

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

BONNIE J. CUNHA,
Appellant

v.

E-21-008

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Bonnie J. Cunha

Appearance for Respondent:

Joseph Santoro
Department of Correction
Division of Human Resources
50 Maple Street, 1st Floor
Milford, MA 01757

Commissioner:

Christopher C. Bowman

SUMMARY DECISION

On December 28, 2020, the Appellant, Bonnie J. Cunha (Appellant), filed a non-bypass equity appeal with the Civil Service Commission (Commission), contesting the decision of the Department of Correction (DOC) to not appoint her to the position of Correctional Program Officer A/B (CPO A/B) from Certification No. 06864.

On January 8, 2021, DOC filed a Motion to Dismiss the Appellant's appeal and the Appellant filed an opposition. On February 9, 2021, I held a pre-hearing conference which was attended by the Appellant and a representative for DOC. Subsequent to the pre-hearing conference, DOC submitted additional information and the Appellant submitted a reply.

Viewing the facts most favorably to the Appellant, I find the following:

1. The Appellant is employed a Clerk VI at DOC.
2. On October 20, 2018, the Appellant took the civil service examination for CPO A/B and received a score of 86.
3. On July 1, 2019, the Appellant's name was place on the eligible list for CPO A/B.
4. On May 15, 2020, DOC created Certification No. 06864 from which it anticipated appointing thirty (30) CPO A/Bs.
5. The Appellant was ranked 19th among those willing to accept appointment on Certification No. 06864.
6. On August 15, 2020, additional names were placed on the eligible list, apparently due to a subsequent examination. The Appellant is now ranked 66th on this eligible list, although it appears that DOC continued to process Certification No. 06864.
7. In August 2020, the Appellant received a conditional offer of employment from DOC, conditional upon passing medical and drug screening tests.
8. On September 15, 2020, the Appellant received an email from DOC stating in part: "... This is your *official conditional offer* for the MADOC Academy pending the results of your psych test (we don't have the results back) and your COVID-19 results (information below) ... as of now you want to plan to start the Academy. **The first day of the Academy is Monday, October 26, 2020.**)" (emphasis in original)
9. The Appellant passed the medical (including psychological) tests and drug screening.
10. The Appellant purchased the necessary gear in anticipation of attending the training academy.
11. On September 28, 2020, a day before the scheduled COVID-19 test, the Appellant received an email from DOC stating that "due to current operational needs", DOC was only able to

hire 7 CPO A/Bs, as opposed to 30, and that the Appellant’s rank on the Certification was not reached in regard to those 7 appointments. The email stated in part, “Therefore, for now, you will stay in your Clerk position and we will look to hire you as a CPO come early next year.”

12. On November 19, 2020 DOC sent the Appellant an email informing her that no additional CPO A/Bs would be hired for the January 2021 Academy.¹

13. On December 1, 2020, DOC sent the Appellant a formal non-selection letter confirming that she was not considered for appointment to the October 11, 2020 Academy as “your rank was not reached on the certification ...”.

14. On December 28, 2020, the Appellant filed this appeal with the Commission, arguing that she is an aggrieved person and asking the Commission to place her name at the top of the next certification for CPO A/B.

Legal Standard for Summary Disposition

An appeal may be disposed of on summary disposition 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 Board, 18 MCSR 216 (2005).

Analysis

The Appellant received a conditional offer of employment for CPO A/B from DOC; she completed the required medical and drug screening; and she made plans to attend the October 2020 training academy. As her conditional offer of employment was, effectively, rescinded prior

¹ This effectively marked the end of the certification. Any future certifications would be generated from the updated eligible list upon which the Appellant’s rank was now considerably lower.

to her attending the training academy, the Appellant argues that she is an aggrieved person for whom relief is warranted.

I am not unsympathetic to the Appellant's plight here. She was understandably looking forward to what, for her, was a promotional opportunity at DOC. Importantly, however, even when viewing the facts in the light most favorable to the Appellant, there is no evidence, or even an allegation, that DOC's actions here were the result of any personal, political or other reasons not related to basic merit principles. The Appellant has not disputed the detailed reasons cited by DOC for the decision to appoint 7, as opposed to 30, CPO A/Bs, which include the unanticipated closure of at least two minimum security facilities which resulted in the displacement of many incumbent CPO A/Bs.

In sum, absent proof of any subterfuge or ulterior motives on DOC's part, the Appellant's claim cannot be distinguished from the classic case of "dying on the vine", which is the inevitable plight of any person whose name appears near the top of an eligible list and is then removed or lowered due to a subsequent examination. See Brackett v. Civil Service Comm'n, 447 Mass. 233, 253 (2006) and cases cited (placement on civil service list is no guarantee of appointment or promotion); Callanan v. Personnel Adm'r, 400 Mass. 597, 600 602 (1987) (no vested interest in position during life of an eligible list); Mandracchia v. City of Everett, 21 MCSR 307 (2008) ("A candidate whose name is not reached for promotion or appointment has no recourse but to take the next examination.")

For all of the above reasons, the Appellant's appeal under Docket No. E-21-008 is *dismissed*.
Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 3, 2021.

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:

Bonnie Cunha (Appellant)

Joseph Santoro (for Respondent)