

COMMONWEALTH OF MASSACHUSETTS

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

SOKHON MEL,
Appellant

v.

G1-23-234

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Sokhon Mel

Appearance for Respondent:

Omar Bennani, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the bypass appeal of the Appellant for lack of jurisdiction as it was not filed within 60 days of receiving the reasons for bypass from the Boston Police Department and there was no good cause that would warrant tolling the filing deadline.

DECISION ON RESPONDENT’S MOTION TO DISMISS

Procedural Background

On November 16, 2023, the Appellant, Sokhon Mel (Appellant), filed a bypass appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Police Department (BPD) to bypass him for original appointment to the position of permanent, full-time police officer. On January 30, 2024, I held a remote pre-hearing conference which was attended

by the Appellant and counsel for the BPD. The BPD subsequently filed a motion to dismiss the Appellant's appeal based on timeliness, and the Appellant did not file a reply.

Undisputed Facts

The following is undisputed:

1. On June 30, 2021, the Appellant took the civil service examination for police officer.
2. On September 1, 2021, the state's Human Resources Division (HRD) established the eligible list for Boston police officer.
3. Between September 2022 and January 2023, HRD issued Certification No. 08848 to the BPD to appoint candidates to the position of Boston police officer.
4. The Appellant was ranked 61st among those candidates willing to accept appointment on the certification.
5. On September 7, 2023, the BPD notified the Appellant that he was being bypassed for appointment. The bypass letter notified the Appellant of his right to file a bypass appeal with the Commission.
6. 70 days later, on November 16, 2023, the Appellant filed a bypass appeal online with the Commission, contesting the decision of the BPD.

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 Commonwealth's Standard Adjudicatory Rules of Practice and Procedure,

specifically the provision codified at 801 CMR 1.01 (6)(b), states that:

“Any Person with the right to initiate an Adjudicatory Proceeding may file a notice of claim for an Adjudicatory Proceeding with the Agency within the time prescribed by statute or Agency rule. In the absence of a prescribed time, the notice of claim must be filed within 30 days from the date that the Agency notice of action is sent to a Party.” (emphasis added)

More than two decades ago, the Commission adopted by rule a Bypass Appeal Statute of Limitations that allows bypassed candidates to file an appeal with the Commission up to 60 days “from receipt of ... notice” of the bypass reasons. The Appellant received the reasons for bypass from the BPD on September 7, 2023. Given the above-referenced statute of limitations, the Appellant had until November 6, 2023, to file a timely bypass appeal with the Commission. Ten days after the November 6, 2023 filing deadline, the Appellant, on November 16, 2023, filed an appeal online with the Commission. As such, his bypass appeal is not timely.

At the pre-hearing conference, to determine if there was good cause to toll the period for filing a bypass appeal with the Commission, I asked the Appellant about the circumstances surrounding his late appeal. He acknowledged receiving the bypass reasons, which contained his right to appeal within 60 days, but indicated that his busy work schedule prevented him from filing within 60 days. While I am sympathetic to the demands of a busy work schedule, that alone does not constitute good cause for tolling the filing deadline here, particularly given the relatively generous period of time allotted to file an appeal as well as that appeals can now be filed online with the Commission at any hour.

Conclusion

The Appellant’s appeal under Docket No. G1-23-234 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 March 21, 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:

Sokhon Mel (Appellant)

Omar Bennani, Esq. (for Respondent)