

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

CHRISTOPHER CORWIN,
Appellant

v.

D-20-012

BOSTON FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Christopher Corwin

Appearance for Respondent:

Kate M. Kleimola, Esq.
City of Boston
Officer of Labor Relations
Boston City Hall, Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

1. On **January 6, 2020**, the Appellant, Christopher Corwin (Lt. Corwin), a Fire Lieutenant in the Boston Fire Department (BFD), received notice from the BFD that his appeal of his two-tour suspension was denied.
2. G.L. c. 31, s. 42 states in part:

“Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements

3. G.L. c. 31, s. 43 states in part:

“If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission.’

4. Since 2003, the Commission has required a \$50.00 filing fee for disciplinary appeals. (812 CMR 4.00; <http://www.mass.gov/anf/hearings-and-appeals/oversight-agencies/csc/appeal-filing-fees.html>). On August 17, 2006, the Commission issued a “Clarification of Commission Policies”, stating that appeals received without a filing fee would be returned to the Appellant or the attorney who submitted it. (<http://www.mass.gov/anf/hearings-and-appeals/civil-service-appeals-process/filing-your-appeal/clarification-of-commission-policies.html>). See also [Flynn v. Attleboro](#), 23 MCSR 279 (2010) and [McKeon v. City of Quincy](#), 24 MCSR 395 (2011). Further, the Commission’s [appeal form](#) also explicitly states that a filing fee is required.
5. On January 17, 2020, the Commission received a letter from Lt. Corwin, seeking to file a Section 42 (procedural) appeal and a Section 43 (just cause) appeal with the Commission. No filing fee was included nor was there any phone number or email address provided.
6. That same day, on January 17, 2020, the Commission stamped the letter as being an incomplete appeal that required a filing fee and returned it to the Appellant via mail, the only contact information that was available to the Commission.
7. On January 23, 2020, the Commission received an appeal form with a \$50 filing fee from Lt. Corwin which was postmarked **January 22, 2020** – 11 business days after January 6, 2020.
8. On March 10, 2020, I held a pre-hearing conference at the offices of the Commission which was attended by Lt. Corwin and counsel for the BFD.
9. Consistent with an established briefing schedule, BFD filed a motion to dismiss and the Appellant filed a reply.

Analysis / Conclusion

The BFD argues that, since the Appellant did not file an appeal with the required filing fee until January 22, 2020, one day outside the statutory filing deadline under both Section 42 and Section 43, his appeal should be dismissed.

In his reply, the Appellant, for the first time, without any supporting evidence, suggests that the Commission returned his incomplete appeal form to the wrong address, preventing him from mailing the filing fee to the Commission in a timely manner. Even if this unsupported argument is true, it would not change the outcome here. There is ample notice, on the appeal form, and on the Commission’s website, stating that the Commission will not consider an appeal to have been

received unless it is accompanied by the required filing fee. As a courtesy, the Commission, upon receiving an appeal without the required filing fee, takes immediate steps to remind the Appellant of this requirement, using any and all contact information provided by the Appellant. Here, the only contact information provided by the Appellant was a mailing address (i.e. – no phone number, no email address, etc.) which the Commission used to provide the Appellant with a written reminder regarding the need to include a filing fee.

I also considered the other arguments raised in the Appellant’s brief, none of which change the fact that his appeal, with the appropriate filing fee, was not received by the Commission within the statutorily-required ten days from receiving notice from the BFD of its decision to uphold his two-day suspension.

For all of the above reasons, and for all the reasons cited in the BFD’s Motion to Dismiss, the Appellant’s appeal under Docket No. D-20-012 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on April 23, 2020.

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:
Christopher Corwin (Appellant)
Kate M. Kleimola, Esq. (for Respondent)