COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114

MICHAEL G. BLANCHETTE,
Appellant

v. E-23-162

CITY OF LAWRENCE,
Respondent

Appearance for Appellant: Michael Blanchette
Pro Se

Appearance for Respondent: Eric McKenna, Esq.
Valerio, Dominello, & Hillman
One University Ave
Suite 300B
Westwood, MA 02090

Commissioner: Shawn C. Dooley

SUMMARY OF DECISION

The Commission dismissed the Appellant's bypass appeal since the Appellant was not bypassed during the hiring process for the Lawrence Fire Department.

DECISION ON RESPONDENT'S MOTION FOR SUMMARY DECISION

On August 28, 2023, the Appellant, Michael Blanchette (Appellant), pursuant to G.L. c. 31, § 2(b), timely appealed to the Civil Service Commission (Commission) to contest his non-hiring by the City of Lawrence (City) for appointment as a permanent full-time fire fighter.

I held a remote pre-hearing conference on October 3, 2023, which was attended by the Appellant, Counsel for the City, the City Solicitor, and the City's Fire Chief. On October 26, 2023, the City filed a Motion for Summary Decision and on November 17, 2023, the Appellant submitted a response. For the reasons set forth below, the Appellant's appeal is denied.

UNDISPUTED FACTS

1. On November 20, 2020, the Appellant took the civil service examination for firefighter, receiving a score of 98.
2. On March 15, 2022, the state's Human Resources Division (HRD) established an eligible list for Lawrence firefighter.
3. On September 21, 2022, the City submitted a Requisition to HRD for a certification to appoint permanent firefighter positions.
4. On October 6, 2022, HRD sent Certification No. 08892 to the City.
5. On October 17, 2022, the Appellant signed the certification as willing to accept appointment and completed an employment application for the Lawrence Fire Department (LFD).
6. The Appellant's name initially appeared in a tie-group at the 12th rank of Certification No. 08892.
7. The City is a "Consent Decree" community, however, meaning that the City is required to provide a degree of preference to minority applicants in accordance with court orders entered in the *Castro v. Beecher* Federal Consent Decree litigation. Pursuant to a court order that will not expire until the end of 2024, and due to a marked imbalance between the demographic makeup of the LFD and the local qualified labor pool, for every non-minority candidate (or tied group of non-minorities) whose name appears atop a certification, a

Lawrence minority candidate (or tied group of minorities) must then appear and the list proceeds in alternating descending rank order.

8. After considering the reported racial identity or ethnicity of the applicants, HRD sent the City a decree-adjusted ranked certification in which the Appellant was ranked 20th in a tie group.
9. On January 4, 2023, the Appellant was interviewed by Fire Chief Moriarty and Captain Martin of the Lawrence Fire Department. His interview performance was considered the second best among those candidates interviewed.
10. In March 2023, the City appointed seven applicants, all of whom were ranked higher than the Appellant on the Consent Decree-adjusted certification.
11. The City did not provide the Appellant with any reasons for his non-selection because such notification is only required in the event that an applicant is bypassed.
12. On October 3, 2023, counsel for HRD confirmed that the Appellant was ranked below all candidates appointed and that the Appellant's non-selection did not constitute a bypass.

SUMMARY DECISION STANDARD

When a party is of the opinion that there is no genuine issue of fact relating to all or part of a claim or defense and he or she is entitled to prevail as a matter of law, the party may move, with or without supporting affidavits, for summary decision on the claim or defense. 801 CMR 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law—i.e., "viewing the evidence in the light most favorable to the non-moving party", the substantial and credible evidence established that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case", and has not rebutted this evidence by "plausibly suggesting" the existence of :specific facts" to raise "above the speculative level" the existence of a material factual dispute requiring an evidentiary

hearing. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). Accord Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008). See also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36 (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (factual issues bearing on plaintiff's standing required denial of motion to dismiss).

APPLICABLE CIVIL SERVICE LAW

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the state's Human Resources Division (HRD) or, in certain cases, by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. The statute provides:

> *No person shall be deemed to be aggrieved . . . unless such person has made specific allegations* in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder *and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status*. Id. (*emphasis added*)

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

> *If the rights of any person* acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder *have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights* notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights. (*emphasis added*)

The fundamental mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31, which command, among other things, "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including

open consideration of qualified applicants for initial appointment" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, § 1. A mechanism for ensuring adherence to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority of a "certification" which ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. G.L. c. 31, §§ 6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the "2n+1" formula. G.L. c. 31, § 27; PAR.09.

In order to deviate from the rank order of preferred hiring and appoint a person "other than the qualified person whose name appears highest", an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L. c. 31, §§ 1 and 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a "reasonably thorough review" of the background and qualifications of the candidates' fitness to perform the duties of the position and was "reasonably justified". Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688 (2012), citing Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm'n, 447 Mass. 233, 543 (2006) and cases cited; Beverly v. Civil Service Comm'n 78 Mass. App. Ct. 182 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

ANALYSIS

The record shows that the City did not appoint any candidate ranked below the Appellant on the certification generated by HRD consistent with the governing federal consent decree. Thus, as a matter of law, the City correctly asserts that the Appellant's non-selection is not a bypass and the City is not required to provide written reasons for his non-selection.[1] While the Appellant performed well in an internal interview process, this did not compel the City to bypass other candidates on the certification in favor of the Appellant. Given the strictures of the federal court Consent Decree, which is binding on both HRD and the City of Lawrence through the end of 2024, the Appellant cannot show that he is a person "aggrieved" within the meaning of G.L. c. 31, § 2(b).

While the Appellant's commitment to serving the City of Lawrence is commendable, his non-selection does not constitute a bypass, the Commission discerns no denial or abridgement of the Appellant's rights under civil service law in view of the Consent Decree terms, and there is no evidence or allegation that the Appellant's non-selection was related to personal or political bias or any other impermissible reason. For these reasons, the Commission lacks jurisdiction to hear this appeal and the Appellant's appeal is hereby ***dismissed***.

Civil Service Commission

/s/ Shawn C. Dooley
Shawn C. Dooley
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on December 14, 2023.

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

[1] Whether or not the Appellant's name appeared higher than other candidates on an eligible list issued prior to application of the Consent Decree is legally irrelevant.

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:
Michael Blanchette (Appellant)
Eric T. McKenna, Esq. (for Respondent)
Ashlee Logan, Esq. (HRD)