

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**RE: JOINT REQUEST BY MASSACHUSETTS  
HUMAN RESOURCES DIVISION TO GRANT  
RELIEF TO RYAN FITZGERLD**

**CASE NO: E-15-69**

Appearance for Ryan Fitzgerald

Pro Se

Appearance for City of Taunton:

Jason D. Buffington, Esq.  
City Solicitor  
City Hall – 141 Oak Street  
Taunton, MA 02780

Appearance for HRD:

Patrick G. Butler, Esq.  
Human Resource Division - Legal  
One Ashburton Place  
Boston, MA 02108

Commissioner:

Paul M. Stein

**DECISION ON PETITION FOR CHAPTER 310 RELIEF**

The Massachusetts Human Resources Division (HRD), on behalf of Ryan Fitzgerald, filed a petition with the Civil Service Commission (Commission), seeking relief, pursuant to the Commission's equitable authority inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, relative to an error by HRD, which failed to place Mr. Ryan, a veteran, with the proper veteran's preference on a Certification for appointment to the position of Firefighter with the City of Taunton (Taunton), from which Taunton eventually hired three (3) firefighters. As a result of the error, Mr. Fitzgerald was not considered for appointment from that Certification. HRD requests that

Mr. Fitzgerald be placed at the top of all future certifications issued to Taunton for so long as it takes to consider Mr. Fitzgerald for appointment as a Taunton firefighter.<sup>1</sup>

The Commission held a pre-hearing conference with the parties on May 8, 2015, at which time it appeared that certain facts bearing on the petition required clarification. As a result of the receipt of additional information from HRD and Taunton, the following facts are not in dispute:

1. On January 15, 2015, HRD issued Certification No. 02607 to Taunton for appointment of two (2) firefighters. This request was eventually modified to increase the hiring to a total of three (3) firefighters.

2. Certification No. 02607 included the names of sixteen (16) firefighters who had been laid off from their positions with the City of Fall River and appeared on the state reemployment list, which requires those candidates to be considered ahead of all others.

3. Overall, nine (9) of the candidates on the reemployment list signed willing to accept an appointment in Taunton, but, eventually, all but three (3) of those candidates withdrew from consideration.

4. Next below the reemployment list candidates, Certification No. 02607 contained the names of two “402A” candidates (children of police officers or firefighters who died in the line of duty), neither of whom signed willing to accept.

5. Next below the 402A candidates, were two (2) Taunton residents with disabled veteran’s preference who signed willing to accept, and ten (10) Taunton residents with veteran’s preference who signed willing to accept. The last veteran candidate who signed willing to accept stood in the thirteenth (13<sup>th</sup>) position on the Certification.

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<sup>1</sup> In a companion petition (CSC No. E-15-68), HRD seeks to rectify a second error that caused another candidate, Timothy Berthelette, who should have been listed on the certification as a Taunton resident with disabled veteran’s status but was also omitted by mistake.

6. Mr. Fitzgerald took and passed the entry level examination for Firefighter and duly claimed Taunton residency preference and statutory veteran's status preference, neither of which are disputed.

7. By mistake, HRD failed to place Mr. Fitzgerald's name in the proper place on the eligible list as a Taunton resident with veteran's preference, listing him only as a non-veteran resident.

8. But for the error, Mr. Fitzgerald's name would have appeared tied in the ninth (9<sup>th</sup>) position on Certification No. 02607, tied with two other candidates, among all candidates who signed willing to accept. Because his name did not appear, however, he was not considered for the appointment.<sup>2</sup>

9. Under the so-called "2n+1" formula, Taunton was permitted to hire three firefighters from among the top seven (7) candidates willing to accept. Thus, Mr. Fitzgerald, who should have been ranked ninth, would not have been eligible for hire, unless more highly ranked candidates withdrew or were bypassed.

10. Taunton hired one of the Fall River reemployment list candidates and the two disabled veterans, the latter being tied in the sixth (6<sup>th</sup>) position on the Certification, all of whom were more highly-ranked than Mr. Fitzgerald would have been, even had his name been included on the certification in the proper position.

The Commission supports the intent of a request to remedy an error made by HRD in compiling the certification used by Taunton to hire firefighters on which Mr. Fitzgerald's name would have appeared for consideration but for the error. In this situation, however, Taunton hired three (3) firefighters from the list, all of whom were ranked higher than

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<sup>2</sup> This accounts for the additional insertion of Mr. Berthelette as a disabled veteran who, if properly placed would have come ahead of Mr. Fitzgerald as well. See Decision on Petition for Chapter 310 Relief, CSC No. E-15-2015 (May 28, 2015).

Mr. Fitzgerald. Although Mr. Fitzgerald may well have been interviewed, as it turned out, under the “2n+1” rule, he would not have been eligible to be hired, as Taunton chose not to reach far enough down the list to hire him or anyone else in his tie group.

In order for the Commission to exercise its discretion to grant equitable relief under Chapter 310, HRD’s error must have caused some “harm” to Mr. Fitzgerald’s civil service rights. As it turned out, even if his name had appeared on Certification No. 20607, he could not have been hired in this cycle. His name now appears properly on the eligible list, tied with two others in the second-ranked veteran’s group. See

[http://www.csexam.hrd.state.ma.us/eligiblelist/eligiblelist.aspx?ListId=2&Location\\_Id=309](http://www.csexam.hrd.state.ma.us/eligiblelist/eligiblelist.aspx?ListId=2&Location_Id=309)

Thus, even without any relief from the Commission, Mr. Fitzgerald is already now situated high on the list of names likely to be included in any future certifications. Simply because HRD made an error, that does not warrant creating for Mr. Fitzgerald a priority in hiring by placing him above the two 402A candidates as well as the two Taunton disabled veterans and the one Taunton veteran now more highly ranked. To now place Mr. Fitzgerald ahead of these other candidates, in this situation, would amount to a windfall to him and would not be equitable to those other candidates.

Accordingly, inasmuch as there is no basis upon which to conclude that Mr. Fitzgerald’s civil service rights have been harmed which is a prerequisite to granting relief pursuant to Chapter 310, the Petition is hereby *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on May 28, 2015.

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:

Ryan Fitzgerald (Petitioner)

Patrick G. Butler, Esq. (HRD)

Jason D. Buffington, Esq. (Taunton)