

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

BRIAN BERGERON,
Appellant

v.

G1-16-184

CITY OF REVERE,
Respondent

Appearance for Appellant:

Pro Se
Brian Bergeron

Appearance for Respondent:

Daniel E. Doherty, Esq.
City of Revere
281 Broadway
Revere, MA 02151

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On April 25, 2015, the Appellant, Brian Bergeron (Mr. Bergeron), took and passed the civil service examination for police officer, which was administered by the state's Human Resources Division (HRD).
2. On November 1, 2015, HRD established an eligible list for police officer in the City of Revere (City).
3. Based on self-reporting by Mr. Bergeron, his name appeared among those qualifying for the statutory residence preference in Revere.
4. On April 27, 2016 and July 27, 2016, HRD issued Certification No. 03764 to the City from which the City ultimately appointed four (4) police officers.
5. Mr. Bergeron was not selected for appointment after the City determined that he did not qualify for the residency preference as he did not reside in Revere for the twelve (12) months preceding the date of the civil service examination. None of the four (4) appointed candidates were ranked below Mr. Bergeron.

6. Erroneously believing that Mr. Bergeron's non-selection constituted a bypass, the City forwarded bypass reasons to Mr. Bergeron along with notification that he had a right to file an appeal with the Commission.
7. The City, pursuant to Personnel Administration Rule .09 (PAR.09), also filed a request with HRD that, if approved, would remove Mr. Bergeron's name from the eligible list, tentatively set to expire on or around October 31, 2017. HRD has not acted on this request.
8. On November 7, 2016, Mr. Bergeron filed an appeal with the Commission.
9. On November 22, 2016, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Bergeron, counsel for the City and a representative from the City's Police Department.
10. At the pre-hearing conference, Mr. Bergeron did not dispute that he did not reside in Revere for the entire twelve (12) months preceding the civil service examination, and, thus, his name should not be among those with residency preference on any Certification issued to the City.
11. Also as part of the pre-hearing, the City indicated that the primary purpose in filing the PAR.09 removal request with HRD was to ensure that Mr. Bergeron did not appear on any Certification among those with residency preference. The City was willing to withdraw the PAR.09 removal request if the residency issue was corrected.

Analysis

There is no active dispute to be adjudicated by the Commission here. First, Mr. Bergeron was not bypassed. Second, the City has assented to withdrawing the PAR.09 removal request as long as Mr. Bergeron is accurately listed as a non-resident on the existing eligible list for Revere police officer.

Conclusion

The state's Human Resources Division (HRD) is hereby ordered to change Mr. Bergeron's status on the current eligible list for Revere Police Officer from resident to non-resident. Once this action is taken, the City's PAR.09 request regarding Mr. Bergeron should be deemed as withdrawn.

Mr. Bergeron's appeal to the Commission under Docket No. G1-16-184 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 8, 2016.

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:

Brian Bergeron (Appellant)

Daniel Doherty, Esq. (for Respondent)

Patrick Butler, Esq. (HRD)