

Petitioner checked “VIOLATION OF CIVIL SERVICE ACT/RULES” and “OTHER NON-MERIT FACTORS.” *Id.* The appeal request form thereafter requests that the party identify the reasons underlying the appeal, specifically cautioning a party to “ANSWER THE FOLLOWING QUESTIONS AS COMPLETELY AS POSSIBLE. FAILURE TO DO SO MAY RESULT IN DENIAL OF YOUR APPEAL.” *Id.*

In response to the question “[w]hat action(s) occurred which led you to believe you were discriminated against?” Petitioner answered as follows:

The Hazleton Career Link has refused to inform me of job openings in the Career Link, for which I have veterans [sic] preference and could have applied. Career Link refuses to assist me in getting hired into county jobs for which I have veterans [sic] preference.

Id. In response to the question of “[w]here and when did this action occur?” Petitioner stated “Hazleton Career Link over the past several years.” *Id.* Additionally, Petitioner identified Elaine Stalfa, Monica Takach, and Herbert Allen Smith as the parties who discriminated against him, but he did not provide their job titles as requested in this portion of the appeal request form.

The next question asked “[d]o you believe the Civil Service Act and/or Rules were violated? If so, what section(s)?” *Id.* Petitioner responded as follows:

Yes. I believe that every time the Career Link chose not to inform me of a job in the Hazleton Career Link, for which I had veterans [sic] preference, they [sic] violated my veterans [sic] preference. Herbert Allen Smith and Angelo Salvatore were fully aware that I wanted, and still want, a public sector job in Hazleton and Luzerne County.

Id. Finally, the appeal request form asked Petitioner to provide any other information which he believed to be relevant. Petitioner stated the following:

Elaine Stalfa filed bogus police reports claiming that because of my military background, I was not allowed in

Career Links. That policy violated my veterans [sic] preference for every job that was filled throughout the time period since this policy has been in effect.

*Id.*² Petitioner sought a remedy of “[m]oney [sic] and a government job in Hazleton Career Link or Luzerne County government.” *Id.*

The Commission thereafter reviewed the information presented by Petitioner and issued an order dated February 19, 2014, denying Petitioner’s request for a hearing explaining that there was “neither an appealable personnel action nor a sufficient allegation of discrimination to form a basis upon which the Commission could schedule and hold a hearing.” (Record at Item No. 2.) The Commission noted in this order that Petitioner had “the burden of going forward to allege that he was denied a particular job opportunity and establish a claim of discrimination as the basis for his appeal,” but that Petitioner had “neither identified a specific job nor indicated acts, which, if proven, would constitute discrimination, although requested

² Around the same time that Petitioner filed his petition for review in this case, Petitioner also filed a petition for review in another case from the final determination of the Office of Open Records (OOR) denying his request for certain records and/or information from the Department of Labor and Industry (Department) under the Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101 – 67.3104. By opinion and order dated September 29, 2014, this Court affirmed OOR’s final determination. *Donahue v. Pennsylvania Department of Labor and Industry* (Pa. Cmwlth., No. 56 C.D. 2014, filed September 29, 2014). In this companion case, the Court was provided with a more complete record that detailed the history of Petitioner’s interactions with Hazleton Career Link. Specifically, the record in that case revealed that Chief Counsel for the Department had advised Petitioner by letter dated October 13, 2011, that the Hazleton Career Link would no longer provide him with assistance at the office and that, instead, he could avail himself of the same assistance via online resources. *Id.*, slip op. at 2. As the basis for this decision, the letter cited Petitioner’s history of sending inappropriate, inaccurate, and sometimes threatening emails to Department employees and other state government officials, as well as Petitioner’s filing of false criminal charges against the site administrator at the Hazleton Career Link office. *Id.* Additionally, the letter advised Petitioner that the Hazleton Career Link office and the Office of Equal Opportunity within the Department had determined that Petitioner was not eligible for, and they would no longer entertain requests for, employment training, because Petitioner was already employable with his present skills. *Id.*

to do so on the Appeal Request Form.” *Id.* The Commission cited section 105.12(c) of its regulations in support of its order, which provides as follows:

Appeals alleging discrimination which do not include specific facts relating to discrimination may be dismissed. Specific facts which should appear on the appeal form include:

- (1) The acts complained of.
- (2) How the treatment differs from treatment of others similarly situated.
- (3) When the acts occurred.
- (4) When and how the appellant first became aware of the alleged discrimination.

4 Pa. Code §105.12(c). Petitioner subsequently filed a petition for review with this Court.

On appeal,³ Petitioner argues that the Commission erred in denying him a hearing. More specifically, Petitioner argues that he cited very specific acts in his appeal request form, which, if proven, would constitute discrimination, including numerous violations by the Hazleton Career Link office of what is commonly referred to as the Veterans’ Preference Act, 51 Pa.C.S. §§7101 – 7109.⁴ We disagree.

³ Our scope of review in cases where the Commission dismisses an appeal *sua sponte* for failure to state a cause of action for discrimination under the Civil Service Act, Act of August 5, 1941, P.L. 752, *as amended*, 71 P.S. §§741.1 - 741.1005, is limited to determining whether the Commission committed legal error in determining that the allegations were legally insufficient. *Bellew v. State Civil Service Commission*, 543 A.2d 1266 (Pa. Cmwlth. 1988).

