COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

One Ashburton Place - Room 503
Boston, MA 02108
(617) 979-1900

JAMES PETROULES,
Appellant

CASE NO: E-19-266

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant: James Petroules, Pro Se

Appearance for Respondent: Earl Wilson, Esq.
Director of Employee Relations
Department of Correction
50 Maple Street, First Floor
Milford MA 01757

Commissioner: Paul M. Stein

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, James Petroules, a tenured employee of the Massachusetts Department of Correction (DOC), assigned to the Souza-Baranowski Correctional Center (SBCC), appealed to the Civil Service Commission (Commission) seeking to be restored to his civil service title of Correction Officer I (CO-I) from his current civil service title of CO-I/Head Cook. Originally styled as a reclassification appeal pursuant to G.L.c.30, §49, a prehearing conference was held on January 7, 2020 and a Full Hearing was scheduled for February 26, 2020. The DOC filed a Motion to Dismiss and a Motion for A More Definite Statement, which Mr. Petroules opposed. At the February 26, 2020 Full Hearing, at which I presided, after reviewing the proposed exhibits and hearing argument on the motions, I concluded that Mr. Petroules was not seeking "reclassification" of his current position, but, rather, claimed that he was aggrieved by having been misled by DOC and the correction officers' union (MCOFU) in 2018 into accepting an offer to convert his civil service title, then a permanent CO-I serving as a provisional CO-I/Head

Cook, into a permanent CO-I/Head Cook, so that he could compete with other permanent CO-I/ Head Cooks for jobs in the kitchen, effected through a prior Commission Decision in Shadd v. Department of Correction, CSC No. E-17-157 (2018) (Shadd). He now wants to leave his kitchen job and asks the Commission to restore him to the status of a permanent CO-I, so that he may compete with other permanent CO-I's for assignments working outside the kitchen. DOC would not agree to restore his CO-I permanency unless he retook and passed another CO-I civil service examination. Accordingly, I ordered that the reclassification appeal be converted into a request for equitable relief pursuant to Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993 (Chapter 310). The motions were denied and the Full Hearing was rescheduled to afford the parties time to prepare for the issues presented and to provide the Massachusetts Human Resources Division (HRD) an opportunity to be added as an interested party. A status conference was scheduled for March 31, 2020.[1]

As a result of the onset of the COVID-19 State of Emergency, however, further proceedings were delayed until August 8, 2020, when I held a remote status conference (via Webex) in which the Appellant appeared pro se, the DOC appeared with counsel and HRD appeared through counsel. In accordance with the Commission's interim procedures governing appeals during the State of Emergency, a remote Full Hearing (via Webex video conference) was scheduled for October 7, 2020. I issued a Remote Hearing Procedural Order that specified the deadlines and responsibilities of the parties in the preparation for and conduct of the remote hearing.

On September 14, 2020, I duly received a document from the Appellant entitled "Appeal of Nicholas Petroules Against MA Department of Correction for Violation of Civil Service Statute GL CH 31 §41", which set forth his legal position and proposed relief, including certain

[1] The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

documents which I treat as his proposed exhibits. He stated that he did not intend to call any witnesses. On September 15, 2020, I duly received the DOC's "Response to Procedural Order", with DOC's exhibit list, copies of proposed exhibits and full list of witnesses.

On September 30, 2020, the DOC informed me that Mr. Petroules had recently taken and passed the most recent civil service examination for CO-I and that his name had been placed on the current eligible list from which the DOC is currently hiring Correction Officers. The DOC stated it would agree to promptly transfer Mr. Petroules from his position of CO-I/Head Cook, pursuant to G.L.c.31, §35. HRD confirmed that such a transfer authorized by Section 35 and would not require any equitable relief from the Commission. DOC arranged to effectuate the transfer on September 27, 2020.

Thereafter, Mr. Petroules indicated that, while he would accept the transfer, he still wanted to pursue a full hearing on the "other issues" that he had raised. The DOC submitted a statement to the Commission that it knew of no additional relief to which Mr. Petroules would be entitled to receive from the Commission, and if he did not agree to the transfer, it would withdraw its offer. I indicated I would treat the DOC's statement as a Motion to Dismiss and, for this reason, as well as scheduling difficulties that prevented both the DOC and Mr. Petroules from proceeding with the evidentiary hearing on October 7, 2020, I cancelled the evidentiary hearing and rescheduled the matter for a Status Conference/Motion Hearing on October 13, 2020. At the hearing, the DOC and Mr. Petroules presented argument in support of their respective positions which I address more fully below. After considering the submissions of the parties, arguments presented, and after a careful review of the record in this matter and the Shadd Decision, I conclude that the DOC's offer to transfer Mr. Petroules back to his title of CO-I would provide him with all of the relief to which he would be entitled if the Commission were to allow this appeal. None of the

"other issues" (some current and some hypothetical) that he presented are matters that implicate a violation of his civil service rights or that would justify the Commission granting further discretionary equitable relief pursuant to Chapter 310. Thus, the Motion to Dismiss is allowed, and the appeal is denied.

