

COMMONWEALTH OF MASSACHUSETTS

Civil Service Commission

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

FRANCIS TOUCHETTE,

Appellant

v.

DEPARTMENT OF CORRECTION,

Respondent

Docket Number:

G1-25-002

Appearance for Appellant:

Francis Touchette

Pro Se

Appearance for Respondent:

Eamonn M. Sullivan, Esq.

Department of Correction

50 Maple Street, 1st Floor

Milford, MA 01757

Commissioner:

Angela C. McConney¹

SUMMARY OF DECISION

The Commission dismissed the bypass appeal for lack of jurisdiction because the Appellant failed to file it within 60 days of receiving the reasons for bypass from the Department of Correction and there was no good cause that would warrant tolling the filing deadline.

DECISION

On January 1, 2025, the Appellant, Francis Touchette, pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) the October 3, 2024 decision of the Department of Correction (Department or DOC) to bypass him for appointment to the position of permanent full-time Correction Officer I.

¹ The Commission acknowledges the assistance of law clerk Chanel Palmer in the drafting of this decision.

The Commission conducted a remote pre-hearing conference on January 28, 2025 and scheduled an in-person full evidentiary hearing for July 9, 2025 at the offices of the Commission, located at 100 Cambridge Street, Boston MA.² The hearing was recorded via Webex.³ The Appellant did not submit a post hearing brief. The Department submitted a post hearing brief in August 2025, whereupon the administrative record closed.

Commission Jurisdiction to hear the Matter

On the day of the evidentiary hearing, the Department filed a Motion to Dismiss, stating that Mr. Touchette had failed to appeal to Commission within 60 days. 801 C.M.R. §1.01(4), 801 C.M.R. §1.01(7)(g)(3)⁴ The filing deadline is jurisdictional – that is, it limits the jurisdiction of the Commission to hear the appeal. G.L. c. 31, §2(b). The jurisdiction issue may not be waived by a party.

When I questioned the parties, the Department said that in addition to mailing Mr. Touchette the October 3, 2024 bypass letter via USPS first class mail, it emailed Mr. Touchette the bypass letter on October 8, 2024. That email was not in the administrative record. Mr. Touchette could not recall when he had received the bypass letter, but argued that he had had to call the Department in order to get a copy. I advised that parties that the evidentiary hearing

² The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ The Commission provided a link to the parties. Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

⁴ Parties may file an appeal on the Commission's online portal, mail or hand-deliver the appeal form to the Commission's offices within sixty (60) calendar days of receiving the notification of bypass. For appeals sent via mail, the Commission uses the postmark date to determine if the appeal is timely. [File an appeal with the Civil Service Commission | Mass.gov](#)

would proceed, that I would leave the record open in order for the Department to submit the email.

Undisputed Facts

The following is undisputed:

1. Francis Touchette (Appellant or Mr. Touchette) is a high school graduate with a background in construction.
2. Mr. Touchette took the civil service exam for the position of Correction Officer I (CO I) on January 20, 2024. (Stipulated Facts)
3. On March 15, 2024, the state's Human Resources Division (HRD) issued Certification No. 09829 to the Department. The Appellant was ranked 44th among those willing to accept appointment. (Stipulated Facts)
4. Mr. Touchette completed the Department's Application for Employment on April 19, 2024. (R. Exhibit 3)
5. W. Jason J. Patterson has an eighteen-year tenure in the Department, and is an investigator in the Department's Office of Investigative Services (OIS). He was assigned to conduct Mr. Touchette's background investigation. (R. Exhibit 5; Testimony of Patterson)
6. Mr. Patterson conducted a background investigation including Mr. Touchette's criminal history, driving history, past school discipline, employment history/discipline, professional and personal references, financial records, and Mr. Touchette's completed application form. (R. Exhibit 5; Testimony of Patterson)
7. Mr. Patterson submitted his findings in a June 5, 2024 report to the Department's Human Resources Department. Mr. Patterson noted that Mr. Touchette had negative police contact. (R. Exhibit 5)

8. After a review of Mr. Patterson's report, the Department decided to bypass Mr. Touchette. (Stipulated Facts; R. Exhibit 2)

