr. MacEachern, within ten (10) days. Mr. MacEachern was given ten (10) days thereafter to file a response to DCR's submission.
7. After reviewing the information submitted, I informed the parties, via a Procedural Order, that the Commission would determine the posture of this appeal.
8. On June 8, 2016, DCR, consistent with the Procedural Order, provided the Commission with a reply, part of which relied on information obtained from the state's Human Resources Division (HRD)
9. DCR's research shows that the Park Ranger program was created by Chapter 38, s. 124 of the Acts of 1995 which has been codified as G.L. c. 92, § 34B.
10. Most relevant to this appeal is that the Park Ranger series falls under the civil service law; the Appointing Authority is DCR; and no civil service examination has ever been administered for Park Ranger positions since their creation in 1995, meaning that all Park Ranger positions must be filled "provisionally".
11. According to DCR, the Ranger II in question began his employment with the Metropolitan District Commission (MDC) (now DCR) in 1990 as a Recreational Facilities Supervisor. He was then "transferred" to the Ranger Program in 1999 as a Ranger I and was then "promoted" to Ranger II in 2012.
12. In 2014, according to DCR, the Ranger II filed a complaint with the Massachusetts Commission Against Discrimination (MCAD), claiming that DCR failed to grant his request for accommodation, which included a request to no longer work the 11:00 P.M. to 7:00 A.M. shift.
13. While that MCAD appeal was pending, and I infer in a desire to resolve the complaint without litigation, DCR, after consulting with the Ranger II's union, agreed to "transfer" the Ranger II to a Forest and Parks Supervisor II position at the Myles Standish Park. According to DCR, both of these positions are "Occupational Group 09, Grade 16" positions within the same bargaining unit. DCR treated this action as a lateral transfer as part of a request for a reasonable accommodation.
14. Although Mr. MacEachern had ten (10) days to submit a reply, he chose not to do so.

Analysis

G.L. c. 31, § 35, which governs "transfers", refers to "tenured" and "permanent" employees. Here, no civil service examination has been administered for the Park Ranger series since its inception in 1995 – *twenty-one (21) years ago*. While the record does not establish how long no

examinations have been administered for the Forest and Parks Supervisor series, it is likely even longer. Thus, according to DCR, what occurred here is something the legislature never envisioned, the “transfer” of an employee from one provisional position to another provisional position.

The Commission, however, has previously determined that there is a distinction between a “transfer” and a “reassignment” which is not defined under the civil service law. In Sands v. City of Salem, 21 MCSR 502, 504 (2008), the Commission determined that it lacked jurisdiction to hear the appeal (of Mr. Sands) in that the action taken did not constitute a transfer, but, rather, a reassignment. In Sands, the Appellant, a Hoisting Equipment Operator, was no longer able to perform some of the essential duties in his previously held position. Therefore, in order to make reasonable accommodations for his medically documented permanent disability, he was reassigned to perform cemetery-related duties in the Cemetery Department. Although his distance of travel from his residence was greater than previously, the Commission concluded that the change in travel did not impose an unreasonable hardship on the employee.

Here, the Ranger II, who initiated the reasonable accommodation request, has agreed to the new, similar position of Forest and Parks Supervisor II. Based on the facts related to this specific case, it would appear that, for civil service purposes, the Ranger II has been voluntary reassigned to a Forest and Parks Supervisor II position. As I do not construe prior Commission decisions to limit reassignments to permanent or tenured civil service employees, this action is not in violation of the civil service law. Further, Mr. MacEachern was not “bypassed” nor, based on the reasons discussed above, was he aggrieved by the action or inaction of DCR or HRD.

Conclusion

For these reasons, Mr. MacEachern’s appeal under Docket No. G2-16-090 is hereby *dismissed*.

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) on September 1, 2016.

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)(I), 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:

Dirk William MacEachern (Appellant)

Frank Hartig, Esq. (for Respondent)

John Marra, Esq. (HRD)