FINDINGS OF FACT

Based on the proposed exhibits and other documents and submissions of the parties, the following relevant facts are not in material dispute:

1. The Appellant, James Petroules, is a tenured employee of the DOC, currently assigned to SBCC. He took and passed the civil service examination for CO-I and was appointed to that position on November 3, 2013. After serving the probationary period as prescribed by law, he gained tenure (permanency) in that title.

2. As set forth in the Shadd Decision, Mr. Petroules was one of the dozens of CO-I's who, at some point after they were appointed to the title of CO-I, assumed the duties of a Head Cook in the kitchen of various DOC facilities.

3. As described in the Shadd Decision, for some period from 1998 until 2007, DOC did not offer separate civil service examinations for CO-I and CO-I/Head Cook. Both positions were classified by HRD as job code (E18165), both included substantially identical "care and custody" duties over inmates, and both commanded the same pay grade under the applicable collective bargaining agreement (CBA) between the DOC and MCOFU. When a permanent CO-I was assigned to the kitchen, DOC and HRD treated them as a permanent CO-I serving in the "functional" title of a provisional CO-I/Head Cook.

4. When separate CO/Head Cook examinations resumed in 2007, DOC issued an advisory that, if a CO-I working in the kitchen held permanency in his or her CO-I title, it was not

necessary for that employee to take a CO-I/Head Cook examination. Based on this advisory, for some time thereafter, there were "permanent" CO-I/Head Cooks hired from a CO-I/Head Cook eligible list and "provisional" CO-I employees working in the DOC's kitchens who never had taken a CO-I/Head Cook examination.

5. In 2012, HRD assigned new, separate job codes for CO-I/Head Cook (E1816C), separate from the job code for CO-I. They still retained the same CBA pay grade.

6. The Shadd Decision arose as a result of an appeal brought by a permanent CO-I who had been serving as a provisional CO-I/Head Cook since 2008 and had never taken a Co-I/Head Cook exam because of the DOC advisory indicating that he did not need to do so. The appeal sought, among other things, to rectify the discrepancy that made it more difficult for "provisional" CO-I Head Cooks to bid for kitchen jobs over "permanent" CO-I/Head Cooks, due to the way those positions were treated by DOC and the CBA.

7. By Decision dated March 29, 2018, on a Joint Petition for 310 Relief, the Commission entered an order directing that DOC and HRD "take such action as necessary and appropriate to effectuate and adjust Mr. Shadd's civil service record so that he shall be deemed a permanent civil service employee in the title of CO-I/Head Cook, effective [as of the date he first assumed the functional duties of a Head Cook]. The Shadd Decision also ordered DOC to provide the Commission with the names of all similarly situated employees with "permanency in the title of CO-I who have been treated as a 'provisional' CO-I/Head Cook" and, upon receipt of that list, the Commission "shall take such further action and enter such further orders as appropriate."

8. On or about April 6, 2018, DOC issued letters to all CO-I employees, including Mr. Petroules,[2] who were then currently assigned to institutional kitchens, performing the functional

[2] There is a question as go whether Mr. Petroules actually received the April 6, 2018 letter, but he knew the letter was sent to him. (See Finding #9)

duties of CO-I/Head Cook but holding permanency in the CO-I title. The letter solicited the officers' "preference to remain in your permanent CO-I Title or to have your name submitted to the Civil Service Commission, for consideration in gaining a CO-I/Head Cook permanent title." The letter also indicated that the DOC will be offering a civil service examination for CO-I/Head Cook in the Fall, and that future hires into the kitchen will be made from the eligible list generated by the results of that examination, i.e., future hires into CO-I/Head Cook positions will be permanent appointments who would gain preference in job assignments over provisional CO-I/Head Cooks..

