

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place - Room 503
Boston, MA 02108

MATTHEW McCARTHY,
Appellant

v.

E-18-242

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Matthew McCarthy¹

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On December 12, 2018, the Appellant, Matthew McCarthy (Mr. McCarthy), filed an appeal with the Civil Service Commission (Commission), asking the Commission to grant him relief under Chapter 310 of the Acts of 1993, arguing that the state's Human Resources Division (HRD) failed to notify him via email that his name appeared on a Certification (05777) issued on November 13, 2018 for MBTA Police Officer. Mr. McCarthy sought an order allowing him to sign the Certification and be considered in the current hiring process, even though the deadline for signing the Certification had passed.
2. On January 8, 2019, I held a pre-hearing conference which was attended by Mr. McCarthy, his father and counsel for HRD. Mr. McCarthy submitted an appearance form for his counsel, Scott Dunlap, who, according to Mr. McCarthy, was unable to attend the pre-hearing conference due to a scheduling conflict.

¹ The Appellant indicated that he was being represented by Attorney Scott Dunlap. However, the Commission never received a Notice of Appearance from Attorney Dunlap. All notices and correspondence to and from the Commission, however, have been copied to Attorney Dunlap.

3. At the pre-hearing conference, it was agreed that: a) Mr. McCarthy, sometime in 2017, took and passed the civil service examination for full-time police officer; and b) his name appeared on Certification No. 05777, issued to the MBTA Police Department on November 13, 2018.
4. Candidates whose name appear on a Certification are notified of such by HRD, via email. In this email, candidates are notified of the deadline date for signing the Certification indicating their willingness to accept appointment. The deadline in this case was November 20, 2018.
5. At the pre-hearing conference, Mr. McCarthy stated that he never received an email notification from HRD. Rather, on November 26, 2018, when he logged into HRD's online system (NEOGOV) to sign up for another civil service examination, he saw a notification indicating that he had been sent an email on November 13th regarding the MBTA Police Officer Certification.
6. According to Mr. McCarthy, he immediately checked his email account, including his SPAM / Junk folder, and confirmed that he had not received any email from HRD on November 13th, or at any other time, regarding his name appearing on Certification No. 05777. According to McCarthy, he checks this email account throughout the day as it his primary email account.
7. At the pre-hearing, Mr. McCarthy opened the inbox from his email account on his phone to show that he received several emails on November 13th, but no email from HRD.
8. I asked Mr. McCarthy to open the junk / SPAM folder as well, but the folder (at least what appeared on the phone), only went back several weeks (i.e. – through December 2018). Mr. McCarthy offered to check his gmail account on a computer at the offices of the Commission to see if the junk / SPAM folder went back further when accessed on a computer, as opposed to his phone.
9. HRD argued that, according to the online NEOGOV system, an email was sent to Mr. McCarthy on November 13th and, HRD argued, this is sufficient evidence for the Commission to conclude that an email was sent and that McCarthy is not an aggrieved person.
10. Standing alone, I found Mr. McCarthy's statements to be credible. It appears that he does indeed use his gmail account as his primary email account and that he checks that email account throughout the day. Given his strong desire for a position as an MBTA Police Officer, it is not plausible that he would receive and ignore an email regarding his eligibility to sign the Certification related to this hiring process.
11. For these above-referenced reasons, and given the time-sensitive nature of this appeal, I ordered the parties to take the following actions forthwith:

- I. The Appellant would access his junk / SPAM folder on his GMAIL account on a computer to view the content of the entire folder, including the junk emails received on or around November 13, 2018.
 - II. The Appellant would provide the Commission with a printout of the list of junk emails received on or around November 13th accompanied by an affidavit, signed under the pains and penalties of perjury, that he had not deleted any emails from this folder.
 - III. HRD, as discussed at the pre-hearing conference, would, solely for the purpose of “testing” the system, take the steps necessary to “re-notify” the Appellant of the Certification in order to determine if this generated an email to the Appellant’s email account. HRD was ordered to report its findings to the Commission.
 - IV. Upon receipt of this information, the Commission would determine whether any additional actions and/or orders by the Commission are required.
12. During the afternoon of January 9, 2019, HRD forwarded information to the Commission which was not responsive to the order in Paragraph 11, Subparagraph III above.
 13. On January 11, 2019, Mr. McCarthy forwarded an affidavit to the Commission stating that he had taken the steps ordered by the Commission and found no email from HRD notifying him that his name appeared on Certification No. 05777.
 14. On February 18, 2019, I inquired with HRD regarding whether it had taken the steps ordered in Paragraph 11, Subparagraph III.
 15. Also on February 18, 2019, I inquired with the MBTA regarding the status of the hiring process related to Certification No. 05777 and whether any candidate tied or ranked below Mr. McCarthy on Certification No. 05777 was being considered for appointment.
 16. The MBTA responded by indicating that the hiring process related to Certification No. 05777 had been completed and that no candidate tied or ranked below Mr. McCarthy was considered for appointment.

Analysis

This appeal is moot. Even if Mr. McCarthy had received an email notification from HRD, he would not have been considered for appointment as the MBTA did not consider any individuals tied or ranked below Mr. McCarthy. Thus, McCarthy cannot show that he is an aggrieved person here.

Conclusion

For this reason, Mr. McCarthy’s appeal under Docket No. E-18-242 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, Commissioners on February 28, 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 To:

Matthew McCarthy (Appellant)
Scott Dunlap, Esq.
Patrick Butler, Esq. (for Respondent)
Daniel Kazakis, Esq. (MBTA)