

COMMONWEALTH OF MASSACHUSETTS

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

AARON ALIDRISSI,
Appellant

v.

G1-21-130

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Aaron Alidrissi

Appearance for Respondent:

James Megee, Esq.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

1. On April 9, 2020, the Civil Service Commission (Commission) issued a “Decision on Joint Motion for Relief Under Chapter 310 of the Acts of 1993” ordering the state’s Human Resources Division (HRD) and/or the Boston Police Department (BPD) to “place the name of Aaron Alidrissi at the top of any current or future certification for the position of permanent full-time police officer within the Boston Police Department until he is selected or bypassed.” (emphasis added)¹
2. The 2020 order was issued after discussions regarding the legitimacy of the BPD’s decision to require the Appellant, given his age at the time, to undergo an additional physical

¹ The 2020 decision involved a certification that was issued to the BPD in 2019 based on the Appellant’s score on an examination administered in 2017, when the Appellant was less than 40 years old.

“exercise tolerance test” that other candidates were not required to complete, in addition to the fact that the Appellant was not given the opportunity for a re-examination within 16 weeks, as required.

3. In compliance with the Commission’s Order, HRD, on April 10, 2020, added the Appellant’s name to the top of BPD Certification No. 06931.
4. The BPD issued a conditional offer of employment to the Appellant from Certification No. 06931, with one of the conditions being completion of the Police Academy. Candidates seeking entry into the Police Academy must now pass a physical fitness *entrance* examination, separate from the Physical Abilities Test (PAT) administered by HRD. It is undisputed that the Appellant failed to successfully complete the Police Academy physical fitness entrance examination. According to the Appellant, he was only able to complete 26 sit-ups in one minute, one short of the 27 sit-up requirement. He also fell just short of the push-up requirement.
5. On November 23, 2020, based on the Appellant’s failure to be accepted into the Police Academy, the BPD rescinded the Appellant’s conditional offer of employment and notified him that he was being bypassed, along with notification regarding his appeal rights to the Commission.
6. The Appellant did not file an appeal with the Commission regarding the November 2020 bypass.
7. As the Appellant was bypassed for appointment, and was notified of his bypass appeal rights, the Appellant had received all relief ordered by the Commission in April 2020.
8. The Appellant, during the above-referenced time period, took a subsequent civil service examination for police officer on June 15, 2019, at which time he was over 40 years old.

9. Notwithstanding the fact that all ordered relief had been provided to the Appellant as of November 2020, HRD placed the Appellant's name at the top of the next Certification (No. 07505) issued to the BPD on January 15, 2021, with an indication that his placement on the Certification was the result of relief ordered by the Commission.
10. In a letter from the BPD dated July 12, 2021, the Appellant was notified that he was being bypassed for appointment due to the maximum age limitation which requires that candidates may not be over 40 years of age at the time of the underlying examination.² As part of that letter, the Appellant was notified that he had a right to file an appeal with the Commission.
11. On July 29, 2021, the Appellant filed an appeal with the Commission.
12. On August 17, 2021, I held a remote pre-hearing conference which was attended by the Appellant, and counsel for the BPD, at which time all of the above-referenced dates and events were stipulated to.
13. For all of the above reasons, including that the Appellant's name should not have been placed at the top of Certification No. 07505, and that, absent relief by the Commission, the Appellant was not eligible to be considered for appointment as a Boston Police Officer because he was over the maximum age of 40, set by statute, at the time of the 2019 examination, the BPD was given 30 days to file a Motion to Dismiss related to whether the Commission has jurisdiction to hear this appeal and the Appellant was provided with 30 days thereafter to file a reply. The BPD's motion and the Appellant's opposition were subsequently filed by the parties.

² See Chapter 43 of the Acts of 2007.

Legal Standard for Summary Disposition

An appeal may be disposed of on summary disposition when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

Parties’ Arguments

The BPD argues that is undisputed that the Appellant was over the age of 40 at the time he took the 2019 civil service examination, from which the current eligible was established. In accordance with Chapter 43 of the Acts of 2007, the Appellant was ineligible to be considered for appointment as a Boston Police Officer absent relief from the Commission. The BPD argues that the Appellant already received the relief ordered by the Commission, as his name was placed at the top of a prior certification; he was considered for appointment; he was granted a conditional offer of appointment; and then bypassed after failing to meet certain conditions of the conditional offer, at which time he was sent a written notice of bypass, informing him of his right to file an appeal with the Commission, which the Appellant did not do. Therefore, according to the BPD, the Appellant’s name should not have appeared – at all – on this most recent certification and there is no bypass to appeal to the Commission.

