

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KARL ARMANO,
Appellant

v.

G1-15-206

CITY OF LAWRENCE,
Respondent

Appearance for Appellant:

Pro Se
Karl Armano

Appearance for Respondent:

Nicholas Dominello, Esq.
Deutsch Williams
1 Design Center Place: Suite 600
Boston, MA 02214

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On October 26, 2015, the Appellant, Karl Armano (Mr. Armano), filed an appeal with the Civil Service Commission (Commission), contesting: 1) the decision of City of Lawrence (City) to bypass him for appointment as a firefighter; and 2) the decision of the state’s Human Resources Division (HRD) to grant the City’s request to remove Mr. Armano’s name from the eligible list of candidates for firefighter pursuant to Personnel Administration Rules, Section 9 (PAR.09).

On November 10, 2015, I held a pre-hearing conference which was attended by Mr. Armano, his father, counsel for the City, the City’s Personnel Director and counsel for HRD.

As part of that pre-hearing conference, it was stipulated that:

1. On April 26, 2014, Mr. Armano took the civil service examination for firefighter and received a score of 98.
2. On November 13, 2014, HRD placed Mr. Armano's name on the eligible list of candidates for firefighter. That list is scheduled to expire on November 13, 2016.
3. On February 27, 2015, HRD issued Certification No. 02615 to the City to fill four (4) vacancies for firefighter.
4. Mr. Armano's name appeared fourth (4th) on the Certification among those willing to accept employment.
5. Mr. Armano was listed on the Certification as qualifying for residency preference in Lawrence and, thus, his name appeared above all those who did not qualify for residency preference.
6. In order to receive residency preference on this Certification, candidates were required to reside in Lawrence from April 26, 2013 to April 26, 2014, the one-year period preceding the date of the firefighter examination.
7. Mr. Armano resided in *Methuen* from April 26, 2013 to August 2014.
8. The City did not reach any "non-residency" preference candidates from Certification No. 02615.
9. The City determined that Mr. Armano did not meet the residency preference requirement.
10. On May 1, 2015, the City forwarded correspondence to HRD seeking to bypass Mr. Armano based on his failure to qualify for the residency preference, which would remove him from those within the so-called "2N + 1" formula of candidates who could be considered for appointment.

11. On May 14, 2015, the City forwarded correspondence to HRD seeking to have Mr. Armano's name removed from the eligible list of candidates, which would effectively remove Mr. Armano's name from any future Certifications issued to the City from the eligible list established in November 2014, set to expire in November 2016.
12. In a letter dated June 4, 2015, HRD informed Mr. Armano that HRD approved the City's request to have his name removed from the eligible list.
13. The letter from HRD stated that Mr. Armano had sixty (60) calendar day to appeal HRD's decision to the Commission.
14. On October 26, 2015, Mr. Armano filed an appeal with the Commission. On his appeal form, Mr. Armano wrote that he received HRD's notice on June 8, 2015. At the pre-hearing conference, Mr. Armano stated that he may not have received the notice until July 2015.

Analysis

The [Commission's rules](#) require that bypass appeals brought under G.L. c. 31, § 2(b), challenging the bypass of a candidate for appointment to a civil service position, must be filed within sixty (60) days of receipt of the notice of the reasons for bypass. Other forms of Section 2(b) appeals are required to be brought within thirty (30) days "from the date the Agency notice of action was sent to the party." 801 CMR 1.00 (6). See also Pugsley v. City of Boston and HRD, 24 MCSR 544 (2011) citing Garfunkel v. Department of Revenue, 22 MCSR 291 (2009).

In Pugsley, the Commission stated:

"In prior decisions, the Commission has construed these provisions, as a general rule, to imply a written notice ... would be essential to establish the trigger date for the limitations period, or the violation could be considered a continuing one. See O'Toole v. Human Resources Division, 21 MCSR 561 (2008) (suggesting, but not deciding that written notice may be necessary to trigger the time for a section 2(b) appeal in all cases) The Commission also embraces the principle that a party coming before the Commission to seek equitable relief, as Mr. Pugsley does here, must exercise reasonable diligence in

pursuit of that relief. Accordingly, where a person has had actual notice – whether in writing or not – of an action or inaction by HRD or an appointing authority that the person reasonably knew or should have known was a violation of civil service law or rules, that person cannot sit on those rights indefinitely. Thus, it is a fair requirement that once such a person discovers that he or she has been harmed by an action or inaction of HRD, he had an obligation to promptly file a claim of appeal, or lose the right to press it. See, e.g., White v. Peabody Constr. Co., Inc., 286 Mass 121 (1980); Day v. Kerkorian, 72 Mass.App.Ct. 1 (2008)”

Even if I were to accept Mr. Armano’s statement at the pre-hearing conference that he did not receive HRD’s June 4, 2015 notice until July 2015, and, for the purposes of this decision, assume that the date was July 31, 2015, Mr. Armano’s appeal was still not filed with the Commission within sixty (60) calendar days of receiving the notification from HRD. For that reason, the Commission has no jurisdiction to hear this appeal.

Even if the Commission did have jurisdiction to hear this appeal, Mr. Armano does not dispute that he did not meet the residency preference requirement, which would have removed him from consideration from the Certification in question, as the City only reached and appointed those with residency preference.

In regard to whether the Commission would have upheld HRD’s decision to remove Mr. Armano’s name from the eligible list via PAR.09, that would have been a much closer call given the higher standard required to justify such action.

Based on these undisputed facts and/or representations from Mr. Armano which I have accepted as true for the purpose of this decision, Mr. Armano’s appeal is not timely. Therefore, the appeal is *dismissed*.

Civil Service Commission

Christopher C. Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 10, 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. 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 to:

Karl Armano (Appellant)

Nicholas Dominello, Esq. (for Respondent)

Mark Detwiler, Esq. (HRD)