COMMONWEALTH OF MASSACHUSETTS

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

MARK DELUCA,
Appellant

v.

BOSTON FIRE DEPARTMENT,
Respondent

Docket Number:	E-25-151
Appearance for Appellant:	Glen Hannington, Esq. One Boston Place, Suite 2600 Boston, MA 02108
Appearance for Respondent:	Robert J. Boyle, Jr., Esq. City of Boston Boston City Hall, Room 624 Boston, MA 02201
Commissioner:	Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the appeal of a non-selected candidate for Boston firefighter as no bypass occurred and the candidate failed to show good cause why the City's tie-breaking method, which included the verification of residency preference, should be investigated by the Commission.

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

On June 26, 2025, the Appellant, Mark DeLuca (Appellant), filed a non-bypass equity appeal with the Civil Service Commission (Commission) contesting his non-selection for the position of firefighter by the Boston Fire Department (BFD). On July 29, 2025, I held a remote pre-hearing

conference which was attended by the Appellant, counsel for the Appellant and counsel for the BFD. The BFD subsequently filed a motion to dismiss, and the Appellant filed an opposition.

Undisputed Facts

Based on the statements of the parties and the written submissions, the following is undisputed, unless otherwise noted:

1. On July 17, 2022, the Appellant applied to the state's Human Resources Division (HRD) to take the 2022 municipal firefighter (original appointment) examination. The Appellant did not claim Boston civil service residency on his initial application with HRD.
2. On October 21, 2022, the Appellant took and passed the civil service examination for firefighter and indicated an interest in being appointed as firefighter in the City of Boston.
3. Based on the examination date of October 21, 2022, the Appellant must have continuously resided in the City of Boston from October 21, 2021 to October 21, 2022 to be eligible for civil service residency preference in the City of Boston.
4. As part of the hiring cycle in question, only candidates with a Boston residency preference were eligible for appointment.
5. On April 1, 2023, HRD established an eligible list for Boston firefighter.
6. On May 17, 2023, the Appellant notified HRD that he had resided continuously in the City of Boston since October 24, 2021, three days after the beginning of the residency preference window referenced above.
7. That same day, HRD updated the Appellant's civil service residency preference to Boston.
8. Residency preference verification is the responsibility of the appointing authority (i.e. – the BFD) after the appointing authority receives a certification of names from HRD as part of a hiring cycle.

9. On October 28, 2024, HRD issued Certification No. 10181 to the BFD. Based on his examination score, veteran status *and the above-referenced Boston residency preference claimed by the Appellant*, the Appellant was tied for 6th on the certification among those willing to accept appointment.
10. No candidate ranked below 6th on the certification was appointed by the BFD as a firefighter.
11. Effectively as a tie-breaking method, the BFD relied in part on conducting background investigations, disqualifying certain candidates in the 6th tie group for various reasons, including, as in this case, a candidate's inability to verify their civil service residency preference.
12. Although no candidate ranked below the Appellant was appointed as a firefighter, the BFD, on May 2, 2025, sent the Appellant notification indicating that he had been bypassed for appointment based on the BFD's conclusion that the Appellant was unable to verify that he was eligible for civil service residency preference in Boston (i.e. – that he resided continuously in Boston during the residence preference window of October 21, 2021 to October 21, 2022).[1]
13. On June 26, 2025, the Appellant filed a non-bypass equity appeal with the Commission.

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

[1] At the pre-hearing conference, the BFD indicated that the "bypass letter" with reasons for "bypass" was sent in error and that the Appellant should have received a non-selection letter simply stating that he had been non-selected.

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").

APPLICABLE CIVIL SERVICE LAW

Appeals Filed Under Section 2(b)

Section 2(b) of Chapter 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the Human Resources Division (HRD) or, in certain cases by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. The statute provides:

> No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

> If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

The fundamental mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31, which command, among other things, "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, § 1. The most important mechanism for ensuring adherence to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority of a "certification" which ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. G.L. c. 31, §§ 6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the "2n+1" formula. G.L. c. 31, § 27; PAR.09.

To deviate from the rank order of preferred hiring and appoint a person "other than the qualified person whose name appears highest", an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively

justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L. c. 31, §§ 1, 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a "reasonably thorough review" of the background and qualifications of the candidates' fitness to perform the duties of the position and was "reasonably justified". *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688 (2012), *citing Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *Brackett v. Civil Service Comm'n*, 447 Mass. 233, 543 (2006) and cases cited; *Beverly v. Civil Service Comm'n*, 78 Mass. App. Ct. 182 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

