

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

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

Robert A. Conklin,
Appellant

v.

G1-06-230

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

Pro Se
Robert A. Conklin
1377 Perron Avenue
Somerset, MA 02726

Respondent's Attorney:

Richard Greene
Department of Correction
Deputy Director
Division of Human Resources

Commissioner:

John E. Taylor

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Robert A. Conklin (hereinafter "Conklin" or "Appellant"), appeals the June 30, 2006 decision of the Department of Corrections (hereinafter "DOC") denying his request for appointment as a Correctional Officer I

(Certification Number 4050031, Dated 05/31/06). The appeal was filed on September 14, 2006, more than sixty (60) days later.

A hearing was held on at the offices of the Civil Service Commission (hereinafter "Commission") on February 5, 2008. One tape was made of the hearing. Nine exhibits were entered into evidence.

FINDINGS OF FACT:

Based on the nine (9) exhibits entered into evidence, the testimony of Richard Greene, Deputy Director, Department of Corrections Division of Human Resources, and the testimony of the Appellant, I make the following findings of fact:

1. The Appellant Robert A. Conklin, D.O.B 11/11/79 took the civil service examination for the position of Correction Officer I with the DOC. He scored an 83 on the examination and was placed on certification list No. 4050031 dated May 31, 2006. (Exhibit 1)
2. In June of 2006, the Appellant was notified to report to the DOC for a pre-screening process applicable to all candidates for the position of Correction Officer I.
3. As part of this pre-screening process the Appellant executed a written waiver on June 17, 2006 allowing the DOC to perform a Criminal Offender Record Information (CORI) background check. (Exhibit 2)
4. On June 26, 2006, the DOC received the results of the CORI check that revealed that Mr. Conklin had a number of Court appearances, in various Courts covering periods from 1997 to 2003. The number of Court appearances in various Courts were all dismissed. (Exhibit 3)
5. On June 30, 2006, the Appellant received written notification that he was being bypassed for the position as a Correction Officer I on the grounds that his background investigation revealed an unsatisfactory criminal history record. (Exhibit 4)

6. Pursuant to M.G.L. c.32 §2(b), the Appellant filed an appeal of this action which was received by the Commission on September 14, 2006. (Exhibit 5)
7. On January 11, 2007, the Respondent filed a Motion for Summary Decision, with the Civil Service Commission. On April 2, 2007, this Motion for Summary Decision was denied, at that time, by the Commission. (Exhibit 6)

CONCLUSION AND FINDINGS:

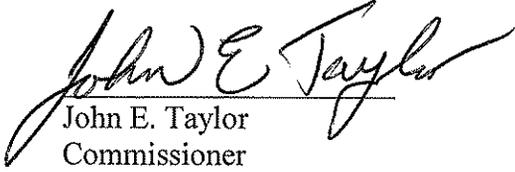
The Appellant has appealed this action to the Commission stating that the Appointing Authority lacked a reasonable justification for considering his arrest record contained in Appellant's CORI report. The Appellant states that since his criminal record lists only arrests - but no convictions - the Appointing Authority should be precluded from considering said record in determining whether to appoint the Appellant.

The Appellant's appeal presents a timeliness problem. The Appointing Authority notified the Appellant of their decision to bypass him on June 30, 2006. The Appellant's appeal was received by the Commission on September 14, 2006 (Exhibit 5), more than sixty (60) days later. The Bypass Statute of Limitations adopted by the Civil Service Commission on June 8, 2000, states that an appeal to the Commission for a bypass must be received by the Commission within sixty days.

.After consideration of all of the testimony and evidence in the record, this Commissioner finds that, the Appellant's appeal was not filed in a timely manner.

Therefore, the appeal under Docket No. G1-06-230 is hereby *dismissed*.

Civil Service Commission


John E. Taylor
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein and Taylor, [Marquis- Absent] Commissioners) on July 24, 2008.

A true record. Attest:


Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. 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.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 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 sent to:

Robert A. Conklin
Richard Greene DOC