

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**VICTOR A. MEDEIROS AND
FRANCIS J. POLLOCK, Jr.**
Appellants

v.

G1-06-300
G1-06-301

**DEPARTMENT OF MENTAL
RETARDATION,**
Respondent

Appellant's Attorney:

Jaime DiPaola-Kenny, Esq.
Associate General Counsel
AFSCME Council 93
8 Beacon Street
Boston, Ma M02108

Respondent's Attorney:

Robert J. Smith, Esq.
EOHHS/DMR
500 Harrison Avenue
Boston, MA 02118

Commissioner:

John J. Guerin, Jr.

**DECISION ON RESPONDENT'S MOTION FOR SUMMARY
DECISION**

On November 14, 2006, the Appellants, (hereafter "Medeiros", "Pollock" or "Appellants") appealed the decision of the Respondent, the Department of Mental Retardation (hereafter "Respondent" or "Department") as Appointing Authority, claiming that they were bypassed for promotion and seeking relief pursuant to G.L. c. 31, § 2(b). The cases were consolidated without objection. A pre-hearing conference was conducted

at the offices of the Civil Services Commission on February 22, 2007. On that day, the Department submitted a Motion for Summary Decision. On May 9, 2007, the Appellants submitted an Opposition to the Motion for Summary Decision and requested that the Commission schedule a full hearing on the merits of the appeals.

Factual Background

The Appellants are employed by the Department as Mental Retardation Workers III (“MRW III”). Appellant Medeiros was first appointed as an MRW III on June 22, 1986 and was granted temporary-after-certification status on December 3, 1989. He subsequently received permanent status as an MRW III on September 22, 1996 through the Human Resources Division (“HRD”) bestowing such status on all temporary-after-certification employees. His permanency date is December 3, 1989.

Both Appellants took and passed the Department promotional Mental Retardation Worker IV (“MRW IV”) examination on June 24, 1989.¹ Neither received a promotion from this list, which expired on June 30, 1997. There is no effective MRW IV list currently in existence.

In or around April 2006, a MRW IV position was posted. The posting stated that the position was a Civil Service position. The Appellants applied for the position and were interviewed by the Selection Committee. On or about July 19, 2006, the Department selected a MRW III to fill the position on a provisional basis. The applicant

¹ Appellant Pollock contends that he is a permanent employee after successful completion of this examination. According to the Department, Appellant Pollock was first appointed as an MRW III on April 26, 1987 and has continually held this position on a provisional basis. It is not necessary to rule on this issue for the resolution of this appeal.

selected had been employed as a MRW III since October 29, 1989. She did not have permanent employment status nor had she taken a relevant Civil Service examination.

The Appellants were informed by the Respondent that they were not selected and that the applicant had been selected because she scored higher on the interview questions. Appellant Medeiros was also informed that he was not selected based on education and training. Appellant Pollock was informed that he was also not selected based on work performance in the same or related work, other work history and seniority. His non-selection form stated: "Review of applicant's work history noted various disciplinary actions. Applicant hired performance appraisals were also rated higher than Mr. Pollock's."

According to the "Non-Selection Forms" attached to the Appellants' Pre-Hearing Memorandum submitted for these appeals, the Appellants first learned of the instant personnel action on July 19, 2006. The Appellants filed their appeals on November 14, 2006.

On June 8, 2000, the Commission adopted a Statute of Limitations requiring a bypass appeal to be filed with the Commission within sixty (60) days of receipt of the bypass notice (non-selection forms). This amendment took full force and effect on October 1, 2000. The time for filing these bypass appeals is considered by the Commission as tolled beginning on the date of July 19, 2006. The Commission acknowledged the filing of these bypass appeals on November 14, 2006, *117 days* after the alleged bypass.

The Statute of Limitations allowing sixty (60) days for filing of the appeals had expired and the appeals, therefore, were not timely filed. Pursuant to 801 CMR 1.01 s.

7(g), I find that the appeals are time-barred. Therefore, the appeals on Docket Nos. G1-06-300 and G1-06-301 are hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Taylor, Guerin and Marquis, Commissioners) on August 23, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Jamie DiPaola-Kenny, Esq.

Robert James Smith, Esq.