

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

RUBEN CANO,
Appellant

v.

G1-20-081

NEW BEDFORD POLICE DEPARTMENT &
HUMAN RESOURCES DIVISION,
Respondents

Appearance for Appellant:

Pro Se
Ruben Cano

Appearance for New Bedford Police Department:

Elizabeth Treadup Pio, Esq.
City of New Bedford
Office of the City Solicitor
133 William Street, Room 203
New Bedford, MA 02740

Appearance for Human Resources Division:

Melissa Thomson, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENTS' MOTIONS FOR SUMMARY DISPOSITION

1. On May 11, 2020, the Appellant, Ruben Cano (Mr. Cano), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the New Bedford Police Department (NBPD) to bypass him for appointment as a police officer.
2. On June 2, 2020, I held a pre-hearing conference via videoconference which was attended by Mr. Cano and counsel for the NBPD.
3. At the pre-hearing conference, the parties agreed that Mr. Cano's conditional offer of employment was rescinded solely because he failed the "eyes and vision" portion of the medical examination.

4. Specifically, the medical guidelines of the state's Human Resources Division (HRD) state in part that a "Category A" medical condition shall include: "(iv) Demonstration of color vision deficit on testing by Ishihara or Richmond pseudo- isochromatic plates.
(v) Candidates who demonstrate a color deficiency with Ishihara or Richmond testing may be re- tested with a Farnsworth D-15. Two or more major "cross-over" errors (defined as a sequence jump of 4 or more in the cap sequence created by the test subject) on the Farnsworth D-15 is a Category A condition."
5. At the pre-hearing conference, the parties agreed that Mr. Cano was sent to an NBPD-contracted optometrist and "failed" the Ishihara test. He was then given an opportunity to have a re-test with his own optometrist which he did.
6. According to Mr. Cano, he "failed" the Ishihara test again and, although "doing better", he also "failed" the Farnsworth D-15 test.
7. At the time, Mr. Cano was not provided with any written documentation by his optometrist regarding how it was determined that he "failed" the Farnsworth D-15 test (i.e. – was there two or more major "cross-over" errors (defined as a sequence jump of 4 or more in the cap sequence created by the test subject)?
8. For this reason, I asked Mr. Cano to obtain a copy of any written documentation available from his optometrist to determine whether the "failure" was consistent with the definition in the HRD medical guidelines.
9. Mr. Cano subsequently provided information from his optometrist showing that he indeed failed the Farnsworth D-1 test according to HRD medical guidelines. Specifically, Mr. Cano's D-15 test and re-test shows "two or more major 'cross-over' errors defined as a sequence jump of 4 or more in the cap sequence created by the subject" which is a Category A medical condition under HRD medical guidelines.
10. Mr. Cano notified the Commission that he "would like to continue the appeal ... and contest the criteria or law regarding the color vision deficiency."
11. The NBPD and HRD subsequently filed motions for summary disposition. Mr. Cano was given thirty (30) days to file a reply. He did not submit a reply.

Legal Standard for Motion for Summary Disposition

A motion for summary decision may be filed pursuant to 801 C.M.R. 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

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).

Analysis

HRD promulgated the medical standards pursuant to Massachusetts General Laws c. 31, § 61A with the approval of the Legislature. The Category A medical conditions are “absolutely disqualifying.” “HRD must abide by legislative mandates and the Commission has no choice but to affirm decisions which are made adherent to those mandates.” See Granlund v. Human Resources Division, 19 MCSR 268 (2006). Although the Appellant may be “frustrated by the Medical Standards and believe that they are prohibiting h[im] from proving that [h]e can be a great police officer, the Commission is not the venue to protest the Medical Standards as they are currently written.” Diiorio v. City of Worcester & HRD, 27 MCSR 413 (2014). The Medical Standards “must be given the force and effect of law which the Commission cannot override. Corcoran v. BFD, 28 MCSR 100 (2015), citing Carleton v. Commonwealth, 447 Mass. 791 (2006).

Since Mr. Cano has no reasonable expectation of prevailing as the Medical Standards have been approved by the Legislature and the Commission has no jurisdiction to change them, Mr. Cano’s appeal under Docket No. G1-20-081 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 October 22, 2020.

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:

Ruben Cano (Appellant)

Elizabeth M. Treadup Pio, Esq. (for NBPD)

Melissa Thomson, Esq. (for HRD)