

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

ANNA KINYON,

Appellant

CASE NO. C-18-138

v.

DEPARTMENT OF PUBLIC HEALTH,

Respondent

Appearance for Appellant:

Anna Kinyon, Pro Se

Appearance for Respondent:

David A. Markowitz, Esq.
Deputy General Counsel
Department of Public Health
250 Washington Street – 2nd Floor
Boston, MA 02108

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT’S MOTION TO DISMISS

The Appellant, Anna Kinyon, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.30, §49, from the decision of the Massachusetts Human Resources Division (HRD) dated June 6, 2018, that HRD concurred with the determination that her position with the Department of Public Health (DPH) was correctly classified in the title of Registered Nurse IV and denied her request for reclassification to the title of Registered Nurse V. The Commission held a pre-hearing conference on August 28, 2018 at which time the DPH moved to dismiss the appeal for lack of jurisdiction as it was untimely filed with the Commission. The Appellant did not appear at the pre-hearing conference. By Procedural Order dated August 29, 2018, the Appellant was provided an opportunity to file an opposition to the Motion to Dismiss on or before September 6, 2018, but declined to do so.

FINDINGS OF FACT

Based on the submissions of the parties, I find the following material facts are not disputed:

1. The Appellant, Anna Kinyon, is employed as a Registered Nurse IV at the Tewksbury Hospital within the Department of Public Health (DPH). (*Claim of Appeal; Motion to Dismiss*)

2. On or about June 6, 2018, Ms. Kinyon received a letter of that date from HRD informing her that HRD had reviewed her request for reclassification and had determined that she was properly classified as a Nurse IV and denied her request for reclassification to the higher title of Nurse V. (*Claim of Appeal; Motion to Dismiss*)

3. On August 2, 2018, the Commission received Ms. Kinyon's appeal from HRD's June 8, 2018 decision, which appeal was dated July 30, 2018 and mailed to the Commission with a postmark dated July 31, 2018. (*Claim of Appeal; Motion to Dismiss*)

4. HRD's June 6, 2018 letter, among other things, specifically notified Ms. Kinyon of her right to appeal to the Commission and noted that the Commission's form for filing a reclassification appeal should be used and that "CSC filing requirements are indicated on the reclassification form, so it is important that you obtain a copy of this form before filing your appeal." (*Claim of Appeal*)

5. The Commission's reclassification appeal form states, in boldface type, that the appeal form must be delivered to the Commission or mailed with a postmark dated "**within thirty (30) calendar days of receiving the denial letter from HRD.**" (*Claim of Appeal*)

Analysis

The undisputed facts, viewed in a light most favorable to Ms. Kinyon, establish that she was informed of HRD's denial of her reclassification request on June 8, 2018. Her appeal was filed on July 31, 2016. Pursuant to the Commission's rules, and as stated on the Commission's

reclassification appeal form, a reclassification appeal to the Commission must be filed within 30 days of the receipt of notice of the action of HRD. 801 C.M.R. 1.01(6)(b). Thus, Ms. Kinyon's appeal here was filed more than 24 days late.

The period within which a candidate must appeal to the Commission after receipt of notice of the "action or inaction" that the candidate contends was an unlawful violation of his or her civil service rights is a jurisdictional matter that the Commission has strictly enforced. See, e.g., Kelley v. City of Boston Fire Dep't, 29 MCSR 176 (2016); Armano v. City of Lawrence, 28 MCSR 599 (2015); Lane v. Newbury Police Dep't, 28 MCSR 587 (2015); Walker v. City of New Bedford, 26 MCSR 398 (2013); Allen v. Taunton Public Schools, 26 MCSR 376 (2013); Mercedes v. Springfield Housing Auth., 26 MCSR 16 (2013); Pugsley v. City of Boston, 24 MCSR 544 (2011); Murzin v. City of Westfield, 24 MCSR 610 (2011); Kearney v. Department of Conservation and Recreation, CSC No. G2-09-324 (2010) (unpublished).

CONCLUSION

In sum, for the reasons stated herein, the Commission lacks jurisdiction to hear this appeal.

The Motion to Dismiss is hereby ***granted*** and the appeal of Anna Kinyon, is ***dismissed***.

Civil Service Commission
/s/Paul M. Stein
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 8, 2018.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Anna Kinyon (Appellant)

David A. Markowitz, Esq. (for Respondent)

John Marra, Esq. (HRD)