9. On May 8, 2018, Mr. Petroules emailed DOC Deputy Director Matthew Beaudet and conveyed the following:

> "Good afternoon. My name is James Petroules. I currently work in the kitchen over at SBCC. I hold a temp bid and a [sic] I would like to stay in the kitchen. I am not at my current residence, so I do not know if I received a letter. If you have any questions, please feel free to contact me."

10. Director Beaudet immediately responded and asked Mr. Petroules to provide his full name and DOC ID # and he would "add you to the list which will be forwarded to Civil service [sic] . . . ."

11. On July 5, 2018, by Supplemental Decision On Joint Motion for Relief Under Chapter 310 of the Acts of 1993, in order to put all DOC Head Cooks on a level playing field, the Shadd Decision ordered that the DOC permanent CO-I officers, whose names appeared on the list provided by DOC as electing to become permanent in their kitchen title (which included Mr. Petroules), be "converted" to permanency in the title of CO-I/Head Cook; the Commission authorized DOC and HRD to effect that change without requiring the employee to take and pass another civil service examination, i.e., the CO-I/Head Cook examination.

12. By e-mails on July 23, 2018 and August 6, 2018 to Director Beaudet, another CO-I (Nicholas Jamieson) who held a provisional appointment as a CO-I/Head Cook, stated that he "was interested in permanently staying in the kitchen" and asked "why my name was not put on the list . . . as I clearly expressed an interest in becoming a permanent kitchen worker.". By e-mails on August 3, 2018 and August 6, 2018, Director Beaudet explained that DOC had only submitted the names of officers who "positively acknowledged their interest in requesting 310 relief (thus changing their titles from CO-I to COI/Head Cook). . . " Director Beaudet left Mr. Jamison off the list because he understood that Mr. Jamieson had not definitively indicated he chose to remain in the kitchens permanently and was "willing to give up your CO-I status"[3] If, however, as Mr. Jamieson claimed, he "clearly expressed an interest in becoming a permanent kitchen worker", Director Beaudet suggested Mr. Jameson reach out to the Commission to see if he could still be added to the list.

13. By email to the Commission, Mr. Jamieson explained his initial concern with being included as one of the officers granted Chapter 310 relief under Shadd, if it meant that current CO-I's, such as himself, would "be limited in their career advancement by being made permanent CO-I/head cooks (sic), and that they retain the status of CO-I in the kitchen who has full rights as CO-I . . . I do not want to limit my career by becoming a permanent CO-I/head cook (sic) , but if this is the only way to keep my current position in the kitchen at this point so be it. I will cross the promotional bridge if I arrive at it."

14. On August 16, 2018, by Addendum to Supplemental Decision on Joint Motion for Relief Under Chapter 310 of the Acts of 1993, the Commission added Mr. Jamieson (and one other

[3] Mr. Jamieson originally had emailed Director Beaudet on April 13, 2020, shortly after receiving the DOC's April 6, 2018 letter, expressing concern that, if he became a permanent CO-I/Head Cook, it would limit his ability to bid outside the kitchen for other CO-I jobs and limit his opportunities for promotion in the future;, therefore, "until . . . more information was available I would like to retain my status as a CO-I in the kitchen.".

officer) to the list of those covered by the Shadd Decision who were left off the original list and who "now seek to be included among the officers granted relief" under the Shadd Decision.

15. Ultimately, forty-three (43) permanent CO-I "provisional" CO-I/Head Cooks, including Mr. Petroules and Mr. Jamieson, were converted to permanent CO-I/Head Cooks.

16. Converting from a permanent CO-I, provisional CO-I/Head Cook, to permanent CO-I/ Head Cook did not affect the civil service seniority date of any tenured employee, which always remains the date on which they were initially appointed as CO-I's.

17. By letter dated July 23, 2018, Deputy Beaudet informed Mr. Petroules that "the Civil Service Commission has accepted your name and granted Chapter 310 Relief with regards to your request to have your permanent Civil Service title changed from Correction Officer I to Correction Officer I/Head Cook" and informed him that "your Department of Correction seniority date will remain the Date of your hire as a Correction Officer I."

18. About a year after the Shadd Decision entered, on or about May 14, 2019, Mr. Petroules contacted Cheryl Brannan, Personnel Supervisor in the DOC Division of Human Resources and she emailed a message to Director Beaudet regarding her conversation:

> "James [Petroules] is going to be calling you. He wants to go back to a CO I position from his perm CO/Head Cook position. He was part of the recent Civil Service Agreement. . . . He said he never received a letter and it was never explained to him that if he took the perm CO/HC position he would not be able to go back to a CO-I position. He [sic] life has changed, and he needs to be able to do SWAPS."
>
> "I did explain he would need to take the CO I Civil Service Exam and have his score reached."

