

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

STEPHEN A. COBB,
Appellant

v.

DEPARTMENT OF CORRECTION,
Respondent

Docket Number:	G2-24-185
Appearance for Appellant:	<i>Pro Se</i> Stephen A. Cobb
Appearance for Respondent:	Eamonn Sullivan, Esq. Department of Correction 50 Maple Street Milford, MA 01757
Commissioner:	Christopher C. Bowman

SUMMARY OF DECISION

The Commission affirmed the decision of the Department of Correction to bypass a candidate for promotional appointment to Correction Officer II based on recent off-duty misconduct that resulted in an uncontested 3-day suspension.

DECISION ON RESPONDENT'S MOTION FOR SUMMARY DECISION

Procedural Background

On November 29, 2024, the Appellant, Stephen A. Cobb, a Correction Officer I (CO I) with the Department of Correction (DOC), filed a promotional bypass appeal with the Civil Service Commission (Commission), contesting the decision of DOC to bypass him for promotional appointment to permanent, full-time Correction Officer II (CO II).

On January 7, 2025, I held a remote pre-hearing conference, followed by a status conference on March 25, 2025, both of which were attended by the Appellant and counsel for DOC. The parties subsequently filed cross motions for summary decision.

Undisputed Facts

Based on the statements of the parties and the written submissions, the following, unless otherwise noted, is not in dispute:

1. The Appellant is employed as a CO I at DOC.
2. On October 23, 2020, the Appellant took the promotional examination for CO II and received a score of 76.
3. On January 15, 2021, the state's Human Resources Division (HRD) established the eligible list for CO II.
4. On January 26, 2024, the Appellant was arrested for operating a motor vehicle under the influence of alcohol.
5. On June 27, 2024, DOC's Professional Standards Unit (PSU) concluded an investigation into the Appellant's OUI arrest.
6. On July 30, 2024, a DOC "Commissioner's hearing" was held regarding the findings of the investigation. No decision was made at that time regarding whether discipline would be issued against the Appellant.
7. On August 12, 2024, HRD sent DOC Certification No. 10063, from which DOC ultimately promoted 82 candidates to CO II.
8. The Appellant was ranked 7th among those candidates willing to accept promotional appointment and 45 candidates ranked below him were promoted.

9. On October 29, 2024, DOC notified the Appellant that he had been bypassed for promotional appointment due to a “sustained investigation” related to the January 2024 OUI.
10. DOC has a policy of not promoting employees facing discipline beyond a letter of reprimand for actions occurring within one year of the promotion date.
11. Also on October 29, 2024, the Appellant filed the instant appeal with the Commission.
12. On January 15, 2025, DOC, based upon the sustained findings related to the OUI, imposed a 3-day suspension on the Appellant. The Appellant did not appeal this 3-day suspension.
13. Currently, the Appellant is still under investigation for another alleged incident, dating back to 2023.
14. Another candidate, who was arrested for OUI on September 7, 2024, was promoted to CO II on September 9, 2024, with an effective date of October 20, 2024.

STANDARD FOR SUMMARY DISPOSITION

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be decided on summary disposition only when, “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 Bd.*, 18 MCSR 216 (2005). See also *Mangino v. HRD*, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under

Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); *Morehouse v. Weymouth Fire Dep’t*, 26 MCSR 176 (2013) (“a party may move for summary decision when . . . there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

LGEAL STANDARD REGARDING BYPASS APPEALS

When bypassing a candidate for promotion, the burden is on the appointing authority to show that they had reasonable justification for its bypass decision. *Sherman v. Town of Randolph*, 472 Mass. 802, 811 (2015) [“The commission must ‘properly place[] the burden on the [appointing authority] to establish a reasonable justification for the bypass[.]’” (quoting *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 264 (2001).

ANALYSIS

As a preliminary matter, the Appellant, as part of his cross motion for summary decision, alleged, for the first time, that DOC promoted another candidate to CO II (in 2021) who had a prior OUI arrest, although the Appellant does not identify when that OUI occurred in relation to the promotional date. Solely for the sake of ruling on this motion, I assume that the candidate identified by the Appellant was promoted to CO II in 2021 despite having an OUI charge within one year of the promotional date.

It is undisputed, however, that DOC has a policy of not promoting employees facing discipline beyond a letter of reprimand for actions occurring within one year of the promotion date. 103 DOC 230.05 states: “The Department shall consider an employee’s discipline history prior to a transfer, promotion, or reassignment, and they may be denied based on the date of the incident which resulted in discipline being imposed.”

During my tenure on the Commission, which dates back to 2006, I have reviewed multiple appeals in which DOC has consistently applied this policy by not promoting employees facing discipline beyond a letter of reprimand for actions occurring within one year of the promotion date. In cases where the disciplinary investigation is pending at the time of bypass, the Commission has routinely issued orders with a future effective date, allowing relief in the form of reconsideration when the discipline was not sustained or only warranted a warning, or consolidated the bypass and discipline appeal when a suspension or more was issued. The point here is that DOC's policy related to how recent discipline impacts promotional decisions is not new, nor did it apply only to the Appellant, but, rather, has been entrenched in DOC's policies for many years.

In regard to the 2024 promotion of a candidate with a recent OUI, DOC, via a sworn affidavit submitted by DOC's Deputy Director of Human Resources, claims that the promotion occurred as a result of an administrative oversight in which his office was not notified of the OUI until after the effective date of the promotional appointment, at which point DOC opted not to vacate the promotional appointment. Although not fully developed or explicitly stated in his cross motion, the Appellant seems to cast doubt on whether the promotion occurred because of administrative oversight.

Even assuming, solely for the purpose of deciding this motion, that two candidates were not subject to this longstanding policy and that those promotions were not solely the result of administrative error, the Appellant still has no reasonable expectation of prevailing here. DOC's policy to bypass candidates for promotion with discipline beyond a letter of reprimand in the prior year is reasonable and is particularly appropriate here given the uncontested facts set out in the arrest report regarding the Appellant's recent OUI.

Although any suggestion that a deviation in policy by DOC was conscious or intentional is purely speculative, if the Appellant has evidence to show that DOC's decision to promote other candidates with a recent OUI was based on favoritism or other reasons not consistent with a merit-based process, he could, conceivably, file a request for investigation with the Commission. However, based on the undisputed facts here, including the uncontested facts related to the Appellant's OUI arrest, that would not change the fact that DOC's decision to bypass the *Appellant* for promotional appointment was justified.

CONCLUSION

For the above reasons, DOC's Motion for Summary Decision is allowed the Appellant's appeal under Docket Number G2-24-185 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey and Stein, Commissioners [McConney – Absent]) on May 1, 2025.

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 to:
Stephen Cobb (Appellant)
Eamonn Sullivan, Esq. (for Respondent)