

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

Thomas Yahoub,
Appellant

v.

Docket No. G2-04-363

Town of Milton,
Respondent

Appellant's Representative

Pro-se

Respondent's Representative:

Joseph A. Emerson, Jr., Esq.
33 Whitney Avenue
Westwood, MA 02090

Commissioner:

John E. Taylor

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

The Appellant, Thomas Yahoub, (hereafter "Appellant" or "Yahoub") filed this appeal with the Civil Service Commission on June 17, 2004 claiming that he was bypassed for the position of Junior Custodian in the Milton Public Schools by the Respondent, Town of Milton (the "Town"), as Appointing Authority, between 1995 and 1999. The Appellant was appointed to the position of Junior Custodian in the Milton School Department on August 30, 1999. At the pre-hearing conference, the Respondent filed a Motion to Dismiss based on a lack of jurisdiction pursuant to 801 CMR 1.01(7) (g) (3). Following the pre-hearing held at the offices of the Civil Service Commission

on July 11, 2007, the Commissioner allowed the Appellant 30 days to respond to the Respondent's Motion to Dismiss. On August 10, 2007, the Appellant submitted an opposition to the Respondent's motion.

Factual Background

The Appellant was placed on the eligibility list in 1995 and was appointed to the position of Junior Custodian in the Milton School Department on August 30, 1999. He asserts that during the period between spring of 1995 and August of 1999, other Junior Custodian positions were filled by the Appointing Authority. These positions were filled by non-veterans and/or by people who did not come from a certified list. Yahoub is a disabled veteran and he had submitted the appropriate documentation as to his disabled veteran's status when he sat for the examination. The Appellant was qualified for and willing to accept such appointment from spring of 1995 through August of 1999. He was never contacted by the Appointing Authority to see if he was ready and willing to accept an appointment from spring of 1995 until his 1999 appointment. Yahoub requests the Commission accept jurisdiction, make findings of fact and rulings of law, and provide such remedy as is in its power, including but not limited to an order for back pay, all other monetary damages, interest and reasonable attorney's fees. On December 28, 2004, the Appellant initiated physical contact with his supervisor for which he was dismissed. The Commission, in its decision in that case (D-05-91) dated February 9, 2007, determined that the Appointing Authority sustained its burden of proving reasonable justification for the termination of the Appellant.

Respondent's Grounds for Dismissal

The Respondent asks the Commission to dismiss the Appellant's appeal as he has not provided any allegation of any decision, action or failure to act on the part of the administrator which would provide a basis for his appeal. The Respondent contends that the present appeal does not fall within the jurisdiction of the Commission.

The Commission may dismiss a matter on the motion of a party for, among other circumstances the "lack of jurisdiction to decide the matter." 801 CMR 1.01 (7) (g) (3). In the present case, since the Appellant has been properly dismissed from his position as a school custodian, the issue of whether he was bypassed or not is moot and the remedy requested, to receive the appointment retroactively, is impossible for the Commission to grant. In addition, since the Appellant is no longer an employee of the Appointing Authority, the Commission lacks jurisdiction to hear the appeal.

Conclusion

Based on the above, the Commission does not have jurisdiction in the matter.

Respondent's Motion to Dismiss is allowed and the Appellant's appeal filed under Docket G2-04-363 is hereby ***dismissed***.

Civil Service Commission

John E. Taylor
Commissioner

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

A true copy. 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 MGL c. 30A s. 14(1) for the purpose of tolling the time of appeal.

Pursuant to MGL c. 31 s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under MGL c. 30A s. 14 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 to:

Thomas Yahoub
Joseph A. Emerson, Jr., Esq.
Kerry Bonner, Esq. HRD