

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

JOHN F. ROBBINS,  
Appellants

v.

B2-08-28

TOWN OF MANSFIELD  
AND HUMAN RESOURCES DIVISION,  
Respondents

Appellant's Attorney:

Harold L. Lichten, Esq.  
Pyle, Rome, Lichten, Ehrenberg  
& Liss-Riordan, P.C.  
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Boston, MA 02108

Town of Mansfield's Attorney:

Joseph T. Bartulis, Jr., Esq.  
Murphy, Hesse, Toomey &  
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P.O. Box 9126  
Quincy, MA 02269-9126

HRD's Attorney:

Tsuyoshi Fukuda, Esq.  
Human Resources Division  
One Ashburton Place: Room 211  
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON HRD AND TOWN OF MANSFIELD'S MOTION TO DISMISS

*Procedural History*

On February 1, 2008, John F. Robbins (hereafter "Robbins" or "Appellant"), pursuant to G.L. c. 31, § 24, filed an appeal with the Civil Service Commission. The Appellant's appeal to the Commission stated in relevant part:

“In accordance with Ch. 31, sec. 24, I wish to appeal the scoring of my mark relative to Assessment Center (other) dated 2008 / 1 / 16...Part c of sec. 24 provides an avenue of appeal with seventeen days in that I do not feel this test was a fair test of my fitness to actually perform the primary or dominant duties of the position for which the exam was held. A written exam answer can be cited to a particular book, chapter and page. The grading of these assessment answers are I believe subjective and may leave room for interpretation.”  
(Appellant’s February 1, 2008 Appeal to Commission)

A pre-hearing conference was conducted at the Commission on March 3, 2008, which was attended by counsel for the Appellant and the Town of Mansfield.<sup>1</sup> The state’s Human Resources Division (hereafter “HRD”) and the Town of Mansfield (hereafter “Town” or “Appointing Authority”) each subsequently filed a Motion to Dismiss the Appellant’s appeal. The Appellant filed answers to the above-referenced motions and all parties submitted unsolicited surreplies.

#### *Factual Background*

The Appellant is employed as a firefighter for the Town of Mansfield Fire Department. On November 18, 2007, the Appellant took the written portion of the promotional exam for the position of lieutenant. On December 20, 2007, the Appellant participated in the Fire Lieutenant Assessment Center. On or about January 16, 2008, the Appellant was notified that he did not pass the promotional examination for lieutenant for the Mansfield Fire Department as he had not received a passing score on the Assessment Center portion of the exam. On February 1, 2008, the Appellant filed the instant appeal with the Commission.

#### *HRD and Town’s Argument to Dismiss Appeal*

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<sup>1</sup> Counsel for HRD subsequently notified the Commission that they have no record of having received notice of the March 3, 2008 even though Commission records indicate that notice was sent to HRD, the Appellant and the Town of Mansfield.

Both HRD and the Town argue that the Civil Service Commission lacks jurisdiction to hear the instant appeal since the Appellant failed to comply with the requirement of G.L. c. 31, § 22 to first seek review by the administrator (HRD) prior to filing this appeal with the Commission.

G.L. c. 31, § 22 states in relevant part, “An applicant may request the administrator to conduct a review of whether an examination taken by such applicant was a fair test of the applicant’s fitness actually to perform the primary or dominant duties of the position for which the examination was held, provided that such request shall be filed with the administrator no later than seven days after the date of such examination.”

G.L. c. 31, § 24 states in relevant part, “An applicant may appeal to the commission from a decision of the administrator...relative to (a) the marking of the applicant’s answers to essay questions; (b) a finding that the applicant did not meet the entrance requirements for appointment to the position; or (c) a finding that the examination taken by such applicant was a fair test of the applicant’s fitness to actually perform the primary or dominant duties of the position for which the examination was held. Such appeal shall be filed no later than seventeen days after the date of mailing of the decision of the administrator.”

According to HRD, if the Appellant wished for a fair test review of the Assessment Center, he was required to file the request to the administrator (HRD) by December 27, 2007. Since he did not do so, HRD and the Town argue that the Commission has no jurisdiction to hear the Appellant’s fair test appeal filed directly with the Commission on February 1, 2008.

