

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KELLY A. SEXTON,
Appellant

C-16-153

v.

DEPARTMENT OF REVENUE,
Respondent

Appearance for Appellant:

Pro Se
Kelly A. Sexton

Appearance for Respondent:

Elisabeth M. Baker, Esq.
Department of Revenue
P.O. Box 9553
Boston, MA 02114-9553

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On November 5, 2014, the Appellant, Kelly Sexton (Ms. Sexton), who is employed by the Department of Revenue's Child Support Enforcement division (DOR/CSE), filed a request with DOR/CSE to be reclassified from Accountant III to Child Support Enforcement Worker C (CSEW C).
2. On April 24, 2015, DOR/CSE denied Mr. Sexton's request for reclassification.
3. On April 29, 2015, Ms. Sexton appealed DOR/CSE's determination to the state's Human Resources Division (HRD).
4. On October 29, 2015, HRD denied Ms. Sexton's appeal and affirmed DOR/CSE's decision to deny her request for reclassification. In the denial letter issued to Ms. Sexton, she was informed of her right to file an appeal with the Civil Service Commission (Commission).
5. On August 25, 2016, the Commission received correspondence from Ms. Sexton stating that she had not received any response to correspondence dated November 2, 2015, which was attached.

6. Upon receiving the correspondence from Ms. Sexton, the Commission's Office Manager contacted Ms. Sexton by phone and informed her that the Commission has not received the correspondence dated November 2, 2015 and/or an appeal form with a \$75 filing fee.
7. On September 16, 2016, the Commission received an appeal form and filing fee from Ms. Sexton.
8. On October 4, 2016, I held a pre-hearing conference at the Offices of the Commission which was attended by Ms. Sexton and counsel for DOR/CSE.

Applicable law and rules

G.L. c. 30, § 49 states in relevant part:

“A manager or an employee of the commonwealth objecting to any provision of the classification affecting the manager or employee's office or position may appeal in writing to the personnel administrator [HRD] ... Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it ...”

On September 2, 1999, the Commission adopted the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.00 (Formal Rules) as its Rules of Practice and Procedure, effective December 1, 1999.

801 CMR 1.01(6)(b) states:

“Claim for Adjudicatory Proceeding

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 frame 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.”

Analysis

There is no prescribed time by statute, regarding the filing of classification appeals with the Commission. Thus, pursuant to 801 CMR 1.01(6)(b), Ms. Sexton had thirty (30) days from the day she received HRD's notice to file an appeal with the Commission. Notice of her appeal rights were contained in HRD's October 29, 2015 letter to Ms. Sexton and the Commission's reclassification appeal form explicitly references the need to file the appeal within thirty (30) days of receipt of the HRD notice.

Although Ms. Sexton stated that she sent correspondence to the Commission in November 2015 seeking to appeal HRD's determination, the Commission has no record of receiving this correspondence. Further, it is undisputed that Ms. Sexton did not forward the required filing fee to the Commission in November 2015.

Rather, the Commission did not receive any notice of appeal from Ms. Sexton until September 16, 2016, approximately eleven (11) months after receiving the HRD determination, well beyond the required thirty (30)-day time period required to file such an appeal.

Conclusion

For this reason, Ms. Sexton's appeal filed under CSC Docket No. C-16-153 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) on October 13, 2016.

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:

Kelly A. Sexton (Appellant)

Elisabeth M. Baker, Esq. (for Respondent)