

**COMMONWEALTH OF MASSACHUSETTS**

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

JOHN C. DOE<sup>1</sup>,  
*Appellant*

v.

CITY OF WORCESTER,  
*Respondent*

Docket Number: [Redacted]

Appearance for Appellant: *Pro Se*

Appearance for Respondent: Theresa Reichert, Esq.  
City of Worcester  
455 Main Street, Room 109  
Worcester, MA 01608

Commissioner: Christopher C. Bowman

**SUMMARY OF DECISION**

The Commission dismissed the bypass appeal of the Appellant based on the undisputed fact that he failed to meet the medical standards required of firefighters after undergoing an initial medical examination and re-examination.

**DECISION ON RESPONDENT'S MOTION FOR SUMMARY DECISION**

On March 6, 2024, John C. Doe (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Worcester (City) to bypass him for original appointment to the position of firefighter. On March 12, 2024, I held a remote

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<sup>1</sup> Consistent with its [Protocols to Protect Privacy](#), the Commission has opted to use a pseudonym for the Appellant in this appeal which pertains to a medical diagnosis related to a candidate for appointment.

pre-hearing conference which was attended by the Appellant and counsel for the City. The City subsequently filed a motion for summary decision. In response, the Appellant submitted a letter from a physician as noted below.

## **UNDISPUTED FACTS**

Based on the information submitted and the statements made at the pre-hearing, the following is not disputed, unless otherwise noted:

1. On October 24, 2022, the Appellant took the written portion of the examination for firefighter.
2. On April 1, 2023, the state's Human Resources Division (HRD) established an eligible list for firefighter.
3. On August 11, 2023, HRD issued Certification No. 09442 to the City upon which the Appellant was tied for 13<sup>th</sup>.
4. The City, after conducting a background investigation, issued the Appellant a conditional offer of employment for the position of firefighter, contingent on multiple conditions, including successful passage of a medical examination as required by [Section 61A of Chapter 31](#) and [HRD's Initial Hire Medical and Physical Ability Test Standards and Physician's Guide](#) (Medical Guidelines).
5. The City subsequently rescinded the Appellant's conditional offer of employment after a City-contracted physician concluded that the Appellant failed to meet the medical guidelines as they relate to asthma.
6. The Appellant's non-selection constituted an appealable bypass as one or more candidates ranked below him on the certification were appointed.

7. As part of the Appellant's appeal, he submitted a letter from his pediatrician dated February 28, 2024 with no reference to the medical guidelines stating in part that: "This young man has outgrown all respiratory symptoms and does not have asthma."
8. During the March 12, 2024 pre-hearing conference, the Appellant produced correspondence from MGH Pulmonary Associates dated March 7, 2024, with no reference to the medical guidelines, stating in part that: " ... from a pulmonary perspective, [the Appellant] is capable of performing all necessary activity and training for this academy recruitment class."
9. On March 13, 2024, the City-contracted physician sent correspondence to both of the above-referenced physicians (the Appellant's pediatrician and MGH Pulmonary Associates), providing them with the medical guidelines related to asthma, and asked for a clarification regarding whether, in their opinion, the Appellant met those medical standards.
10. On March 20, 2024, the Appellant's pediatrician replied to the City stating: "I am not a pulmonologist nor expert in asthmatic lung diseases" and declined to opine on whether the Appellant met the medical guidelines as they relate to asthma.
11. On May 6, 2024, the physician from MGH Pulmonary Associates replied to the City stating in part that "[The Appellant] does not meet the HRD asthma standard" with specific reference to a pulmonary-related examination performed on the Appellant.
12. On May 21, 2024, the Appellant forwarded a letter to the Commission from Dr. Peter M. Barkin of Emerson Health Pulmonary in Concord, MA. This letter, which made no reference to the medical guidelines, stated:

[The Appellant] is a patient of mine with asthma as supported by medical impression and positive methacholine challenge on 5/16/2024. Full pulmonary function tests on 2/26/2024 were within normal limits. He has no current respiratory symptoms and his chest exam today is clear. He is an acceptable candidate from a medical standpoint to perform all duties as a firefighter.

## **MOTION FOR SUMMARY DECISION STANDARD**

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).

## **RELEVANT CIVIL SERVICE LAW**

Section 61A of Chapter 31 states in relevant part that:

No person appointed to a permanent, temporary or intermittent, or reserve police or firefighter position ... shall perform the duties of such position until he shall have undergone initial medical and physical fitness examinations and shall have met such initial standards. The appointing board or officer shall provide initial medical and physical fitness examinations. If such person fails to pass an initial medical or physical fitness examination, he shall be eligible to undergo a reexamination within 16 weeks of the date of the failure of the initial examination. If he fails to pass the reexamination, his appointment shall be rescinded. No such person shall commence service or receive his regular compensation until such person passes the health examination or reexamination.

## **ANALYSIS**

Based on the undisputed facts, an initial medical examination conducted by a City-contracted physician concluded that the Appellant failed to meet the medical standards as they relate to asthma. The Appellant was then afforded the opportunity for a re-examination. The Appellant underwent a re-examination by a physician at MGH Pulmonary Associates. Upon reviewing the medical guidelines, that physician concluded that the Appellant did not meet the medical guidelines as they relate to asthma. Based on the plain language of Section 61A, the

Appellant's conditional offer "shall be rescinded" based on the Appellant's failure to pass the re-examination (conducted by his own physician).

The City is not required to consider the results of an additional medical re-examination submitted by the Appellant. Even if it were, the correspondence from Dr. Barkin of Emerson Health Pulmonary makes no reference to the medical guidelines and, thus, is not relevant.

## **CONCLUSION**

The Appellant's appeal 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) on June 27, 2024.

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 to:  
John C. Doe (Appellant)  
Theresa Reichert, Esq. (for Respondent)