

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

**EMMA EVANS-
HOWARD,**

Appellant

v.

**DEPARTMENT OF
CORRECTION,**

Respondent

Case No.: D1-12-296

ORDER OF DISMISSAL

On August 8, 2012, Emma Evans-Howard (Ms. Evans-Howard), an employee with civil service permanency, received notice that her employment with the Department of Correction (DOC) was terminated. (DOC had previously conducted a hearing on May 23, 2012.)

On October 30, 2012, almost three months after receiving her notice of termination, Ms. Evans-Howard filed an appeal with the Commission, contesting her termination.

G.L. c. 31, § 43 states in relevant part that:

“If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission ...

Saturdays, Sundays and legal holidays shall not be counted in the computation of any period of time specified in this section.”

When “a remedy has been created by statute and the time within which it must be pursued is one of the prescribed conditions under which it can be availed of, the [commission] has no jurisdiction to entertain proceedings for relief begun at a later time.” Falmouth v. Civil Serv. Comm’n, 64 Mass. App. Ct. 606 (2005) citing Cheney v. Assessors of Dover, 205, Mass. 501, 503 (1910).

Since Ms. Evans-Howard did not file an appeal within the statutory filing deadline of ten business days from the date she received the notice of termination, the Commission has no jurisdiction to hear this appeal.

For this reasons, Ms. Evans-Howard’s appeal under Docket No. D1-12-296 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on January 10, 2013.

A True Record. Attest:

Commissioner

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)(1), 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.

Notice to:

Emma Evans-Howard (Appellant)

Amy Hughes, Esq. (for Respondent)