⁴ Section 7104(a) of the Veterans’ Preference Act essentially provides that the appointing or promoting power of a government employer give preference to a veteran who “possesses the requisite qualifications and is eligible to appointment to or promotion in” a non-civil-service public position. 51 Pa.C.S. §7104(a). Sections 7104(b) and (c) require similar preference with respect to placement on a civil service list or appointment/promotion to a civil service position. 51 Pa.C.S. §7104(b), (c).

Section 905.1 of the Civil Service Act⁵ prohibits discrimination in the classified service, providing as follows:

No officer or employe of the Commonwealth shall discriminate against any person in the recruitment, examination, appointment, training, promotion, retention, or any other personnel action with respect to the classified service because of political or religious opinions or affiliations because of labor union affiliations or because of race, national origin or other non-merit factors.

71 P.S. §741.905a. Nevertheless, we have previously recognized that the Commission is authorized to dismiss an appeal, *sua sponte*, without a hearing if the appeal request form fails to state a claim. *Reck v. State Civil Service Commission (Pennsylvania Liquor Control Board)*, 992 A.2d 977 (Pa. Cmwlth. 2010); *Craig v. State Civil Service Commission (Department of Environmental Protection)*, 800 A.2d 364 (Pa. Cmwlth. 2002). In such cases, we have stated that the burden of proof is upon the party claiming to be aggrieved by the alleged discrimination to present affirmative factual allegations in support thereof because discrimination cannot be inferred. *Id.* Further, we have held that “mere general and conclusory allegations of discrimination are not adequate. There must be specific factual allegations of discrimination within the context of Section 105.12(c) of the Civil Service Rules.” *Allen v. State Civil Service Commission (Pennsylvania Board of Probation and Parole)*, 992 A.2d 924, 929 (Pa. Cmwlth. 2010).

In the present case, the allegations in Petitioner’s appeal request form were insufficient to provide a foundation for an appeal based upon alleged discrimination in his non-selection for appointment to a job in the state classified service. Petitioner does not identify a specific job for which he was denied an appointment. At most,

⁵ Added by the Act of August 27, 1963, P.L. 1257, *as amended*, 71 P.S. §741.905a.

Petitioner merely presumes that he was denied an opportunity for a job because jobs mandating veterans' preference were undoubtedly filled "throughout the time period" that the alleged discrimination occurred. (Record at Item No. 1.) However, in order for a non-selection for appointment to be appealable to the Commission, the position at issue must be one that is under the Commission's jurisdiction, i.e., it must be a job in the state classified service. While some county jobs are in the classified service, many others are not, and by failing to specify a single job that Petitioner believes he was denied an opportunity for, it is impossible for the Commission to determine if it has jurisdiction to hold a hearing.

In addition, section 951(b) of the Civil Service Act, added by the Act of August 27, 1963, P.L. 1257, states that "[a]ny person who is aggrieved by an alleged violation of Section 905.1 of this act may appeal in writing to the commission within twenty calendar days of the alleged violation. Upon receipt of such notice of appeal, the commission shall promptly schedule and hold a public hearing." 71 P.S. §741.951(b). Section 105.12(a)(3) of the Commission's regulations similarly provides that "[a] person appealing discrimination under section 905.1 of the act . . . shall appeal within 20 calendar days of the alleged discrimination." 4 Pa. Code §105.12(a)(3). However, in his appeal request form, Petitioner simply refers to job openings "over the past several years" and "throughout the time period." (Record at Item No. 1.) Petitioner failed to identify any job opening to which he was subject to discrimination within the twenty days preceding his appeal and, thus, neither the Commission nor this Court can determine if his appeal was timely filed such that the Commission had jurisdiction to hear the same.

Furthermore, Petitioner fails to cite a specific job or jobs for which he was denied his veterans' preference. As noted above, in order to receive this preference,

section 7104 of the Veterans' Preference Act requires that the veteran be both qualified and eligible to compete for the job at issue. However, Petitioner fails to identify any specific job for which he was allegedly denied the preference. Without identifying a specific job, it is impossible for the Commission and this Court to determine whether Petitioner was qualified or eligible for the position and, hence, whether Petitioner set forth a viable claim of discrimination.

Accordingly, the order of the Commission is affirmed.⁶

⁶ The Commission notes that Petitioner has included additional factual assertions and attached numerous documents to his brief that were not part of the certified record in this matter. The Commission correctly states that this court may not consider facts that were not of record before the Commission in determining whether the Commission properly dismissed the appeal. *Behm v. State Civil Service Commission*, 494 A.2d 1166 (Pa. Cmwlth. 1985). Hence, this Court did not consider these factual assertions or documents in reaching our decision.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean M. Donahue,	:	
Petitioner	:	
	:	No. 447 C.D. 2014
v.	:	
	:	
State Civil Service Commission	:	
(Department of Labor and Industry),	:	
Respondent	:	

PER CURIAM

ORDER

AND NOW, this 29th day of October, 2014, the order of the State Civil Service Commission, dated February 19, 2014, is hereby affirmed.