

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

ANDREW MONZON,
Appellant

v.

CASE NO: E-09-289

HUMAN RESOURCES DIVISION,
Respondent

Appellant, Pro Se:

Andrew Monzon
[REDACTED]

HRD'S Attorney:

Tsuyoshi Fukuda, Esq.
Human Resources Division
One Ashburton Place – 3rd Floor
Boston, MA 02114

Commissioner:

Paul M. Stein

DECISION ON MOTION TO DISMISS

The Appellant, Andrew Monzon, acting pursuant to G.L.c.31, §2(b), appealed from an alleged action or inaction of the Massachusetts Human Resources Division (HRD) to exclude him from placement on the eligible list for original appointment as Firefighter. HRD moved to dismiss the appeal on the grounds that the Appellant had failed to take and pass the Physical Abilities Test (PAT) and, therefore, could not be considered for appointment by law. The Appellant filed no written Opposition to the motion. A motion hearing was held by the Civil Service Commission (Commission) on November 9, 2009. The hearing was digitally recorded. The record was left open to receive further information from HRD, which the Commission received on November 10, 2009.

FINDINGS OF FACT

Giving appropriate weight to the documents submitted by the parties, and the argument presented by the Appellant and HRD, and inferences reasonably drawn from the evidence, I find the following material facts to be undisputed:

1. The Appellant, Andrew Monzon, sat for the Entry Level Firefighter Civil Service Examination held on April 26, 2008 and he was notified by letter from HRD dated July 23, 2008 that he had passed the written portion of the examination and that he must now “take and pas the PAT [Physical Abilities Test] in order to have [his] name placed on the 2008 Firefighter Eligibility List.” (*HRD Motion, Exhibit B*)
2. The July 23, 2008 notice Mr. Monzon received states, in part:

Thank you for participating in Phase 1 (the written examination) of the 2008 testing and selection process for firefighters for the Commonwealth of Massachusetts. The scoring of Phase 1 has been completed and your Phase I score band is presented below and is also available in the HRD Standings and On-line Applicant Record System (SOARIS)

Applicant’s Phase 1 Score Band: ■

A majority of the Phase 1 participants scored in bands 2-11. *If an applicant receives a Score Band of 1 . . . the applicant will not be permitted to continue in the 2008 testing and selection process.*

If you scored in one of the higher bands (2-11), you may continue in the 2008 testing and selection process and apply to take the Entry Level Firefighter Physical Ability Test (PAT). Please be advised that you must take and pass the PAT in order to have your name placed on the 2008 Firefighter Eligibility List.

. . .

If you are eligible but have not applied to take the PAT, please log into the HRD Standings & On-line Applicant Record Information System (SOARIS) at <https://www.cscexam.hrd.state.ma.us/standings/> and apply online. If you have not already set up a SOARIS User Account with HRD, we urge you to create one at your earliest convenience. . . . The deadline to apply has been extended from July 25 to August 4, 2008. Upon receipt of your online application, HRD will schedule you automatically on a first-come first-serve basis. There is a fee of \$100 for the PAT but eligible applicants may request a fee waiver online.

(*HRD Motion, Exhibit B*) (*emphasis added*)

3. On August 5, 2008, Mr. Monzon logged-on to the HRD “Standings and On-line Applicant Record Information System (SOARIS) and created a user account number

under his personal e-mail address “monzona@mail.uri.edu”. Mr. Monzon used this account to apply for the PAT and paid for the PAT with a credit card. (*HRD Motion, Exhibits A, B & C*)

4. That same day, August 5, 2008, the PAT Administrator acknowledged Mr. Monzon’s online PAT application and immediately sent an automated e-mail to the e-mail address he had just provided which stated:

“Thank you for submitting your application to take the PAT component of the 2008 Firefighter Examination. An email will be sent between 1 to 4 days of your application to advise you of the date, time and location of your upcoming PAT. Please periodically log into [SORIS] to check for updates. Should you require additional assistance, please contact the PAT.Administrator@hrd.state.ma.us.” (emphasis added)

(*HRD Motion, Exhibit D*)

5. On August 7, 2008, the PAT Administrator sent Mr. Monzon his PAT schedule information via email to the email address provided by him indicating that his PAT was scheduled for August 25, 2008 @ 11:00 AM in Medford MA. (*HRD Motion, Exhibit E*)
6. According to HRD’s records, Mr. Monzon never again logged on to his SOARIS account after August 5, 2008. (*HRD Motion, Exhibit F; HRD 11/10/09 Supplement*)
7. On November 13, 2008, notice was mailed to Mr. Monzon informing him he did not pass the 2008 Firefighter Entry-Level Examination because he failed to take the PAT. The Appellant does not dispute that he received this notice. (*HRD Motion, Exhibit G; Appellant’s Representation*)
8. HRD established the current active firefighter list on December 1, 2008. There are currently 5,044 candidates on the list. (*Administrative Notice, Napoli v. HRD, CSC Case No. G2-08-283*)