19. By email dated October 26, 2019 to the DOC Human Resources Office, Mr. Jamieson requested confirmation of his "understanding" that "a) a CO-I/head cook, cannot bid out of the kitchen as their COI title has been rescinded; and if a CO-I head cook wishes to leave the kitchen

they would need to b) retake the CO-I civil service test, c) lose seniority as a CO-I for the period they were not a CO-I."

20. By email dated October 28, 2019, from Patricia Snow in the DOC Human Resources office replied to Mr. Jamieson: "Hi Nicholas – you are correct in all aspects written [in your email]"

21. On December 13, 2020, Mr. Petroules filed the present appeal.

22. Mr. Petroules' appeal asserts that he was misled by the DOC and by MCOFU, who failed to fully inform the affected officers and respond to inquiries that sought to clarify whether an election to become a "permanent" CO-I/Head Cook would mean that the officer lost "permanency" in the CO-I title. He, therefore, elected to accept the CO-I/Head Cook "permanency status, claiming that he had assumed he would retain permanency in both titles. He asserts that he only "just" learned that his understanding was not correct.

23. Mr. Petroules asserts that this issue is important to him because he now wants to leave the kitchen and return to working "in the population" in a traditional CO-I role, but DOC will not change its position that, by electing to become a "permanent" CO-I/Head Cook, the DOC will not approve his transfer to a traditional CO-I job unless he first has taken and passed another CO-I civil service examination.

24. Mr. Petroules subsequently did take pass the recent CO-I examination. His name appears on the eligible list for appointment.

25. DOC offered to effectuate a transfer of Mr. Petroules from CO-I/Head Cook to CO-I and agrees that, in accordance with civil service law, such transfer would not affect his civil service seniority date of November 3, 2013.

26. DOC also takes the position that, Mr. Petroules' bid status under the CBA after transfer to CO-I may not necessarily be the same as his civil service seniority date, but probably would be a different date, based on language in Article 14, Section 6 of the CBA that defines seniority for purposes of "job pick, transfers, shift and days off selection" as an employee's "length of service in grade and classification".

27. MCOFU has not appeared in this appeal and has not expressed any opinion whether the two jobs are considered in a different "grade" or "classification." CO-I and CO-I/Head Cook are both the same pay grade under the CBA (Grade 18). For civil service purposes, as established in the Classification Plan approved by HRD, they now appear to be different titles (job codes) in the same job classification series.

STANDARD OF REVIEW

Pursuant to 801 C.M.R. 1.01(7)(g)(3) or (h), an appeal before the Commission is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., if, "viewing the evidence in the light most favorable to the non-moving party [i.e. Mr. Petroules], the DOC has presented substantial and credible evidence that Mr. Petroules has "no reasonable expectation" of prevailing on at least one "essential element of the case", and that he 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 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008).

APPLICABLE CIVIL SERVICE LAW

G.L.c.31,§41-45 provides that a tenured civil servant may be "discharged, removed, suspended . . . laid off [or] transferred from his position without his written consent" only for "just cause" after due notice, hearing (which must occur prior to discipline other than a

suspension from the payroll for five days or less) and a written notice of decision that states "fully and specifically the reasons therefore." G.L.c.31, §41. An employee aggrieved by such disciplinary action may appeal to the Commission, pursuant to G.L.c.31, §42 and/or §43, for de novo review by the Commission "for the purpose of finding the facts anew." Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited.

Appeals to the Commission must be filed within ten (10) days of notice of disciplinary action taken under Section 41 or, if an appointing authority has failed to follow the requirements of Section 41 in taking such action that "affected his employment or compensation", within ten (10) days "after such action has been taken, or after such person first knew or had reason to know of such action." G.L.c.31, §42, ¶1 & §43, ¶1. The ten-day filing deadline is jurisdictional and must be strictly enforced. See, e.g., Town of Falmouth v. Civil Service Comm'n, 64 Mass.App.Ct. 606, 608-609 (2005), rev'd other grounds, 447 Mass. 814 (2006); Poore v. City of Haverhill, 29 MCSR 260 (2016); Stacy v. Department of Developmental Services, 29 MCSR 164 (2016); Volpicelli v. City of Woburn, 22 MCSR 448 (2009); Williamson v. Department of Transitional Assistance, 22 MCSR 436 (2009).

