

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

CRAIG ERICKSON,
Appellant
v.

**ROCKLAND FIRE
DEPARTMENT,**
Respondent

Case No.: I-12-100

RESPONSE TO REQUEST FOR INVESTIGATION

On March 12, 2012, Craig Erickson (Appellant), a provisional Fire Captain in the Rockland Fire Department (Department), filed a request for investigation pursuant to G.L. c. 31, § 2(a) with the Civil Service Commission (Commission). That request stated in relevant part:

“Thomas Heaney does not qualify for appointment of Captain of the Rockland Fire Department as he resides outside of ten miles of the town limits in violation of M.G.L. C. 31, S. 58.”

On May 4, 2012, the state’s Human Resources Division (HRD), submitted correspondence to the Commission stating in relevant part: “As a result of the delegation of civil service appointments and promotions, the approval process in this matter has been delegated to the Rockland Fire Department.”

On May 8, 2012, a pre-hearing conference was held at the offices of the Commission, which was attended by the Appellant, his counsel, Rockland Fire Chief Scott Duffey, counsel for the Rockland Fire Department, Thomas Heaney and counsel for Mr. Heaney.

Mr. Heaney filed a Motion to Intervene which I allowed.

It is undisputed that Mr. Erickson currently serves as a Provisional Fire Captain in the Rockland Fire Department. As a result of a recent promotional examination, an eligible list for Fire Captain was created on April 15, 2012. The only name on that list is Thomas Heaney. If Mr. Heaney receives a permanent appointment, Mr. Heaney’s provisional promotion will end and he will return to his lower position.

According to Chief Duffey and counsel for the Department, the Department is currently reviewing the allegations regarding Lt. Heaney’s residency and will not

be making any permanent appointment until the review is completed. If the Department finds that Lt. Heaney is not in compliance with the residency requirement, it will give him an opportunity to “cure” the non-compliance.

Conclusion

G.L. c. 31, § 58 states in relevant part:

“... any person who receives an appointment to the police force or fire force of a city or town shall within nine months after his appointment establish his residence within such city or town or at any other place in the commonwealth that is within ten miles of the perimeter of such city or town ...”

G.L. c. 31, § 2 states:

“In addition to its other powers and duties, the commission shall have the following powers and duties:

- (a) To conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth.”

This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Superior Court (2007).

G.L. c. 31, § 73 states:

“If, in the opinion of the administrator [HRD], a person is appointed or employed in a civil service position in violation of the civil service law and rules, the commission or the administrator shall mail a written notice of such violation to such person and to the appointing authority. The commission or the administrator shall then file a written notice of such violation with the treasurer, auditor or other officer whose duty it is to pay the salary or compensation of such person or to authorize the drawing, signing or issuing of any warrant for such payment. (emphasis added)

The payment of any salary or compensation to such person shall cease at the expiration of one week after the filing of such written notice with such treasurer, auditor or other officer. No such treasurer, auditor or other officer shall pay any salary or compensation to such person, or draw, sign or issue, or authorize the drawing, signing or issuing of any warrant for such payment, until the legality of the appointment or employment is duly established.

Any person found by the administrator [HRD] to be illegally appointed or employed may file a petition for a writ of mandamus in the supreme judicial court to compel the

administrator to authorize such appointment or employment and the payment of compensation or salary. (emphasis added)

At any time after the filing of such petition, the court may order that the compensation accruing to such person for services actually rendered shall be paid to him until further order of the court, if the court is of the opinion that there is a reasonable doubt whether the appointment or employment of such person is in violation of the civil service law and rules.”

Chapter 310 of the Act of 1993 states:

“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.”

Here, the Appellant is arguing that Lt. Heaney is employed in a civil service position in violation of the civil service law related to residency. G.L. c. 31, § 58.

While Section 2(a) and Chapter 310 together provide the Commission with wide discretion to conduct investigations and order remedial actions based on its findings and conclusions, the issue here appears to fall squarely within the authority of the state’s Human Resources Division (HRD), which serves as the Personnel Administrator. In addition to arguing that Lt. Heaney does not meet the residency requirement, thus making him ineligible to be a firefighter in the Rockland Fire Department, the Appellant also alleges that Lt. Heaney provided HRD with false information regarding his residence when applying for the Fire Captain’s promotional examination.

HRD, since 2009, has delegated most responsibility for promotional appointments to Appointing Authorities and has, for many years prior to that, relied on Appointing Authorities to investigate matters related to the residency requirement. However, there is nothing that prevents HRD, when presented with such allegations, from requiring the Appointing Authority, in its delegated capacity, from investigating the matter and reporting its findings to HRD for review. Further, HRD maintains overall responsibility for the administration of civil service examinations.

For all of the above reasons, including that the Rockland Fire Department is currently conducting its own review of this matter, the Commission orders the following:

1. The Appellant’s request for investigation, docketed as CSC Case No. I-12-100 is denied at this time and the appeal is dismissed with a future effective date of July 31, 2012.
2. On or before July 20, 2012, the Rockland Fire Department shall complete its review of this matter, including any findings, conclusions and recommendations.

3. If, at the conclusion of this review, the Appellant still maintains that Lt. Heaney is employed in his position in violation of civil service law or rules, he may: a) move to revoke the dismissal seeking to reinstate the Appellant's appeal under docket number I-12-100 for further consideration; or b) petition the state's Human Resources Division to review the matter.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on May 31, 2012.

A True Record. Attest:

Commissioner

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)(1), 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.

Notice to:
Michael Savage, Esq. (for Appellant)
John J. Clifford, Esq. (for Respondent)
Joseph G. Donnellan, Esq. (for Intervenor)
John Marra, Esq. (HRD)