

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

MARC SAVAGE,  
Appellant

v.

E-19-217

HUMAN RESOURCES DIVISION &  
SPRINGFIELD FIRE DEPARTMENT,  
Respondent

Appearance for Appellant:

*Pro Se*  
Marc Savage

Appearance for Human Resources Division:

Melissa Thomson, Esq.  
Human Resources Division  
100 Cambridge Street: Suite 600  
Boston, MA 02114

Appearance for Springfield Fire Department:

Maurice Cahillane, Esq.  
Egan, Flannagan and Cohen, P.C.  
P.O. Box 9035  
Springfield, MA 01107

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

1. On October 15, 2019, the Appellant, Marc Savage (Captain Savage), a Fire Captain in the Springfield Fire Department (SFD), filed an appeal with the Civil Service Commission, regarding a promotional examination for Springfield Deputy Fire Chief, administered on June 18, 2019.
2. On November 13, 2019, I held a pre-hearing conference at the Springfield State Building which was attended by Captain Savage, counsel for the SFD and the City's collective bargaining agent. Counsel for the state's Human Resources Division (HRD) participated via phone.
3. Based on the statements made at the pre-hearing, the following appear to be undisputed:

- A. HRD delegated responsibility to the SFD to administer an assessment center-promotional examination for Deputy Fire Chief.
  - B. The promotional examination was scheduled for, and was indeed held, on June 18, 2019.
  - C. The initial deadline for applying for the promotional examination was June 4, 2019.
  - D. As of June 4<sup>th</sup>, only 3 District Fire Chiefs (next lower title) had signed up for the promotional examination.
  - E. Since less than 4 eligible individuals signed up for the examination, HRD opened the examination up to Fire Captains, the next lower title in succession, with a deadline of June 12, 2019.
  - F. A sufficient number of Fire Captains signed up for the promotional examination and it was held on June 18, 2019.
  - G. Captain Savage did not sign up for or take the promotional examination.
  - H. 2 applicants (a District Fire Chief and a Fire Captain) passed the examination.
  - I. An eligible list for Deputy Fire Chief was established on August 1, 2019.
  - J. As referenced above, Captain Savage, on October 15, 2019, filed an appeal with the Commission, arguing that the administration of the examination was procedurally flawed, as there were only six (6) days between the new filing deadline for the examination and the examination date.
4. As part of the pre-hearing conference, HRD argued that G.L. c. 31, s. 19, which relates to the posting of promotional examinations, does not establish any statutory cut-off date for the posting of the examination, as compared to Section 18, which requires that the examination announcement for original appointment examinations be posted at least three (3) weeks prior to the examination filing deadline.
  5. I informed the parties that there was a threshold issue here regarding whether the Commission has jurisdiction to hear this appeal, both in regard to: a) whether Captain Savage, who did not sign up to take the examination, is an aggrieved person; and b) whether the appeal here is timely.
  6. In regard to the timeliness issue, G.L. c. 31, s. 22 states in relevant part that: “An applicant may request the administrator [HRD] 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.” (emphasis added)
  7. In the alternative, 801 CMR 1.01 (6)(b) states: “Any person with the right to initiate an adjudicatory proceeding may file a notice of claim for an adjudicatory proceeding with the agency within the time prescribed by statute or Agency rule. In the absence of a prescribed time, the notice of claim must be filed within 30 days from the date that the Agency notice of action is sent to a Party.”
  8. I set a briefing schedule and received HRD’s Motion for Summary Decision and Captain Savage’s opposition.

*Analysis / Conclusion*

For the reasons stated in HRD's motion, Captain Savage's appeal is dismissed as it is untimely.

Here, Captain Savage had actual notice of the exam posting at some time between June 5, 2019 (the date of the posting) and June 18, 2019 (the date that the Deputy Fire Chief Examination was conducted).

Even accepting Captain Savage's argument that his appeal is not an examination appeal, but, rather, a non-bypass equity appeal, he failed to file an appeal with the Commission until October 15, 2019, approximately three months after the expiration of the thirty-day appeal period.

For this reason, Captain Savage's appeal under Docket No. E-19-217 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 27, 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 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:

Captain Marc Savage (Appellant)  
Melissa Thomson, Esq. (for Human Resources Division)  
Maurice Cahillane, Esq. (for Springfield Fire Department)