

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

THOMAS F. DOWD,
Appellant

G-02-176
G-01-1390

v.

REGISTRY OF MOTOR VEHICLES
& MERIT RATING BOARD,
Respondent

Appellant's Attorney:

Pro Se
Thomas F. Dowd
10 Dudley Street
Walpole, MA 02081

Registry of Motor Vehicles Attorney:

Jean Berke, Esq.
Registry of Motor Vehicles
10 Park Place: 3rd Floor
Boston, MA 02116

Merit Rating Board Attorney:

Susan Prosnitz, Esq.
Executive Office of Public Safety
One Ashburton Place: 21st Floor
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Thomas F. Dowd (hereafter "Dowd" or Appellant") appealed the decision of the Respondents, the Registry of Motor Vehicles and the Merit Rating Board (hereafter "Appointing Authorities", or "RMV" or "Rating Board"), bypassing him for original appointment to the position of EDP Entry Operator II. Both the RMV (on August 29, 2001) and the Rating Board (on

December 5, 2001), which are now under two separate Secretariats within state government, bypassed the Appellant for the same reason – two open felony cases.

A pre-hearing conference was conducted at the offices of the Civil Service Commission on August 9, 2002. On October 17, 2003, RMV filed a Motion to Dismiss with the Commission on the grounds that the issues presented in this matter have already been litigated and decided in favor of the Appointing Authority in at least two other cases. (Dowd v. RMV, Docket No. G-01-1243 (2002) and Dowd v. RMV, Docket No. G-01-1349 (2002))

On November 14, 2003, the pro se Appellant filed an Answer to the Motion to Dismiss in which he included a copy of the Attorney General's nolle prosequi and a subsequent disposal of his felony case in the Middlesex Superior Court on June 7, 2001. The Appellant did not provide any information regarding his other felony case from Suffolk Superior Court. (The December 23, 1999 nolle prosequi request to the Middlesex Superior Court from the Attorney General's office states, "as reasons for this action, the Commonwealth submits that it is in the interest of justice, taking into consideration the defendant's age and the fact that it has been confirmed that the defendant suffers from terminal cancer.")

On December 1, 2003, RMV submitted a Reply to the Appellant's Opposition arguing that his response was untimely. More substantively, RMV argued that even if both felony cases have been dismissed, the Respondent had sound and sufficient reasons, based on the information it had at the time of its decision, for bypassing the Appellant. RMV indicated that it relied on the information provided to it by the Massachusetts Criminal History Systems Board, which revealed that the Appellant had two open felony

cases, including a perjury charge in Suffolk Superior Court and a charge of larceny in Middlesex Superior Court. Further, according to RMV, the Appellant never provided them with certified documentation to dispute the CORI records.

For some reason, this case has languished before the Commission without a final disposition on the Motion to Dismiss. Given the time that elapsed, the Commission opted to schedule a status conference on these two related cases on September 6, 2006 at 9:30 A.M. prior to issuing a final decision. All parties, including the Appellant were sent a notice regarding the status conference more than thirty (30) days prior to the September 6, 2006 status conference. Counsel for RMV (now located within the Executive Office of Transportation) and counsel for the Merit Rating Board (still within the Executive Office of Public Safety) appeared --with counsel for the Merit Rating Board filing a motion to join the now separate RMV in its Motion to Dismiss. The Motion to Join was subsequently allowed by the Commission. Counsel for HRD was also present at the September 6, 2006 status conference. The Appellant failed to show for this September 6, 2006 status conference and was sent an Order to Show Cause why his appeals should not be dismissed for want of prosecution. On September 14, 2006, the Appellant sent a letter to the Commission stating, "Your statement that the hearing scheduled for September 6, 2006 at 9:30 a.m. is contrary to my calendar. My oncologist...has written a letter stating that I was unable to attend the September 6, 2006 hearing and would be unable to attend the September 15, 2006 at 9:30 A.M. hearing."

The Appellant's request to schedule another status conference was allowed and was scheduled for November 17, 2006 at 10:30 A.M. All parties, including the Appellant were given written notice of the new status conference more than thirty (30) days in

advance. On November 17, 2006, counsel for RMV, the Merit Rating Board and HRD again appeared for the status conference. Once again, the Appellant failed to appear. This Commissioner conducted a brief, tape-recorded status conference with the parties present in order to clarify certain issues, including whether or not either Appointing Authority had ever been provided with evidence that the Appellant's felony case in Suffolk Superior Court had been dismissed. Counsel for both RMV and the Merit Rating Board indicated that they had not received any additional information from the Appellant in this regard. Counsel for both the Merit Rating Board argued that their decision to bypass the Appellant would not have changed even if they had been aware that 1 of 2 felony cases had been dismissed. Further, counsel for the Merit Rating Board was not willing to concede that a different conclusion would have been reached even if both cases had been dismissed.

By failing to attend two status conferences regarding his appeals, the Appellant has failed to prosecute his appeal. Moreover, there is no evidence that the Appellant's felony case in Suffolk Superior Court was dismissed and the Commission has ruled in at least two prior cases involving Mr. Dowd that the Appointing Authorities had reasonable justification to bypass Mr. Dowd as a result of open felony cases.

For these reasons, the Appellant's appeals under Docket Nos. G-01-1390 and G-02-176 are hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners [Goldblatt, Chairperson – Absent]) on November 22, 2006.

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 M.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:

Thomas F. Dowd

Susan Prosnitz, Esq.

Jean Berke, Esq.

Wendy Chu, Esq.