

COMMONWEALTH OF MASSACHUSETTS

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

ADONIS DePINA CENTEIO,
Appellant

v.

G1-21-127

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

James Gilden, Esq.
173 North Main Street
Sharon, MA 02067

Appearance for Respondent:

Omar Bennani, Esq.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

On July 22, 2021, the Appellant, Adonis DePina Centeio (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Police Department (BPD) to bypass him for appointment as a police officer. On August 10, 2021, I held a remote pre-hearing conference which was attended by the Appellant, his counsel and counsel for the BPD. At that time, it was reported that the Appellant was apparently not bypassed for appointment, but, rather, non-selected from the last tie group.

On October 20, 2021, I sent an email to counsel for the Appellant inquiring whether the Appellant would be withdrawing his appeal. On November 17, 2021, having received no reply from counsel for the Appellant, I sent a follow-up email asking for a status update. Counsel for

the Appellant replied, indicating that he had not received the October 20th email and stating that “The Appellant is currently being processed. I shall reach out to him to see what he wants to do.” Having received no status update as of October 20th, I provided the BPD with 30 days to file a motion to dismiss and the Appellant with 30 days thereafter to file a reply. The BPD filed a timely motion to dismiss and the Appellant did not submit an opposition.

As referenced in the BPD’s motion to dismiss, the Appellant was ranked in the 72nd tie group on Certification No. 07505. No candidate ranked below the 72nd tie group was appointed from this certification. The BPD’s notice to the Appellant that he was bypassed was sent in error.

The Commission has long held that the appointment of a candidate among those with the same rank on a Certification is not a bypass. See Edson v. Reading, 21 MCSR 453 (2008) (upheld by Superior Court; Edson v. Civil Service Comm'n, Middlesex Sup. Ct. No. 08-CV3418 (2009)); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1998); Servello v. Dep't of Correction, 28 MCSR 252 (2015); See also Thompson v. Civil Service Comm'n, Suffolk Superior Ct. No. MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass); Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 261 (2001) (“In deciding bypass appeals, the commission must determine whether the appointing authority has complied with the requirements of Massachusetts civil service law for selecting lower scoring candidates over higher scoring candidates); Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002) (citing HRD's guide), *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 candidates, no actionable `bypass` has taken place in the parlance of... civil service”).

Applied here, the BPD was not required by the civil service law and rules to provide the Appellant with any reasons for non-selection as he was not bypassed and BPD erroneously notified the Appellant of a “bypass reason” and erroneously notified him that he had a right to appeal that bypass reason to the Commission. This administrative error by the BPD does not result in the Commission having jurisdiction over a non-selection which does not constitute a bypass.

For these reasons, the Commission lacks jurisdiction to hear this appeal and the Appellant’s appeal under Docket No. G1-21-127 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners [Camuso – Absent]) on April 21, 2022.

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:

James Gilden, Esq. (for Appellant)
Omar Bennani, Esq. (for Respondent)