

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
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(617) 979-1900

**ERIC COON, DANIEL McGRATH,
JANET McCARTHY, JAMES
DELANO, COLIN McHUGH,**

Appellants,

v.

**PLYMOUTH FIRE DEPARTMENT
and MASSACHUSETTS HUMAN
RESOURCES DIVISION**

Respondents

E-20-108

**DECISION ON JOINT MOTION FOR RELIEF UNDER
CHAPTER 310 OF THE ACTS OF 1993**

The Appellants appeal to the Civil Service Commission (the Commission) for equitable relief, pursuant to Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, seeking a retroactive adjustment to their civil service seniority date as Firefighters with the Fire Department of the Town of Plymouth (PFD). The Commission held a Pre-hearing Conference (via remote video) on July 28, 2020, at which the PFD Deputy Fire Chief and the Appellants appeared. Based on the information provided by the Appellants, the PFD and HRD, the following facts are not in dispute.

1. The five Appellants were duly selected for appointment after certification from an eligible list for civil service positions of permanent, full-time Firefighters with the PFD, subject to completion of the required Physical Abilities Test (PAT), which is a prerequisite to appointment.
2. Due to the State of Emergency declared by the Governor caused by the COVID-19 pandemic, the scheduled PAT was canceled.
3. The PFD concluded that a delayed employment of the Appellants would seriously impede the PFD's mission as first responders when the public's need for those services was especially important
4. Accordingly, in view of these unforeseen circumstances, the PFD exercised its discretion to make "emergency" appointments of the Appellants pursuant to M.G.Lc.31, §31.
5. On June 12, 2020, HRD again was able to administer the PAT. All five Appellants took and passed the PAT that day and forthwith were appointed to the positions of Permanent Full Time Firefighters with the PFD, effective June 12, 2020.
6. The Appellants, with the support of the PFD, now seek to have their civil service seniority dates adjusted retroactively to the date on which they would have been appointed, had the PAT not been canceled.

7. HRD does not oppose this relief.

Accordingly, pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, the Commission finds that the Appellants' civil service rights have been infringed by the unforeseen consequences of the COVID-19 State of Emergency and through no fault of their own and orders the Human Resources Division (HRD) and/or the Plymouth Fire Department, to take the following action:

- A. HRD shall retroactively adjust the civil services seniority dates of the Appellants, Eric Coon, Daniel McGrath, Janet McCarthy, James Delano and Colin McHugh, as Permanent, Full-Time Firefighters, to the date of their initial "Emergency" Appointments on April 6, 2020.
- B. Nothing in this Decision is intended to affect the independent rights, if any, of the Appellants to relief under any other laws or regulations over which the Commission is without jurisdiction.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners on July 30, 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)(1), 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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's 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:
Eric Coon
Daniel McGrath
Janet McCarthy
James Delano
Colin McHugh
Neil J. Foley, Deputy Fire Chief
Emily Sabo, Esq. (for HRD)
Regina Caggiano (HRD)