

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

MICHAEL DONOVAN,
Appellant

G2-16-150

v.

BROOKLINE FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Michael Donovan

Appearance for Respondent:

Nicholas Dominello, Esq.
Deutsch Williams
1 Design Center Plaza
Boston, MA 02210

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On September 7, 2016, the Appellant, Michael Donovan (Mr. Donovan), a firefighter for the Brookline Fire Department (BFD), filed an appeal with the Civil Service Commission contesting the provisional promotion of another firefighter to the position of Provisional Lieutenant.

On September 27, 2016, I held a pre-hearing conference, which was attended by Mr. Donovan, counsel for the BFD, the Town's Fire Chief and a representative from the Town's human resources department.

At the pre-hearing, the parties stipulated that, in April 2016, there were three (3) names on an eligible list of candidates for permanent Fire Lieutenant. All three (3) firefighters were promoted to the position of permanent Fire Lieutenant, leaving no names on the eligible list. In June 2016,

the Town requested an examination to establish a new list. The examination is scheduled for November 2016.

In July 2016, two (2) vacancies arose for the position of Fire Lieutenant. Since no names were on the eligible list, the BFD promoted two (2) firefighters to the position of Provisional Fire Lieutenant. The two (2) individuals provisionally promoted were not the most senior firefighters. Had the BFD promoted the two (2) most senior firefighters, Mr. Donovan would have been provisionally promoted.

Mr. Donovan filed the instant appeal with the Commission arguing that the BFD violated a “past practice” of promoting the most senior firefighter to lieutenant when no eligible list exists.

G.L. c. 31, s. 15, concerning provisional promotions, permits a provisional promotion of a permanent civil service employee from the next lower title within the departmental unit of an agency if there is no suitable eligible list or the list contains less than three names (a short list). When making such provisional promotions, the Appointing Authority is not required to provide sound and sufficient reasons for the promotion, but, rather, only show that the person is qualified, something that Mr. Sheehan does not contest. The submission of sound and sufficient reasons is only required when an Appointing Authority skips one or more grades and does not provisionally promote someone from the next lower title. See Kelleher v. Personnel Administrator of the Department of Personnel Administration & Somerville, 421 Mass. 382 (1995). See also Kasprzak v. Department of Revenue, 20 MCSR 628 (2007).

Mr. Donovan cannot show that the BFD violated any civil service law or rule by provisionally promoting civil service employees who hold the next lower title of firefighter, even if those employees have less seniority than Mr. Donovan.

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For this reason, Mr. Donovan's appeal under Docket No. G2-16-150 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on October 13, 2016.

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:
Michael Donovan (Appellant)
Nicholas Dominello, Esq. (for Respondent)