*Appellant's Argument in Opposition to Motions to Dismiss*

The Appellant argues that he is not challenging the “fairness” of the exam or challenging the exam under the enumerated provisions of Section 24. Rather, the Appellant argues that his claim is that “the setting of a pass / fail or cut-off score for the assessment center as (1) not part of the delegation agreement between HRD and the Town of Mansfield; (2) not authorized by the information provided to applicants; and (3) irrationally set at the arbitrary score of 70.”

As such, the Appellant, who was pro se at the time of filing of his appeal, but is now represented by counsel, argues that his claim does not fall under Section 22 or Section 24. Rather, the Appellant argues that his claim falls under Section 2(a) and (b) of Chapter 31 as he is a person aggrieved by an action of the administrator.

*Conclusion*

G.L. c. 31, § 2(b) grants the Commission jurisdiction “to hear and decide appeals by a person aggrieved by any decision, action or failure to act by the administrator, except as limited by the provisions of section twenty-four relating to the grading of examinations...” (emphasis added). Section twenty-four speaks to certain appeal rights relative to an exam. It provides that “[a]n applicant may appeal to the commission from a decision of the administrator pursuant to section twenty-three relative to (a) marking of the applicant’s answer to essay questions; (b) a finding that the applicant did not meet the entrance requirements for appointment to the position; or (c) a finding that the examination taken by such applicant was a fair test of the applicant’s fitness to actually perform the primary or dominant duties of the position for which the examination was held.” (emphasis added)

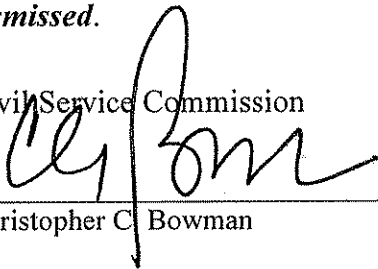
The above-referenced language in Section 2(b) constitutes a limitation with respect to the three types of claims enumerated under Section 24, including a “finding that the examination taken by such applicant was a fair test...”. The Appellant’s claim, filed with the Commission on February 1, 2008, specifically claims, in writing, that, “In accordance with Ch. 31, sec. 24 I wish to appeal the scoring of my mark relative to the Assessment Center (other) dated 2008 / 1 / 16.” However, at some point the Appellant appears to have changed his original allegation that he filed, in writing, at the outset of his appeal, and argued that he was not claiming that the assessment center was unfair.

The Appellant’s appeal, filed with the Commission on February 1, 2008, as argued by the Town, closely traces the language of review under G.L. c. 31, §§ 22-24 because it constitutes a challenge as to whether the December 20, 2007 component was a “fair test”. The Appellant himself stated in his appeal that his claim was being brought under § 24. Any challenge to whether the December 20, 2007 assessment center component was a “fair test” was subject to a seven (7) day statute of limitations, expiring on December 27, 2007. The Appellant failed to fulfill the require prerequisite of seeking the administrator’s review on or before December 27, 2007, and instead filled his appeal for the first time with the Commission on February 1, 2008. The Commission can not hear these type of cases before they have been presented to HRD. As such, the Civil Service Commission has no jurisdiction to hear the instant appeal.

For this reason, the Appellant’s appeal under Docket No. B2-08-28 is hereby

*dismissed.*

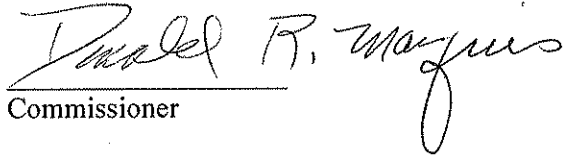
Civil Service Commission

  
Christopher C. Bowman

Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Marquis, Stein and Taylor, Commissioners [Henderson, Commissioner -No]) on June 12, 2008.

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. 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:

Harold L. Lichten, Esq. (for Appellant)

Joseph T. Bartulis, Jr., Esq. (for Town of Mansfield)

Tsuyoshi Fukuda, Esq. (for HRD)