

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Suffolk, ss.

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

PAUL WEINBURGH,

Appellant

v.

CITY OF HAVERHILL,

Respondent

Case No.: E-09-159

**DECISION ON JOINT PETITION FOR RELIEF UNDER
CHAPTER 310 OF THE ACTS OF 1993**

The Appellant, Paul Weinburgh, filed this appeal with the Civil Service Commission (the Commission) pursuant to G.L. c.31, § 2(b) contending he was improperly appointed by the City of Haverhill, the Appointing Authority, to the position of temporary Fire Captain on April 28, 2008 to fill a permanent vacancy. The City of Haverhill contended that its action complied with civil service law and rules because the appointment on a temporary basis was necessitated by a pending appeal from a prior Commission decision involving the Appellant's status on the applicable Fire Captain's eligible list. Subsequently, as a result of a decision of the Massachusetts Appeals Court on September 20, 2008, the Appellant's status at the top of the then current eligible list for Fire Captain in the City of Haverhill was confirmed.

Prior to the hearing on the merits of the present appeal, the Commission received a Settlement Agreement between the parties dated September 22, 2009 to which was attached a Joint Petition for 310 Relief and Proposed Decision. After careful consideration of the parties' submission and all of the attendant circumstances, and pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993,

the Commission orders the Human Resources Division (HRD) and/or the duly authorized delegated appointing authority, to take the following action:

- A. The name of the Appellant, Paul Weinburgh shall be placed at the top of the current and any future eligible lists and certifications for appointment to the position of Permanent Fire Captain in the City of Haverhill until such time as he has been appointed or bypassed.
- B. Upon request from the City of Haverhill, HRD is authorized to issue forthwith a certification for appointment of one (1) Permanent Fire Captain from such eligible list.
- C. If and when selected for promotional appointment as Permanent Fire Captain, the Appellant shall receive a retroactive seniority date for civil service purposes only of April 27, 2008.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Marquis, Stein and Taylor, Commissioners [Henderson – Absent]) on October 7, 2009.

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. 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 to:
Leah Marie Barrault, Esq. (for Appellant)
William D. Cox, Esq. (for Appointing Authority)
Martha Lipchitz O'Connor, Esq. (HRD)