The Appellant argues that he failed to contest his November 2020 bypass because, in January 2021, prior to the deadline for filing a bypass appeal with the Commission regarding the November 2020 bypass, he received notification that he was being considered on a subsequent certification; that he verified that his name appeared at or near the top of the certification, and

that he was told by the BPD that he was indeed eligible to be considered for appointment based on his rank on the certification. Having foregone the opportunity to file a bypass appeal based on this erroneous information, the Appellant effectively argues that he should have one additional opportunity for consideration.

Analysis

Absent relief from the Commission, the Appellant was statutorily ineligible to be considered for appointment as a Boston police officer from this most recent certification, as he was over the maximum age of 40 at the time he took the most recent civil service examination. The relief ordered by the Commission - reconsideration until the Appellant was appointed or bypassed - was already provided in a prior hiring cycle. The fact that the Appellant's name erroneously appeared on a subsequent certification does not entitle the Appellant to additional relief and/or allow the Appellant to disregard the maximum age requirement.

The only issue left for the Commission is whether the time period for filing an appeal of the November 23, 2020 bypass should be tolled based on the Appellant being (erroneously) notified that was being considered as part of the next hiring cycle. Such a claim to equitable estoppel against the Respondent might present a closer question were it not undisputed that the Appellant failed the new fitness requirements that the MPTC now requires *prior* to entry into the Police Academy. At the pre-hearing conference, the Appellant explicitly acknowledged failing the sit-up portion of the fitness test and did not attribute that failure to any defect in equipment or any other irregularities that could form the basis of a potential bypass appeal with the Commission. Thus, this is not the rare case in which it would be warranted to toll the filing period and allow the Appellant to file an appeal beyond the 60-day filing timeline established by the Commission.

Our decision is bolstered by the well-established principle that tribunals have been most “reluctant to apply principles of estoppel to public entities where to do so would negate requirements of law intended to protect the public interest.” Phipps Prods. Corp. v. Massachusetts Bay Transp. Auth., 387 Mass. 687, 693 (1982). It is the Legislature’s considered judgment that candidates for entry-level positions within the municipal police service shall not have attained their fortieth birthday and we are reluctant, based merely on potentially erroneous information concerning Appellant’s potential continuing eligibility, to permit an end-run around this statutory prohibition. See New City Hotel Co. v. Alcoholic Beverages Control Comm’n, 347 Mass. 539, 542 (1964) (estoppel may not be invoked against public officials if result is to defeat operation of statute). “[T]he rule against applying estoppel to the sovereign continues almost intact where a government official acts, or makes representations, contrary to a statute or regulation designed to . . . ensure some . . . legislative purpose.” McAndrew v. School Comm. of Cambridge, 20 Mass. App. Ct. 356, 361 (1985). The public interest in seeing legislative policies adhered to by a governmental agency of the Commonwealth “overrides any equitable considerations.” Phipps Prods. Corp. v. Massachusetts Bay Transp. Auth., *supra*. In Doris v. Police Comm’r of Boston, the Supreme Judicial Court refused to invoke equitable estoppel against a police commissioner who had previously failed to enforce residency requirements, stating: “It would indeed be a most serious consequence if we were to conclude that the inattention or inactivity of government officials could render a statute unenforceable and thus deprive the public of the benefits or protections bestowed by the Legislature.” 374 Mass. 443, 449 (1978). A common thread underlying the strong reluctance to apply principles of estoppel to public entities has been the idea that deference to legislative policy should trump individual acts

or inaction or erroneous statements of a government official that may be contrary to such policy. Otherwise, protections afforded the public interest are thwarted.

Conclusion

The Respondent's motion for summary decision is allowed and the Appellant's bypass appeal under Docket No. G1-21-130 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 4, 2021.

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:

Aaron Alidrissi (Appellant)
James Megee, Esq. (for Respondent)