

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

Thomas McAuliffe,
Appellant

v.

G2-07-127

Human Resources Division,
Respondent

Appellant's Attorney:

Thomas McAuliffe, *pro se*

Respondent's Attorney:

Wendy Chu
Human Resources Division
One Ashburton Place
Boston, MA 02108

Commissioner:

John E. Taylor

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

The Appellant, Thomas McAuliffe, (hereinafter "Appellant") filed this appeal with the Civil Service Commission (hereinafter "Commission") on March 17, 2007 claiming that the Personnel Administrator failed to act upon his request that the Human Resources Division (hereinafter "HRD") update the Classification Specification for the Tax Auditor I, II, and III series for the Department of Revenue (hereinafter "DOR"), approved by the Department of Personnel Administration on July 1, 1987.

After a pre-hearing conference held at the offices of the Commission on August 30, 2007, HRD submitted a Motion to Dismiss the Appellant's appeal on September 20, 2007. On October 25, 2007, the Appellant submitted an Opposition to Motion for Dismissal.

Factual Background

The Appellant is presently employed by the DOR as a Tax Auditor II. Previously, the Appellant held a position of Tax Auditor I with the DOR. While employed as a Tax Auditor I, the Appellant filed a classification appeal before the Commission (C-03-165). The Commission denied the Appellant's classification appeal after a full hearing on or about May 16, 2005. Subsequent to the denial of his classification appeal (C-03-165), the Appellant filed the present appeal (G2-07-127). In this appeal, the Appellant states the he "files this Appeal under G.L. c. 31, sec. 2(b)..." More specifically, the appeal is in connection with the Respondent's failure to act upon his request to "update the Classification Specification for the Tax Auditor I, II, and III series for the Department of Revenue..." Subsequent to the denial of his classification appeal (C-03-165), the Appellant has not taken steps towards filing another classification appeal of his current position as a Tax Auditor II.

Respondent's Grounds for Dismissal

The Respondent's ask the Commission to dismiss the Appellant's appeal as he has not provided any allegation of any decision, action, or failure to act on the part of the administrator which would provide a basis for his appeal. Therefore, under G.L. c. 31 sec. 2(b), the Appellant is not a "person aggrieved." Also, while HRD is required by

statute to establish and maintain classification plans for Commonwealth employees, it is not required to do so under Chapter 31.


In addition, as previously stated, the Appellant has not initiated a classification appeal in his current position. Accordingly, the Commission also lacks jurisdiction under G.L. c. 30, sec. 49, which authorizes the Commission to consider classification appeals only after an individual has unsuccessfully appealed his classification to HRD.

Conclusion

Based on the above, the Appellant cannot be deemed a "person aggrieved" under G.L. c. 31 § 2(b). Accordingly, the Commission lacks jurisdiction to consider the Appellant's appeal/

Respondent's Motion to Dismiss is allowed and the Appellant's appeal filed under Docket G2-07-127 is hereby *dismissed*.

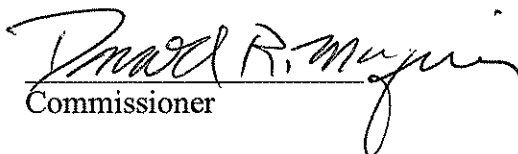
Civil Service Commission



John E. Taylor
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on June 12, 2008.

A true record. Attest:



Donald R. Marquis
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 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 sent to:
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