

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

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

WADE REYES,  
Appellant

v.

G1-07-160

DEPARTMENT OF CORRECTION,  
Respondent

Appellant's Attorney:

James W. Simpson, Jr., Esq.  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street  
Boston, MA 02110  
(617) 439-0305

Respondent's Attorney:

Alexandra E. McInnis  
Director of Personnel  
Department of Correction  
Industries Drive: P.O. Box 946  
Norfolk, MA 02056  
(508) 850-7880

Commissioner:

Donald R. Marquis

**DECISION ON APPOINTING AUTHORITY'S MOTION TO DISMISS**

*Procedural Background*

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Wades Reyes (hereafter "Appellant" or "Reyes") filed a bypass appeal in which he asks the Commission to exercise its equitable powers pursuant to Chapter 310 of the Acts of 1993 to remedy a situation which led to him not being promotionally appointed to the position of Correction Officer II (Sergeant) at the Department of Correction (hereafter "DOC" or "Appointing Authority"). A pre-hearing conference was held before the Commission on

July 19, 2007 at which time the Commission heard oral argument regarding DOC's previously-filed Motion to Dismiss. (*See* DOC's Motion to Dismiss filed with the Commission on May 14, 2007 and Appellant's Opposition to Motion to Dismiss filed with the Commission on May 22, 2007)

### *Factual Background*

On August 5, 2004, the Appellant took the civil service promotional examination #8523 for a sergeant's position (CO II) with the Department of Correction. The Appellant received a passing score. Cards were mailed out to eligible candidates by the state's Human Resources Division (HRD) asking the candidates to confirm that they would be willing to accept the promotion if selected by DOC. The last day to execute the cards for consideration for recent job postings was November 6, 2006. The Appellant did not receive one of the above-referenced cards as his updated mailing address was not listed with HRD.

The Appellant alleges that he contacted the state's Human Resources Division via telephone and updated his address in a timely manner. HRD, via an affidavit from its Assistant Director of the Civil Service Unit, states that, "all changes and updates requested by candidates who have participated in civil service examinations are handled by two methods. The first method is through our on-line services and the second method is through written correspondence to HRD...". (emphasis added) (*See* May 3, 2007 affidavit of Regina Caggiano)

In his opposition to DOC's Motion to Dismiss, the Appellant argues that the affidavit cites the preferred method by which candidates can notify HRD of any change in their

address. According to the Appellant, there is no mention in the affidavit that mail and/or web-based changes are the required method.

While the Commission *inferred* from HRD's affidavit that mail and/or web-based address changes are the required method, and that no address changes are accepted via telephone, the affidavit did not explicitly state that.

Therefore, the Commission, as part of an interim order, ordered HRD to specifically address this question via an updated affidavit, and to submit it to the Commission and counsel for the Appellant and the Appointing Authority, no later than August 30, 2007. The Appellant and Appointing Authority were given ten days upon receipt of this updated affidavit to provide the Commission with a reply to the affidavit.

On September 7, 2007, the Commission received an updated affidavit from HRD stating explicitly, in relevant part, "Address changes are not accepted via telephone". The Appellant filed an objection to the affidavit based on the fact that it was received by the Commission 8 days after the Commission's August 30, 2007 deadline. Further, the Appellant argues that the HRD's updated affidavit failed to cite any written rule, procedure, guideline or other documentation that address changes via telephone are not accepted.

### *Conclusion*

The Commission concludes that the Appellant did not update his address with HRD between August 5, 2004, when he took the civil service promotional examination, and November 6, 2006, the last day to execute the cards for consideration for recent job postings. Therefore, he did not receive a card notifying him of the promotional opportunity and was not considered for promotion. Chapter 310 of the Acts of 1993

allows the Commission to provide relief only if the individual has been prejudiced through no fault of his own. In this case, it was the Appellant's failure to notify HRD of his updated address that led to his non-consideration for the position of sergeant.

For the above-stated reasons, the Appellant's appeal under Docket No. G1-07-160 is hereby *dismissed*.

Civil Service Commission

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Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on September 27, 2007.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. 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:

James W. Simpson, Jr., Esq. (for Appellant)  
Alexandra McInnis (for Appointing Authority)  
Kerry Bonner, Esq. (HRD)  
John Marra, Esq. (HRD)