

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

TIMOTHY SULLIVAN,  
Appellant

v.

B2-21-193

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant:

*Pro Se*  
Timothy Sullivan

Appearance for Respondent:

Alexis Demirjian, Esq.  
Human Resources Division  
100 Cambridge Street: Suite 600  
Boston, MA 02114

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

On October 5, 2021, the Appellant, Timothy Sullivan (Appellant), a police lieutenant with the City of Peabody (City)’s Police Department, filed an examination appeal with the Civil Service Commission (Commission), contesting his education and experience (E&E) score on a recent promotional examination for Police Captain.

On November 16, 2021, I held a remote pre-hearing conference which was attended by the Appellant and counsel for HRD. At the pre-hearing conference, the parties stipulated to the following:

- A. On September 19, 2020, the Appellant took the written portion of a promotional examination for Peabody Police Captain.

- B. The overall examination consisted of an assessment center, a written examination and an education and experience component.
- C. The deadline for completing the E&E portion of the examination was September 26, 2020.
- D. The Appellant completed the E&E module, seeking 2.2 points for his prior experience as a dispatcher in Peabody.
- E. The Appellant did not, however, submit any supporting documentation on or before September 26, 2020, to verify his dates of employment as a dispatcher.
- F. On August 24, 2021, HRD sent a score notice to the Appellant with an E&E score of 87.70 and a total score of 86 (after factoring in the written and assessment components).
- G. Also on August 24, 2021, the Appellant filed an appeal with HRD, contesting HRD's determination to not award him any points for his experience as a police dispatcher as part of the E&E component.
- H. As part of the August 24<sup>th</sup> appeal, the Appellant submitted documentation showing the start date of his time as a dispatcher, but no end date.
- I. After receiving correspondence from HRD that he had provided insufficient information to support his claim for the 2.2 points related to his dispatch service, the Appellant submitted the same documentation to HRD, again with no end date.
- J. On September 13, 2021, HRD sent another score notice to the Appellant denying his appeal due to insufficient documentation.
- K. On October 5, 2021, beyond the 17-day statutory deadline for filing an appeal with the Commission, the Appellant submitted an appeal with the Commission.

L. As part of the Appellant's appeal to the Commission, he submitted documentation from the City's Human Resources Department showing a start date of 2/21/10 and an end date of 1/13/14 as dispatcher, at which time he began as a full-time police officer.

M. If the Appellant were to receive the points he is requesting, his rank on the eligible list would move from 2<sup>nd</sup> to tied for 1<sup>st</sup>.

At the pre-hearing conference, the Appellant did not dispute that he filed his appeal with the Commission beyond the 17-day statutory filing deadline. He candidly acknowledged that he simply overlooked, until he filed his appeal, the language on the bottom of the score notice regarding the filing deadline.

Given the undisputed fact that the Appellant's appeal with the Commission was not timely, I gave him the option of withdrawing his appeal or responding to a motion to dismiss that would be filed by HRD. He chose the latter. HRD subsequently filed a motion to dismiss and the Appellant filed a reply.

#### *Motion to Dismiss Standard*

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "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).

*Applicable Civil Service Law*

Section 2(b) of G.L. c. 31 addresses appeals to the Commission regarding persons 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 ...." It provides, inter alia, "No decision of the administrator involving the application of standards established by law or rule to a fact situation shall be reversed by the commission except upon a finding that such decision was not based upon a preponderance of evidence in the record."

Section 22 of G.L.c.31 states that:

In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held. In any examination, the applicant shall be allowed seven days after the date of such examination to file with the administrator a training and experience sheet and to receive credit for such training and experience as of the time designated by the administrator.

HRD is vested with broad authority to determine the requirements for competitive civil service examinations, including the type and weight given as credit for such training and experience as of the time designated by HRD. G.L. c. 31, § 22(1).

Section 24 of G.L. c. 31 provides that a person may appeal certain HRD actions regarding tests. Specifically:

"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 frame and form and unless a decision on such request for review had been rendered by the administrator. In deciding an appeal pursuant to this section, the commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator."

*Analysis*

It is undisputed that, based on the postmark of the appeal received by the Commission, the Appellant's appeal was not filed within the seventeen (17) days required by Section 24. The Appellant, in his opposition to HRD's Motion to Dismiss, offers the following argument. First, he states that the process for filing an initial appeal with HRD is confusing. Second, he argues that there was a delay in how long it took HRD to respond to his appeal. These arguments are not persuasive. The Appellant's appeal with *HRD* was timely. His appeal to the *Commission* was not. In regard to the time period for filing an appeal with the Commission, the Appellant candidly acknowledged that the 17-day time period was clearly stated on his denial notice from HRD but he overlooked it until he finally filed his appeal with the Commission. Since the Appellant's appeal was received beyond the statutory filing deadline, the Commission lacks jurisdiction to hear his appeal.

Even if the Appellant's appeal with the Commission were timely, which it was not, the Appellant has no reasonable chance of prevailing here. While the Appellant argues that HRD does not specify exactly what supporting documentation is needed to verify his dispatcher experience, the Appellant fails to acknowledge that he did not submit any documentation, at all, at the time that he completed the E&E module of the examination. That notwithstanding, it would be appropriate for HRD to review / update the process for providing non-police officer employment verification as part of the E&E component of an examination. Unlike the employment verification form used for police officer experience, there is no similar form for non-police officer employment (i.e. – dispatcher), which results in uncertainty regarding the type of information that must be submitted (i.e. – start date and end date) and the form in which this information should be submitted.

*Conclusion*

For the above reasons, the Appellant's appeal with the Commission is *dismissed* as it was not filed within the statutory timeframe for filing such an appeal.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 24, 2022.

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:

Timothy Sullivan (Appellant)  
Alexis Demirjian, Esq. (for Respondent)