

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

VASHON ROBINSON,
Appellant

B1-23-081

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Vashon Robinson, *Pro Se*

Appearance for Respondent:

Ashlee N. Logan, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein¹

DECISION ON RESPONDENT’S MOTION TO DISMISS

On June 23, 2023, the Appellant, Vashon Robinson, filed an appeal with the Civil Service Commission (Commission), contesting his Experience, Certification/Training/Licenses and Education (ECT & E) score. The Appellant believes he earned more points for certifications than what was awarded to him. The Appellant is currently employed with the Springfield Fire Department as a Lieutenant. He took the exam for the position of Statewide Fire Captain on March 25, 2023 and received his score on June 14, 2023. The Appellant did not file an appeal with the state’s Human Resources Division (HRD). Instead, he appealed directly to the Commission.

¹ The Commission acknowledges the assistance of Law Clerk Alana Khan with the preparation of this decision.

I held a remote pre-hearing conference on July 5, 2023. The Appellant did not appear for the pre-hearing conference. On July 24, 2023, HRD filed a Motion to Dismiss the appeal on the grounds that the Commission lacks jurisdiction to hear this appeal, because the Appellant did not first appeal to HRD's civil service unit, as is required by the civil service law. The Appellant filed no response to the Motion to Dismiss.

APPLICABLE LEGAL STANDARD

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion to resolve an appeal before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be disposed of, however, on summary disposition only when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co. v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). The non-moving party must offer specific facts which establish a reasonable hope of prevailing after an evidentiary hearing in order to survive a motion for summary decision. Id.

Section 24 of G.L. c. 31 states:

“An applicant may appeal to the commission from a decision of the administrator made pursuant to section twenty-three 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. [. . .] The commission shall refuse to accept any

petition for appeal unless the request for appeal, which was the basis for such petition, was filed in the required time and form and unless a decision on such request for review has been rendered by the administrator.” (emphasis added)

The “administrator” in this section means the head of HRD or their designee within HRD’s civil service unit. G.L. c. 31, § 1.

ANALYSIS

During the examination process, the Appellant submitted an ECT & E claim, asking for credits to be granted due to his total years of service; years of service as a Lieutenant; an EMT/Basic/ Advanced license; and four training certificates. The ECT & E notice issued to the Appellant stated: “you may submit in writing a request for a review of the scoring of your Experience, Certification/Training/Licenses and Education by sending an email to civilservice@mass.gov,” HRD’s civil service unit. The Appellant did not do so.²

Here, the undisputed facts, viewed in a light most favorable to the Appellant, establish that, for the reasons stated within HRD’s Motion to Dismiss, this appeal must be dismissed. The Appellant did not bring forward any facts or evidence that could demonstrate that he has a reasonable expectation of prevailing on at least one essential element of the case. As referenced in G.L. c. 31, § 24, the Commission must refuse to accept an examination-related appeal unless a request for review was first filed with HRD within the appropriate timeframe. At no time did the Appellant file, or attempt to file, an appeal with HRD directly. For this reason, the Commission lacks jurisdiction to hear this appeal.

CONCLUSION

For the reasons stated above, HRD’s Motion to Dismiss is *allowed*, and the Appellant’s

² At the Pre-Hearing Conference, HRD reported that, according to its records, the Appellant received credit for all ECT&E for which he had submitted a documented claim.

appeal under Case No. B1-23-081 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; McConney, Stein, and Tivnan, Commissioners; Dooley, absent) on August 10, 2023.

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)(1), 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:

Vashon Robinson (Appellant)

Ashlee N. Logan, Esq. (for Respondent)