By virtue of the authority provided under Chapter 310 of the Acts of 1993, the Commission also has discretionary equitable power "to take such action as will restore or protect" the "rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder[(i.e. civil service law and rules]" that have been "prejudiced through no fault of his own . . . notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights." St. 1993, c.310, §1.

ANALYSIS

Upon a careful review of the lengthy travel of this appeal, it becomes clear that it is now ripe for dismissal. Having met DOC's prerequisites and been offered the opportunity to be restored to the position of CO-I, with full civil service seniority from the date of his original hire as a CO-I in 2013, there is no further relief that Mr. Petroules is entitled to receive from the Commission.

First, as to any claim that Mr. Petroules was unwillingly forced to relinquish his CO-I title in July 2018 without his consent, in violation of G.L.c.31,§41 & §42, any such claim is barred under the 10-day limitations period for asserting such a claim. Even if he were able to establish that he had not received appropriate disclosures in May 2018, prior to informing DOC that he would "like to stay in the kitchen", he clearly "knew or should have known" of any claim by the time he contacted the DOC Human Resources Office in May 2019 (or perhaps sooner) and voiced his complaint. Moreover, on the merits of any such claim, Mr. Petroules identified no witnesses that he would call at an evidentiary hearing, and the documentary records fall short of establishing his claim that he did not freely and voluntarily agree to the change in title but, rather, only later, when "his life has changed", did he decide that he no longer wished to remain in the kitchen permanently. Moreover, only his permanent civil service title changed because of the Shadd Decision, not his civil service "employment" or "position" in the kitchen or his "compensation", all of which remained the same as what he enjoyed before that change. Thus, there is no "likelihood" that Mr. Petroules can prove a Section 41 or Section 42 claim for violation of his civil service rights.

Second, Mr. Petroules fails to persuade me that this is a case in which the Commission should exercise its discretion under Chapter 310 to grant him additional equitable relief. He had received a bona fide offer from DOC, which has agreed to accept his transfer to his original

position of CO-I. This substantially mitigates the injury to his civil service rights that prompted this appeal. Should he continue to choose not to take DOC up on that offer, should it continue to be available, he cannot be deemed to be "prejudiced through no fault of his own" which is the prerequisite for the Commission to begin to entertain whether to grant any form of discretionary Chapter 310 relief.

Third, save for the opportunity to be restored to a permanent CO-I job, none of Mr. Petroules' remaining claims fall within the purview of the Commission's jurisdiction under Chapter 31 or Chapter 310. Mr. Petroules' "job pick" status to bid for shifts as a returning CO-I is governed by the CBA and is not a matter of civil service law. Mr. Petroules argues that it is unfair for the CBA not to credit him his full time as a permanent CO-I and/or as a CO-I/Head Cook toward his bidding rights, when both titles fall within the same job classification series, both carry the same responsibility for "care and custody" of inmates and both carry the same pay grade. The Commission, however, is not empowered to interpret or alter the rights duly established through collective bargaining under a CBA. The remedies, if any, for such claims, lie elsewhere, not with this Commission.

Similarly, Mr. Petroules claims that he should not have been required to retake the CO-I civil service examination as a condition to the approval of his transfer. He has argued that the CO-I and CO-I/Head Cook titles carry substantially similar responsibility for "care and custody" of inmates, so that it should not have been necessary for him to take another examination in order to seek a transfer back to a CO-I job or, as also argued, to establish eligibility to sit for a future promotional examination. The Commission has no need to address those issues in this appeal, however, as they are presently moot and/or hypothetical as to Mr. Petroules.

Finally, Mr. Petroules appears to ask the Commission to keep this matter open for the purpose of a complete redo of the relief granted by the Commission in the Shadd Decision, and to craft some different form of relief, more to his liking, to address the issue that the Commission had resolved in Shadd. No basis has been established upon which the Commission can reasonably be expected to entertain such extraordinary action at this late date, which, among other things, would put in question the status of the 42 other officers who were granted relief under Shadd, none of whom have come forward to join (or even testify in support of) in Mr. Petroules' request or indicate they would welcome such action.

Accordingly, for the reasons stated above, the DOC's Motion to Dismiss is allowed, and the appeal of the Appellant, James Petroules, under Docket No. E-19-226 is ***dismissed.***

Civil Service Commission

/s/ Paul M. Stein
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Tivnan & Stein, Commissioners) on November 5, 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 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. 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:
James Petroules (Appellant)
Earl Wilson, Esq. (for Respondent)
Alexis Demirjian, Esq. (for HRD)