

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

YVES LORTHE,
Appellant
v.

Case No.: G1-14-214

**HUMAN RESOURCES
DIVISION,**
Respondent

ORDER OF DISMISSAL

On September 9, 2014, the Appellant, Yves Lorthe (Mr. Lorthe), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) that Mr. Lorthe is not a veteran and is not entitled to the veteran preference granted to veterans applying for civil service positions in Massachusetts.

On September 30, 2014, I held a pre-hearing conference which was attended by Mr. Lorthe and counsel for HRD. HRD subsequently filed a Motion to Dismiss and Mr. Lorthe did not file a reply.

According to G.L. 31, § 1, a "veteran" is: "[A]ny person who: (1) comes within the definition of a veteran appearing in the forty-third clause of section seven of chapter four . . ."

G.L. c. 4, § 7, cl. 43rd states, in pertinent part:

"Veteran" shall mean (1) any person, (a) whose last discharge or release from his wartime service as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code or under sections 38, 40 and 41 of chapter 33 for not less than 90 days **active service**, at least 1 day of which was for wartime service; *provided, however, than [sic] any person who so served in wartime and was awarded a service-connected disability or a Purple Heart, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 90 days of active service;* (2) a member of the American Merchant Marine who served in armed conflict between December 7, 1941 and December 31, 1946, and who has received honorable discharges from the United States Coast Guard, Army, or Navy; (3) any person (a) whose last discharge from active service was under honorable conditions, and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States for not less than 180 days active service; provided, however, that any person who so served and was awarded a service-connected disability or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 180 days of active service. . . . (**emphasis added**)

According to G.L. c. 4 § 7, cl. 43, “active service in the armed forces as used in this clause shall **not** include any active duty for training in the army national guard or air national guard or **active duty for training as a reservist in the armed forces** of the United States.”
(Emphasis added)

Here, it is undisputed that Mr. Lorthe serves in the Army *Reserves* and that he was activated for a period of slightly over four months and released from *active duty training*. Mr. Lorthe does not deny that his activation was in the Army Reserves, or that his activation was limited to training. Rather, Mr. Lorthe argues that the law is unfair.

Since Mr. Lorthe’s character of service is excluded from service which would be qualifying for veteran’s status, HRD’s motion to dismiss is allowed and Mr. Lorthe’s appeal under Docket No. G1-14-214 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on January 8, 2015.

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.

Notice to:
Yves Lorthe (Appellant)
Patrick Butler, Esq. (for Respondent)