9. The Department selected thirty-nine candidates for appointment, ten of them ranked below Mr. Touchette. On August 6, 2024, Patricia Snow informed Mr. Touchette that he had failed the background investigation of the hiring process. (R. Exhibit 7)

10. Cheryl A. Van Scyoc, the Department's Executive Director of Human Resources, informed Mr. Touchette of the Department's decision in an October 3, 2024 letter, enclosing his appeal rights. (R. Exhibit 2)

11. As reasons for bypass, the letter cited Mr. Touchette's failed background check, specifically 11 instances of negative police contact. (R. Exhibit 2)

12. On October 8, 2024, the Department's Division of Human Resources also emailed Mr. Touchette the bypass letter. (R. Exhibit 8)

13. Mr. Touchette filed an appeal with the Commission on January 1, 2025. (R. Exhibit 1)

Rule Regarding Dismissal for Lack of Jurisdiction

The Presiding Officer may at any time, on her own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided. 801 C.M.R. §1.01 (7)(g)(3).

Analysis

The Commonwealth's Standard Adjudicatory Rules of Practice and Procedure, specifically the provision codified at 801 C.M.R. §1.01 (6)(b), provides that:

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.

(emphasis added)

More than two decades ago, the Commission adopted by rule a Bypass Appeal Statute of Limitations that allows bypassed candidates to file an appeal with the Commission up to 60 days “from receipt of ... notice” of the bypass reasons. *Mel v. Boston Police Dep’t*, 37 MCSR 33 (2024). At the prehearing conference, Mr. Touchette asserted that the Department only provided him with written notification of his bypass and his appeal rights after he repeatedly inquired about his status. The Department agreed that it had provided Mr. Touchette with notification of his bypass and his appeal rights on at least two occasions - by United States first class mail and by email - but could not provide the date of the email notification.

The Department submitted the October 8, 2024 email and the attached October 3, 2024 bypass letter on July 9, 2025. I admitted the email and attached bypass letter as R. Exhibit 8.

Even if I gave Mr. Touchette the benefit of the doubt that he never received the bypass letter by mail, I conclude that the Department sent Mr. Touchette proper notification of the October 3, 2024 bypass attached to the October 8, 2024 email. Further, the bypass letter advised Mr. Touchette of the right to appeal the Department’s decision to the Commission within 60 days of receipt of the notice. (R. Exhibit 2) At that point, the Department had taken *all* steps necessary to make Mr. Touchette aware of the Department’s bypass decision. Even if Mr. Touchette chose not to open the email, that does not change the fact that he was placed upon notice of the bypass decision upon receiving that email. *Mel*, 37 MCSR 33 (2024).

In spite of the proper notification, Mr. Touchette appealed the Department's decision on January 1, 2025, twenty-three days after the required sixty-day time limit. Thus, this matter is not properly before this tribunal.

Mr. Touchette credibly testified that his life was in a tailspin due to his recent family dysfunction and frequent court appearances. He admitted that he made mistakes, but that his overarching concern has always been for the welfare of his family: he seeks the position of CO I in order to provide stability and a future for his young family.

Notwithstanding the lack of jurisdiction, Mr. Touchette asks the Commission to examine the merits of the appeal. While I am sympathetic to Mr. Touchette's family situation at the time, that alone does not constitute good cause for tolling the filing deadline here, particularly given the relatively generous period of time allotted to file an appeal as well as that appeals can now be filed online with the Commission at any hour.

Even if I were inclined to grant Mr. Touchette's request to consider the appeal, the Commission lacks the authority to provide an equitable remedy that contradicts statutory language. *See Petrillo v. Public Emp. Retirement Admin.*, Docket No. CR-92-731 (Mass. Div. of Admin. Law Appeals, Feb. 15, 1993) *aff'd* (Contributory Retirement App. Bd., Oct. 22, 1993).

CONCLUSION

The appeal filed by Francis Touchette is jurisdictionally defective as untimely filed. Accordingly, the appeal filed under Docket Number G1-25-002 is hereby *dismissed*.

Civil Service Commission

/s/ Angela C. McConney
Angela C. McConney
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on October 16, 2025.

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 C.M.R. § 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:

Francis Touchette (Appellant)

Eamonn Sullivan, Esq. (for Respondent)