9. On or about December 29, 2008, Mr. Monzon contacted HRD and spoke to Jenifer Murphy who reported that he had not checked SOARIS because he had moved, had “too many passwords” and that the e-mail address he had used to register with SOARIS was an old one he doesn’t use. Ms. Murphy reported that she advised Mr. Monzon of his right of appeal to the Commission. *(HRD Motion, Exhibits A & C)*
10. According to HRD, the HRD website contains clear information alerting applicants to the process by which they would be notified via e-mail as to when and where to appear for the PAT, as well as explicit instructions describing the obligations of applicants to update their contact information on SOARIS, including mailing or email addresses, and provides a resource to contact with any questions. *(HRD Motion, Exhibit A; HRD 11/10/09 Supplement)*
11. On June 25, 2009, Mr. Monzon filed the present appeal. In the attachment to his appeal, Mr. Monzon claims that the uri.edu email address he had used in August 2005 had been cut off, unbeknownst to him, and that he had been expecting to receive a written mail notice of the date of the PAT. Thus, he claims he had no way to have known that he had missed the scheduled date for him to take the PAT. *(Claim of Appeal; HRD Motion, Exhibit H: Appellant’s Representations)*

CONCLUSION

Applicable Standard on Dispositive Motion

The party moving for summary disposition of an appeal before the Commission pursuant to 801 C.M.R. 7.00(7)(g)(3) or (h) is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., “viewing the evidence in the light most favorable to the non-moving party”, i.e., HRD has presented substantial

and credible evidence that the opponent has “no reasonable expectation” of prevailing on at least one “essential element of the case”, and that Mr. Monzon has not produced sufficient “specific facts” to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005); cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, 887 N.E.2d 244, 250 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, 881 N.E.2d 778, 786-87 (2008)

Specifically, this motion to dismiss must allowed when the Appellant fails to raise “above the speculative level” sufficient facts “plausibly suggesting” that Mr. Monzon is aggrieved by any action or failure to act by HRD that violates any Civil Service law or rules. See generally Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36, 888 N.E.2d 879, 889-90 (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698, 550 N.E.2d 376 (1990) (factual issues bearing on plaintiff’s standing required denial of motion to dismiss)

Applicable Civil Service Law

The authority to conduct and administer civil service examinations is vested in the Personnel Administrator, i.e. HRD, with limited recourse of appeal to the Commission in certain cases. See G.L.c.31, §5(e), §§16 through 24. In order to successfully challenge a “decision, action or failure to act” by the Personnel Administrator, an appellant must make “specific allegations” that such decision, action or failure to act “was in violation of [Chapter 31], the rules or basic merit principles promulgated thereunder and said allegations shall show that such person’s rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person’s employment status.” G.L.c.31,§2(b). Further, in order for the Commission to grant relief for a violation of his

The Appellant's Claim

Mr. Monzon maintains that he was misled by the notices he received from HRD about the procedure he was obliged to follow to take the PAT component, after being informed that he had passed the written component of the firefighter's examination. He claims that he did not ever receive any of the e-mail notices about the PAT testing process and the written notices he did receive led him to believe that he did not need to take any further action after registering for the PAT on-line until he had received a further written notice to that effect by mail.

The Commission accepts, for purposes of this motion, Mr. Monzon's assertion that he did not, in fact, receive the e-mail messages from HRD concerning the PAT test schedules. Even assuming that to be true, however, the Commission finds no requirement in civil service law that would raise a question about the reasonableness of HRD's notices to Mr. Monzon or its reliance on an applicant's proactive responsibility to follow up on SOARIS or otherwise concerning notices for taking the PAT. The Commission find significant that, thousands of other candidates (who took and passed the written and PAT components) managed to understand the requirement to duly register and follow up on SOARIS for the details about taking the PAT.

HRD took all reasonable steps on its website, generally, and in the SOARIS account page, specifically, to give applicants the tools they need to stay abreast of the examination process and alert HRD to any changes in their contact information. In view

of its own due diligence, HRD was entitled to rely that the thousands of letters and emails it sends to the addresses provided by the applicants will be, and have been, duly received.

Mr. Monzon need have done no more than simply log-in to his SOARIS account, where he would have found all of the information that would have led him to successfully complete the PAT. In fact, had Mr. Monzon logged back on-line to SOARIS even once after he first registered for the PAT on-line, on August 5, 2008, he would have seen the same-day acknowledgment of his registration and confirmation of payment (which, alone, it is curious that he did not seem interested to check on) and would have been alerted to the future e-mail notice he received on August 7, 2008. However, Mr. Monzon apparently did nothing until December 29, 2008, when he contacted HRD by telephone. This failure, alone, is sufficient to find Mr. Monzon responsible for missing the deadline to take the PAT and, therefore, ineligible for relief, because the harm, if any, to his employment rights cannot be considered “no fault of his own.” St. 1993, c.310. See Napoli v. Human Resources Division, CSC Case No. G1-08-283, 22 MCSR --- (2009); Weston v. Human Resources Division, CSC Case No. E-09-40, 22 MCSR --- (2009); Galgay v. Human Resources Division, 22 MCSR 181 (2009)

Accordingly, for the reasons stated above, HRD’s Motion to Dismiss be and is hereby allowed and the appeal of the Appellant, Andrew Monzon is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman [absent]; Henderson, Marquis & Stein; Taylor [absent], Commissioners) on December 3, 2009

A True Record. Attest:

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)(l), 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 to:

Andrew Monzon (Appellant)

Tsuyoshi Fukuda, Esq. (HRD)