

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

HUSSEN MOHAMMED,
Appellant

v.

C-19-127

DEPARTMENT OF TRANSITIONAL
ASSISTANCE,
Respondent

Appearance for Appellant:

Pro Se
Hussen Mohammed

Appearance for Respondent:

Sheila Anderson
Department of Transitional Assistance
600 Washington Street
Boston, MA 02111

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On June 6, 2019, the Appellant, Hussen Mohammed (Mr. Mohammed), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to affirm the decision of the Executive Office of Health and Human Services / Department of Transitional Assistance (DTA) to deny his request to be “reclassified” from Management Analyst III (MA III) to Technical Pay Law (TPL) 013: Data Analyst / Statistician.
2. On June 25, 2019, I held a pre-hearing conference at the offices of the Commission that was attended by the Appellant and DTA representatives.
3. As part of the pre-hearing, DTA argued that:
 - A. The Appellant’s appeal was untimely as it was filed with the Commission more than 30 days after HRD denied his appeal.
 - B. TPL titles are not part of the classification plan and, thus, this reclassification appeal cannot be heard by the Commission.

- C. Further, the Executive Officer of Technology Services and Security (EOTSS) only authorizes TPL titles to be used in IT divisions in state agencies and the Appellant does not work in the IT division of DTA, providing an additional reason why this appeal cannot be heard by the Commission.
4. The Appellant stated that he was told by DTA NOT to file an appeal with the Commission upon receiving the HRD denial, as DTA wanted additional time to consult with EOTSS or other officials about a possible resolution of this matter.
 5. DTA subsequently filed a Motion to Dismiss and Mr. Mohammed filed a reply.
 6. On August 2019, I held a motion hearing and heard oral argument from both parties as well as counsel for the state's Human Resources Division (HRD).

Analysis / Conclusion

DTA's motion to dismiss based on timeliness is denied. At the motion hearing, DTA acknowledged that the Appellant was indeed asked by DTA to delay filing an appeal with the Commission until DTA had time to consult with EOTSS. I credit the Appellant's testimony that his decision to wait approximately three months from receipt of HRD's denial to file an appeal with the Commission was attributable to the request from DTA and was not the result of any fault of his own.

Based on the above, it is appropriate for the Commission to exercise its discretionary authority under Chapter 310 of Acts of 1993 to allow Mr. Mohammed to file his appeal, even if he failed to submit it within the thirty days required by Standard Adjudicatory Rules of Practice and Procedure. (See Boston Police Dep't v. Civ. Serv. Comm'n and Merced, Suff. Sup. Ct. No. 16CV00748 (2018)).

DTA's motion to dismiss based on jurisdictional grounds is allowed. I carefully reviewed the parties' briefs; arguments from both parties and counsel for HRD at the motion hearing; and all documents included in the record.

I concur with DTA and HRD. The purpose of the TPL law, enacted in 1983, was to attract candidates and retain personnel with an expertise and experience in technology systems. The statute did not create new positions or titles, but, rather, allowed for certain titles to be designated as "TPL" titles based on the need for employees to have specific technical knowledge.

In summary, this is not a reclassification appeal under G.L. c. 30, s. 49. Rather, it is a request by an incumbent employee to receive a TPL designation and the higher salary that accompanies it. I am not aware of any prior Commission decision stating that the Commission has jurisdiction over such a TPL-related request.

For these reasons and the reasons stated in DTA's Motion to Dismiss regarding the TPL-related matter, the Appellant's appeal under Docket No. C-19-127 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – Absent]) on February 13, 2020.

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:

Hussen Mohammed (Appellant)
Sheila Anderson (for Respondent)
Patrick Butler, Esq. (HRD)