

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RANDY AZZATO,
Appellant

H-14-282

v.

DEPARTMENT OF CORRECTION &
HUMAN RESOURCES DIVISION,
Respondents

Appearance for Appellant:

Pro Se
Randy Azzato

Appearance for Human Resources Division:

Michael Downey, Esq.
Human Resources Division
One Ashburton Place
Boston, MA 02108

Appearance for Department of Correction:

Joseph S. Santoro
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On November 28, 2014, the Appellant, Randy Azzato (Mr. Azzato), a Program Manager VI (M6) at the Department of Correction (DOC), pursuant to G.L. c. 30, § 53, filed an appeal with the Civil Service Commission (Commission) related to the alleged inaction of the state’s Human Resources Division (HRD).

In his appeal to the Commission, Mr. Azzato stated: “I wish to challenge my classification, hours of employment, vacation leave, sick leave, overtime, pay, and other matters relating to conditions of employment per DOC policy and Massachusetts General Laws.” Further, Mr. Azzato stated in his appeal that: “For over one year, I have asked for assistance and/or a hearing from [HRD]. To date, no assistance has been offered. I now, respectfully and formally, request to invoke my rights under Massachusetts General Law and request the assistance of the Massachusetts Civil Service Commission.” Mr. Azzato attached several documents to his appeal including a letter to HRD dated October 30, 2013 related to a “salary collision” request.

On December 16, 2014, I held a pre-hearing conference which was attended by Mr. Azzato, counsel for HRD and a representative from DOC.

Based on the statements of the parties and the documents submitted, it appears that the only formal request that Mr. Azzato made to HRD was related to the issue of “salary collision” and, according to Mr. Azzato, he made that request on October 30, 2013, over one year ago.

G.L. c. 30, § 53 states:

“The personnel administrator shall make and from time to time may amend, subject to the approval of the commissioner of administration, rules and regulations providing informal procedure for the prompt disposition of any grievance of any employee of the commonwealth, or of any group of such employees employed by the same appointing authority, relating to classification, hours of employment, vacations, sick leave or other forms of leaves of absence, overtime, and other matters relating to conditions of employment. No such grievance shall be so disposed of if the disposition thereof is within the jurisdiction of the contributory retirement appeal board. Such rules and regulations shall provide the procedure to be followed by an employee or by a group of employees employed by the same appointing authority in bringing an alleged grievance before the appointing authority. An aggrieved party may appeal in writing from the finding of the appointing authority to the personnel administrator and shall be entitled to a hearing upon such appeal. If the appointing authority fails to make a finding within fifteen days of the hearing, the aggrieved party may appeal to said administrator in like manner. Said administrator shall grant a hearing to the aggrieved party within fifteen days of the receipt of such appeal, and shall make a decision thereon not later than fifteen days after the close of the hearing. If either the appellant or the appointing authority is aggrieved by a decision of the administrator, said appellant or appointing authority may appeal to the civil service commission established under section fifty-four, but said appeal shall be taken not later than ten days after the mailing of said decision to the appellant or the appointing authority. If the administrator fails to grant a hearing or having granted a hearing fails to make a decision within the above prescribed time, the aggrieved party may appeal to said commission, but said appeal shall, *in the event no hearing was granted, be taken not later than twenty-five days after the date of his appeal to the administrator,* and, in the event that no decision was made, not later than twenty-five days after the hearing was closed.”

The decision of the administrator shall be final and shall be binding on all agents and agencies of the commonwealth, subject to the provisions contained in section fifty-seven, unless an appeal therefrom is made to the civil service commission as hereinbefore provided.

No appeal shall be allowed at any stage of the proceedings unless there is a compliance with the provisions of this section and with the rules and regulations established by the personnel administrator.

The provisions of this section shall not apply to any employee whose position is included in a collective bargaining unit represented by an employee organization with a collective bargaining agreement that has been reached in accordance with the provisions of section seven of chapter one hundred and fifty E and that includes any of the conditions of employment.”

As referenced above, Section 53 clearly requires that the aggrieved employee must take several steps including, but not limited to: filing an appeal with the Appointing Authority and, if unsuccessful at that level, filing an appeal with HRD. Only after these actions have been taken can the aggrieved employee file an appeal with the Commission.

In those cases where the employee was not granted a hearing by HRD, the aggrieved person must file an appeal with the Commission “not later than twenty-five days after the date of his appeal to the administrator.” According to Mr. Azzato, he filed his appeal with HRD on October 30, 2013. Thus, to be timely, his appeal to the Commission must have been filed on or before November 25, 2013 (accounting for the twenty-fifth day being a Sunday).

Since Mr. Azzato did not file his appeal with the Commission until November 28, 2014, his appeal is untimely by over one year. Further, it is unclear if Mr. Azzato first filed an appropriate appeal with DOC.

For this reason, Mr. Azzato’s appeal under Docket No. H-14-282 is hereby *dismissed*.¹

Civil Service Commission
/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on January 8, 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.

Notice:

Randy Azzato (Appellant)
Joseph Santoro (for DOC)
Michael Downey, Esq. (for HRD)

¹ As referenced at the pre-hearing conference, this dismissal does not prevent Mr. Azzato, at this point, from filing (or re-filing) appeals with DOC and, if necessary, HRD and the Commission in compliance with the all of the procedural requirements of Section 53. Further, I advised Mr. Azzato to review the information on HRD’s website, including, but not limited to, the “Salary Administration Rules for Managers, Confidential and Unclassified Employees”, formerly known as the “Gray Book” as well as the “Salary Collision Request” form. If and when Mr. Azzato files a timely appeal and request for hearing with HRD, the Commission trusts that HRD will conduct a timely hearing.