

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

VANESSA BURNS,
Appellant

v.

G1-18-171

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Vanessa Burns

Appearance for Respondent:

Joseph Santoro
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On September 6, 2018, the Appellant, Vanessa Burns (Ms. Burns), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Department of Correction (DOC) to bypass her for appointment for the position of Correctional Program Officer A/B (CPO A/B).
2. On October 16, 2018, I held a pre-hearing conference that was attended by Ms. Burns and DOC representatives.
3. As part of the pre-hearing conference, the parties agreed that:
 - A. On May 21, 2016, Ms. Burns took and passed the civil service examination for CPO A/B.
 - B. On January 19, 2018, Ms. Burns's name appeared ranked 13th on Certification No. 05165 for CPO A/B.
 - C. On February 15, 2018, Ms. Burns was required to participate in a physical fitness test, part of which required her to run 1.5 miles in 19 minutes, 56 seconds.
 - D. Ms. Burns failed the run portion of the test, finishing the 1.5 miles in 21 minutes, 27 seconds.

- E. Ms. Burns was given a second opportunity to pass the run test and failed a second time, finishing the 1.5 miles in 25 minutes, 31 seconds.
4. At the pre-hearing conference, Ms. Burns stated that she failed the test due to a mild asthma and heart condition, the cold weather conditions and insufficient time to prepare for the run.
 5. DOC had ten (10) days to file a Motion to Dismiss the Appellant's Appeal and the Appellant had ten (10) days thereafter to file a reply, after which time the Commission would issue a decision.
 6. DOC submitted a Motion to Dismiss; the Appellant did not submit a substantive reply.

Analysis

It is undisputed that Ms. Burns failed the PAT. As referenced in its motion, DOC, since 2012 has applied the "Cooper Standards" established by the Cooper Institute to evaluate the physical abilities of candidates. These standards were developed as part of a settlement agreement following United States Department of Justice allegations that the prior standards disproportionately excluded female applicants.

Further, it is uncontested that, prior to the PAT, Ms. Burns was medically cleared to participate in the evaluation.

Finally, there has been no allegation that DOC has failed to apply these standards in a uniform manner for all candidates.

For these reasons, and all of the reasons cited in DOC's Motion to Dismiss, Ms. Burns's appeal under Docket No. G1-18-171 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 February 21, 2019.

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:

Vanessa Burns (Appellant)

Joseph Santoro (for Respondent)