

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ROBERT J. BUTTS III,
Appellant

B1-16-089

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Robert Butts

Appearance for Human Resources Division:

Patrick Butler, Esq.
Human Resources Division
One Ashburton Place
Boston, MA 02108

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On May 6, 2016, the Appellant, Robert Butts (Mr. Butts), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission).

On May 24, 2016, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Butts and counsel for the state's Human Resources Division (HRD).

Based on the information provided at the pre-hearing conference, the following is undisputed, unless otherwise noted:

1. Mr. Butts is forty-three (43) years old and is a resident of Boston.
2. In June 2013, Mr. Butts took the civil service examination for police officer and received a score of 99. He is not a veteran.

3. As a result of passing the June 2013 civil service examination, HRD placed Mr. Butts's name on the eligible list of candidates for Boston Police Officer, which was established on October 15, 2013. That eligible list expired on October 30, 2015.
4. Whenever the Boston Police Department seeks to appoint police officers, they must requisition a Certification from HRD and comply with the so-called "2N + 1" formula.
5. In cities and towns, such as Boston, that have accepted the provisions of G.L. c. 31, § 58, no candidate shall be eligible to have his name certified (placed on a Certification) for original appointment to the position of firefighter or police officer if such person has reached his 32nd birthday on the date of the entrance examination.
6. In May 2007, pursuant to Chapter 43 of the Acts of 2007, the maximum age restriction was modified, so that no candidate for police officer in Boston is eligible to sit for the examination if such person has reached his 40th birthday on the date of the entrance examination.
7. On April 27, 2015, at the request of the BPD, HRD, drawing from the eligible list established on October 15, 2013, sent Certification No. 02742 to the BPD to make appointments for police officer. The name of Mr. Butts, a non-veteran Boston resident, appeared in the 49th tie position on that Certification.
8. As part of his background investigation by the BPD, it was determined that Mr. Butts, at the time of the civil service examination, had reached his 40th birthday. As a result, he was not eligible for appointment as a Boston police officer.
9. On September 2, 2015, the Boston City Council passed a Home Rule Petition to ask the state legislature to adopt special legislation "directing the City of Boston Police Department to waive the maximum age requirement for police officers for Robert J. Butts III."

10. Boston Mayor Martin Walsh then approved the Petition.
11. The proposed legislation (H.3763) was filed by Representative Daniel Hunt and others on September 4, 2015.
12. As referenced above, the eligible list upon which the name of Mr. Butts appeared expired on October 30, 2015.
13. BPD had not requested any further Certifications from April 27, 2015 to October 30, 2015.
14. On December 28, 2015, the special legislation was enacted by the House and Senate and laid before the Governor. Governor Baker signed the bill into law on January 6, 2016 (Chapter 169 of the Acts of 2015).
15. The Special Act states:

“Section 1. Notwithstanding chapter 43 of the acts of 2007 or any other general or special law to the contrary, the police department of the city of Boston shall waive the maximum age requirement for original appointment of police officers for Robert J. Butts III. If Robert J. Butts III meets all other requirements set forth by the police department of the city of Boston, he shall be eligible to have his name certified for original appointment to the position of police officer. (emphasis added)

Section 2. This act shall take effect upon its passage.”
16. In order for a person’s name to appear on a Certification, his/her name must be on an active eligible list.
17. Since the eligible list upon which Mr. Butts’s name first appeared expired on October 30, 2015, before the effective date of Chapter 169 of the Acts of 2015, and because his name did not appear on the new eligible list established by HRD on November 1, 2015, HRD did not place his name on a Certification issued to the BPD sometime after January 6, 2016.

Relief being sought by Mr. Butts

Mr. Butts is asking that the Commission order that his “name and score be moved to the current civil service list so [he] can continue the process [he] was on when the age issue arose.”

HRD’s Position

HRD argues that, while the legislature waived the maximum age requirement for Mr. Butts, it did not waive the statutory requirement that his name appear on an active eligible list in order for his name to be placed on a Certification. Thus, according to HRD, Mr. Butts remains ineligible to appear on Certifications drawn from a new eligible list that does not contain the name of Mr. Butts.

Analysis

Mr. Butts is not an aggrieved person and relief by the Commission is not warranted here. Special legislation has been passed waiving the BPD’s maximum age restriction for him. Setting aside the appropriateness of this special legislation, the Act only waives the maximum age requirement. It does not waive another statutory requirement, including the civil service law which states that a person’s name must appear on an active eligible list in order to have his/her name appear on a Certification. (Contrast with Edward Grace v. Human Resources Division & Boston Police Department, 28 MCSR 181 (2015) where Mr. Grace’s name was on an active eligible list at the time special legislation was passed and a new Certification was issued prior to the expiration of that eligible list.)

Had the legislature wished to effectively waive this additional statutory requirement and, as Mr. Butts now requests, “move” his prior score and name to a new eligible list, it could have stated so. Since it did not, HRD was justified in not including his name on the recent Certification issued to the BPD.

Conclusion

Mr. Butts's appeal under Docket No. B1-16-089 is *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) on June 9, 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:

Robert J. Butts III (Appellant)
Patrick Butler, Esq. (for Respondent)