Section 2(b) Bypass Appeals

The Commission has consistently construed the plain meaning of the language in G.L. c. 31, § 27 to infer that selection from a group of tied candidates is not a bypass of a person whose "name appears highest", for which an appeal may be taken as of right to the Commission. See, e.g., *Edson v. Town of Reading*, 21 MCSR 453 (2008), *aff'd sub nom*. *Edson v. Civil Service Comm'n*, Middlesex Sup.Ct. No. 2008CV3418 (2009) ("When two applicants are tied on the exam and the Appointing Authority selects one, the other was not bypassed"); *Bartolomei v. City of Holyoke*, 21 MCSR 94 (2008) ("choosing from a group of tied candidate does not constitute a bypass"); *Coughlin v. Plymouth Police Dep't*, 19 MCSR 434 (2006) ("Commission . . . continues to believe that selection among a group of tied candidates is *not* a bypass under civil service law"); *Kallas v. Franklin School Dep't*, 11 MCSR 73 (1996) ("It is well settled civil service law that a tie score on a certification . . . is not a bypass for civil service appeals"). See also *Cotter v. City of Boston*, 193 F.Supp.2d 323, 354 (D.Mass.2002), *rev'd in part on other grounds*, 323 F.3d 160 (1st Cir. 2003) ("when a civil service exam results in a tie score, and the

appointing authority . . . promotes some but not all of the tied candidates, no actionable 'bypass' has taken place in the parlance of the Civil Service Commission.")

Here, the undisputed facts establish that the BFD did not appoint any candidate ranked below the Appellant, but, rather, appointed candidates tied with the Appellant in the 6th tie group. Thus, for the reasons explained above, as a matter of law, the Appellant's non-selection is not a bypass and the BFD is not required to provide written reasons for his non-selection over others in the tie group and he does not have a statutory right of appeal to the Commission for a de novo review of the "reasonable justification" sustaining the reasons for selecting candidates in the tie group other than the Appellant. The fact that the BFD erroneously sent the Appellant a bypass letter, along with notification that he had appeal rights to the Commission, while unfortunate, does not override the statutory and precedent-setting definition of an appealable bypass referenced above.

Section 2(b) Non-Bypass Equity Appeals

As the Appellant filed this appeal as a non-bypass equity appeal, I reviewed whether the Appellant could be deemed an aggrieved person by considering whether the tie-breaking criteria used to decide whom within the tie group would be appointed were tainted by nepotism, favoritism, or gender bias and/or was arbitrary and capricious, in violation of "basic merit principles".

The Commission has acknowledged that, in theory, tie-breaking methods are properly subject to scrutiny under "basic merit principles". In the matter of *Araica v. Human Resources Division*, 22 MCSR 183 (2009), the Commission declined to pursue an investigation into whether the proposed adoption of "banding" test scores on eligible lists (which has since been abandoned) violated merit principles; but *Araica* did note the importance of having a fair and unbiased tie-breaking system in place:

> [W]ith banding, cities and towns are likely going to be presented with much larger and more diverse certification lists of candidates and will probably need to employ tie-breaking or other selection methods much more frequently and, perhaps even adopt new methods that were not necessary in the past, to choose whom to [appoint]. . . HRD should be actively encouraging adoption of best practices to ensure that such tie-breaking methods are consistent with, and applied in accordance with, basic merit principles and all other applicable laws. We are confident that HRD will appreciate the importance of ensuring that this is done and that failure to do so would be . . . a disservice to all parties. We will not stand idly by if presented with competent evidence that unlawful favoritism was the driving force behind a particular . . . appointment.

Id., 22 MCSR at 186. See generally *De Simone v. City of Cambridge*, 24 MCSR 297 (2010) (interviews used as tie-breaking criteria); *St. Pierre v. Fall River School Dep't*, 22 MCSR 445 (2009) (supervisor's rating used in layoffs to break tie in seniority); *Bartolomei v. City of Holyoke*, 21 MCSR 94 (2008) (noting, without deciding, possible question of using alphabetical order as a tie-breaker); *Johnson v. City of Everett*, 20 MCSR 295 (2007), citing *Cotter v. City of Boston*, 193 F.Supp.2d 323, 354 (D.Mass. 2002), *rev'd in part on other grounds*, 323 F.3d 160 (1st Cir. 2003) (noting problematic lack of standard tie-breaking procedures); *Coughlin v. Plymouth Police Dep't*, 19 MCSR 434 (2006) (same); *Dalrymple v. Town of Winthrop*, 19 MCSR 379 (interview panel used as tie-breaking criteria vs. alphabetical order or seniority); *Sullivan v. North Andover Fire Dep't*, 7 MCSR 175 (1990) (seniority used as tie-breaker).

The Commission has not, however, in any previous appeal, rejected the validity of the tie-breaking methodology for making civil service appointments. Clearly, any claim that the BFD used some form of patently arbitrary and capricious or unlawful discriminatory criteria to select among otherwise equally qualified candidates would be taken seriously. Similarly, nepotism, whether overt or concealed, has no place under basic merit principles in filling civil service

positions. Thus, the Commission's door must be open to hearing and remediating all such violations of the basic merit principles of civil service law in some appropriate manner.

On the other hand, non-selection of tied candidates is still not a bypass and scrutiny of a tie-breaking process cannot be converted into a bypass matter. Unlike a bypass, nothing in the civil service law mandates that an appointing authority provide the reasons for picking one tied candidate over another.

