

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

ARMANDO DOCKERY,)	
Appellant)	
)	
V.)	Docket Number G2-05-395
)	
CITY OF WALTHAM,)	
Respondent)	
)	

DECISION ON RESPONDENT’S MOTION TO DISMISS

Procedural Background

On November 10, 2005, the pro se Appellant, Armando Dockery (hereinafter “Appellant”), filed this appeal based on his position being altered on the certified list for promotion to Captain in the City of Waltham Fire Department (hereinafter “City”). Specifically, the Appellant is appealing, pursuant to G.L. c. 31, § 2(b), an action by the City promoting Lt. Anthony Capello from Certification List No. 251121. The Appellant alleges that the awarding by the Human Resources Division (hereinafter “HRD”) of two (2) points for veteran status to Lt. Capello, after the competitive promotional examination, enabled Lt. Capello’s name to be placed higher on the list, thus, bypassing the Appellant for promotion. The Civil Service Commission (hereinafter “Commission”) scheduled a Pre-Hearing Conference on this appeal for March 16, 2006. Pursuant to the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01 7(g)(3), the City filed this Motion to Dismiss the appeal on March 3, 2006 asserting that the appeal fails to

state a claim upon which relief can be granted. The Appellant received a copy of the motion and has offered no opposition to the motion. The Commission's records indicate that the hearing was postponed pending a ruling on the City's motion or submittal of a Voluntary Withdrawal by the Appellant.

Factual Background

On May 6, 2004, the HRD issued Certification List No. 24024 for promotion to Fire Captain for the City. Three (3) candidates were listed: Stephen Doe in first position with a score of 80; the Appellant in second position with a score of 76; and Lt. Capello in third position with a score of 75. All three (3) indicated on this list as willing to accept promotion.

On November 8, 2005, HRD issued Certification List No. 251121 for the position of Fire Captain. There were only two (2) candidates listed on this revised list: Lt. Capello in first position with a score of 77 and the Appellant in second position with a score of 76. Both candidates again indicated their willingness to accept promotion. This list showed that the two (2) candidates' order within the list changed due to an increase of two (2) points in Lt. Capello's score because of his veteran status. Lt. Capello served in the military from October 1983 to October 1987 and received an honorable discharge.

Respondent's Grounds for Dismissal

The City asserts that there are no sets of facts which support the appeal and, as a matter of law, the action is wrongfully brought against the City and must be dismissed.

The Appellant's appeal states, in part, that he believes "once a list is established and certified, no changes to it should take place thereafter. The cut off dates should be consistent as with lifetime and educational experience." The City's primary argument is that it was mandated by G.L. c. 31, § 27 to follow the newly certified list (251121) issued by the HRD when selecting candidates for promotion. Thus, if the Appellant wishes to appeal a decision of the City made pursuant to a certified list received from the HRD, the Appellant must file the appeal against the HRD and not the City. Essentially, the City believes it has been wrongfully named as the Respondent in the appeal. The City further asserts that, if the Appellant disagrees with the issuance of a revised certified list based on Lt. Capello's veteran status, he must bring an appeal that challenges the policy honoring the service of veterans.

Additionally, the City notes that the HRD has a policy whereby it accepts updates to a candidate's veteran status, even after a certified list has been issued. While it is true that additional education and experience are excluded after the date of a Civil Service exam, the same is not true for information supporting veteran status. The HRD, in fact, provides instructions and forms for updating veteran status after an examination is completed, but does not provide any equivalent process for updating education and experience after a list is generated.

To support its argument on this point, the City maintains that the Personnel Administration Rules (PAR) supplement G.L. c. 31 and govern the procedures followed by the HRD in establishing rankings on certified lists. PAR .14 governs promotions and

explicitly states that, “In competitive examinations for promotion to any position in the classified official service, the administrator shall add two points to the general average mark obtained by any veteran, as defined in M.G.L. c. 31, § 1, providing such veteran has first obtained a passing mark in said examination.” In the instant matter, once the proper forms were received and processed to update Lt. Capello’s veteran status, HRD was *mandated* to issue a new list reflecting that his score had increased by two points.

Conclusion

The Commission concurs with the City that the Appellant failed to name the correct party in his appeal and that the HRD adjusted the certification lists in accordance with applicable Civil Service laws, policies and procedures. The Appellant has failed to state a claim upon which relief can be granted by this Commission. Therefore, the Respondent’s Motion to Dismiss the appeal is allowed and the appeal on Docket No. G2-05-395 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Taylor, Marquis and Guerin, Commissioners) on July 26, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Armando Dockery

Bernadette D. Sewell, Esq.