

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KEVIN SWAN,  
Appellant

v.

B2-15-182

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant:

*Pro Se*  
Kevin Swan

Appearance for Respondent:

Patrick G. Butler, Esq.  
Human Resources Division  
One Ashburton Place: Room 211  
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON MOTION TO DISMISS

On September 3, 2015, the Civil Service Commission (Commission) issued a decision regarding Kevin Swan v. Human Resources Division, CSC Case No. B2-15-100. (Swan I)

The Swan I decision was emailed to Mr. Swan, the Human Resources Division (HRD) and the Boston Police Department (BPD) on September 4, 2015. In Swan I, the Commission denied Mr. Swan’s appeal, concluding that he received the correct education and experience credits for his master’s degree and his prior experience as a police officer in another community.

The Commission’s decision in Swan I included (both in a cover email and at the end of the decision) the standard language regarding appeal rights, stating that either party could file a Motion for Reconsideration with the Commission within ten (10) days of receiving the decision and/or file an appeal in Superior Court within thirty (30) days of receipt of the decision.

Neither party filed a motion for reconsideration or an appeal in Superior Court.

On October 2, 2015, Mr. Swan filed a second appeal with the Commission. (Swan II). In this instant, Swan II appeal, Mr. Swan stated: “Case Ref. B2-15-100, Appellant is refiling an appeal

in accordance with Chpt. 31 Sec 2b. on the grounds of Fairness for the promotional exam given in 2014 by BPD and the scoring weight of E&E by HRD and BPD and that I have been aggrieved by the decision, prejudiced in such a manner as to cause harm to my employment and promotional ability status, in accordance with Basic Merit Principles, Chpt. 31 Sec 1.”

On October 20, 2015, I held a pre-hearing conference, which was attended by Mr. Swan, his representative and counsel for HRD. At the pre-hearing, Mr. Swan stated that he was now seeking a “fair test appeal”. However, when I asked Mr. Swan what, specifically, he was appealing, he stated that he should receive more credit for his time as a Lexington and Milton police officer, an issue that was already addressed in Swan I. Regardless, there is no dispute that Mr. Swan did not file this “fair test appeal” with HRD.

Per agreement of the parties, HRD had two (2) weeks from the date of the pre-hearing conference to file a Motion to Dismiss the Swan II appeal and Mr. Swan had two (2) weeks thereafter to file a reply. HRD filed a Motion to Dismiss and I sent a reminder notice to Mr. Swan regarding the deadline to file a reply. Mr. Swan did not file a reply.

#### *Applicable Law*

Pursuant to G.L. c. 31, § 22 and O’Neill v. Civ. Serv. Comm’n and HRD, Middlesex Sup. Crt. No. 09-0391 (2009), a “fair test appeal” must be filed with HRD within seven (7) days of receiving the examination results.

Pursuant to G.L. c. 31, §24, “The Commission shall refuse to accept any petition for [examination] appeal[s] 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 [HRD].”

#### *Analysis*

Based on the undisputed facts, Mr. Swan failed to file a timely “fair test appeal” with HRD. Therefore, the Commission has no jurisdiction to hear this appeal.

#### *Conclusion*

HRD’s Motion to Dismiss is allowed and Mr. Swan’s appeal under Docket No. B2-15-182 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman  
Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 10, 2015.

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 to:

Benjamin Swan (Appellant)

Patrick Butler, Esq. (for Respondent)

Nicole Taub, Esq. (Boston Police Department)