Here, there is not even an allegation by the Appellant that the BFD engaged in discriminatory practices. Rather, the Appellant, in his opposition, appears to rest solely on the argument that, since the BFD erroneously sent the Appellant a bypass letter, they must now show, by a preponderance of the evidence, that the reason listed in the letter (failure to verify residency preference) was a valid reason for "bypassing" the Appellant. As referenced above, no bypass occurred here, and the BFD was not – and is not – required to provide the Appellant with reasons for his non-selection from a group of candidates tied for 6th on the certification.

After taking all these factual and legal nuances into consideration, absent a legislative change or judicial construction of the statute that would require it, I conclude that Section 2(b) is not the intended or appropriate mechanism to address such challenges. Rather, as appropriate, the Commission may scrutinize questionable tie-breaking procedures when evidence of such is brought to its attention—through its broad independent statutory authority to conduct an investigation into any form of a violation of civil service law, on its own initiative or at the written request of "the governor, the executive council, the general court or either of its branches, the administrator [HRD], an aggrieved person, or by ten persons registered to vote in the commonwealth." G.L. c. 31, § 2(a).

Section 2(a) Investigations

Section 2(a) of Chapter 31 grants the Commission broad discretion to decide to what extent an investigation is appropriate and what response, if at all, should issue. See, e.g., *Dennehy v. Civil Service Comm'n*, Suffolk Superior Court C.A. No. 2013-00540 (2014) ("The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.") See also *Erickson v. Civil Service Comm'n*, Suffolk Superior Court C.A. No. 2013-00639 (2014); *Boston Police Patrolmen's Association et al v. Civil Service Comm'n*, Suffolk Superior Court C.A. No. 2006-4617 (2007). The Commission's exercise of its power to investigate is not subject to the general rules for judicial review of administrative agency decisions under G.L. c. 30A but can be challenged solely for an "abuse of discretion". See *Erickson v. Civil Service Comm'n*, Suffolk Superior Court C.A. No. 2013-00639 (2014), citing *Mayor of Revere v. Civil Service Comm'n*, 31 Mass. App. Ct. 315, 321-22 (1991).

The Commission exercises its discretion to conduct an investigation only "sparingly" and, typically, when there is clear and convincing evidence of an entrenched political or personal bias or systemic violations of the civil service law that can be rectified only by the Commission's affirmative remedial intervention into the hiring process. See, e.g., *Richards v. Department of Transitional Assistance*, 24 MCSR 315 (2011) (declining to investigate alleged age discrimination and favoritism in provisional promotions, but admonishing agency that "certain actions . . . should not be repeated on a going forward basis"). For example, after learning that an appointing authority had hired candidates and began placing them into the Police Academy without having informed numerous bypassed candidates of the right to challenge their non-selection by appeal to the Commission, the Commission initiated a thorough review of the

appointing authority's hiring cycle, which resulted in the entry of numerous orders to implement changes, both retrospective and prospective, to rectify the violations found by the Commission. See *Investigation re: Boston Police Dep't and Due Process of Non-Selected Candidates*, 29 MCSR 367, *supplemental decision*, 29 MCSR 297 (2016). See also *In Re: 2010/2011 Review and Selection of Firefighters in the City of Springfield*, 24 MCSR 627 (2011) (investigation into hiring spearheaded by Deputy Fire Chief which resulted in his son's appointment and required reconsideration of numerous candidates through a new hiring cycle conducted by outsiders not connected with the Springfield Fire Department); *In Re: 2011 Review and Selection of Permanent Intermittent Police Officers By the Town of Oxford*, CSC No. 1-11-280 (2011) (investigation of alleged nepotism in hiring Selectmen's relatives required reconsideration of all 19 candidates through an new independent process); *Dumont v. City of Methuen*, 22 MCSR 391 (2009), *findings and orders after investigation*, CSC No. I-09-290 (2011) (rescinding hiring process and reconsideration of all candidates after Police Chief had participated in selection of her niece).

Although the Appellant did not specifically request an investigation, I have reviewed whether such an investigation would be warranted. As there are no allegations of discriminatory practices or political or personal favoritism, no such discretionary investigation is warranted.

Finally, for the sake of clarity, nothing in this decision should be construed as disqualifying the Appellant for future consideration for appointment as a Boston firefighter should he be among those eligible for consideration for appointment in the future.

Conclusion

In summary, the Commission lacks jurisdiction to hear this matter as an appeal under Section 2(b) of the civil service law and Appellant has not shown good cause why the

Commission should initiate an investigation, either at his request, or on its own initiative. For these reasons, the City's Motion to Dismiss is allowed and the Appellant's appeal under Docket No. E-25-151 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, McConney and Stein, Commissioners) on September 18, 2025.

Either party may file a motion for reconsideration within ten days of 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:
Glen Hannington, Esq. (for Appellant)
Robert J. Boyle, Jr. Esq. (for Respondent)
Michael Owens, Esq. (HRD)