

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, SS.

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

PATRICK CUMMINGS,
Appellant

v.

TOWN OF ABINGTON,
Respondent

CASE NO: G1-12-50

Appellant:

Patrick Cummings, Pro Se

Respondent:

John Nuttall, Chief
Abington Fire Department
1040 Bedford Street
Abington, MA 02351

Commissioner:

Paul M. Stein

SUMMARY DECISION OF DISMISSAL

The Appellant, Patrick Cummings, acting pursuant to M.G.L.c.31, §2(b), appealed to the Civil Service Commission (Commission) asserting that the Fire Department of the Town of Abington (Abington), had made certain appointments to the Abington Fire Department (AFD) whose names did not appear on the eligible civil service list.

Following a pre-hearing conference on March 9, 2012, Abington provided the Commission with copies of Certification No. 205951 dated 5/2/2011 and the Notification of Employment provided to the Massachusetts Human Resources Division (HRD). This documentation established that the individuals in question had been hired from a duly established civil service certification for Firefighter-Paramedic on which their names appeared within the “2n+1” group of the most highly ranked candidates on the list.

Although one more highly ranked candidate (with a veteran's preference) was bypassed, the Appellant's name did not appear on this certification. (*Abington Letter dated 3/9/2012 and documents attached*) It is also undisputed that the Appellant, although also a veteran, has no EMT certification at any level (Basic, Intermediate or Paramedic). (*Appellant's Claim of Appeal*) Civil service law and rules permit Abington to request a certification for appointments to the Abington Fire Department of candidates who have passed the entry level Firefighter examination AND hold EMT-Paramedic certification. The Appellant's lack of such certification would appear to be the reason his name did not appear on Certification No. 205951.

The copy of the Firefighter's eligible list attached to the Appellant's Claim of Appeal does not demonstrate that Abington hired improperly. That list is dated as of February 15, 2012 and, as it states represents the "Standing" on the list as of that date. The individuals in question were hired from a list provided by HRD in May 2011. In accordance with standard civil service procedure, their names would have been removed from the list once HRD received notice of their appointment and, unless restored by specific request under certain circumstances not applicable here, would not appear on subsequent lists. See PAR.07(2). Thus, the absence of the names of the appointed individuals from the February 15, 2012 eligible list tends to confirm, rather than question, that the procedures here were made in compliance with civil service law.

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 7.00(7)(g)(3). The standards for summary disposition are well-recognized, i.e., "viewing the evidence in the light most favorable to the non-moving

party”, the substantial and credible evidence established that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”, and has not rebutted this evidence by “plausibly suggesting” the existence of “specific facts” to raise “above the speculative level” the existence of a material factual dispute requiring evidentiary hearing. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, (2008). See also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36, (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (factual issues bearing on plaintiff’s standing required denial of motion to dismiss)

In the present appeal, the undisputed documentary evidence establishes that Abington requested and duly received from HRD a certification for appointment of four Firefighter-Paramedics in May 2011 and duly appointed four candidates from that list. The Appellant’s name did not appear on the list because he was not a qualified EMT-Paramedic. On these facts, it is clear that Abington has complied with civil service law in making the four appointments in question.

The Appellant claims he inquired of HRD and the Abington Fire Chief about his concerns, but was unable to obtain a satisfactory explanation and was obliged to file this appeal and attend a hearing before the Commission at considerable loss of time and expense. The Commission appreciates that the Appellant does not have the experience or training to understand the technical issues involved in a situation such as the one presented here and may have difficulty comprehending the explanations provided by HRD, the Fire Chief, or even by this Decision. Nevertheless, the Appellant, as any other

person who aspires to a civil service position, is bound by the same established law and rules as any other person. This situation stands to illustrate that, perhaps, seeking out advice of private counsel can often resolve such issues in less time and less expense than by way of appeal to the Commission, which may, as here, turn out to be the penny-wise but pound foolish approach.

Accordingly, for the reasons stated above, the appeal of the Appellant, Patrick Cummings, is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Marquis [absent], McDowell & Stein, Commissioners) on. March 22, 2012.

A True Record. Attest:

Commissioner

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 the 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 a Civil Service Commission's final 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.

Notice to:

Patrick Cummings (Appellant)

John Nuttall, Chief (Appointing Authority)