

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

JACQUELINE FOLEY,
Appellant

v.

**CITY OF WALTHAM and
HRD,**
Respondents

Case No.: J-08-181

DECISION

The Appellant and the City of Waltham jointly filed this appeal with the Civil Service Commission seeking equitable relief pursuant to Chapter 310 of the Acts of 1993 ("310 Relief").¹

The parties request that the Appellant be placed at the top of the current eligibility list for the title of Clerk in the City of Waltham. Unlike most civil service communities, an eligibility list for the clerk series exists in Waltham since the City of Waltham (City) is a delegated community that has been authorized by the state's Human Resources Division (HRD) to conduct its own civil service examinations.

In 1998 the Appellant began working in the City's School Department as a building aide, a non-civil service position. The Appellant participated in the City's civil service clerical examinations in 2002, 2004 and 2007, receiving scores of 77, 73 and 77 respectively. These scores did not place her high enough on the respective lists to be considered for the various clerk vacancies that continue to become available in the City of Waltham's School Department.

Both the Appellant and the City argue that although the Appellant holds the non-civil service title of Building Aide, her duties and responsibilities are consistent with the civil service title of Clerk. As such, the parties ask that the Appellant be placed at the top of the current civil service eligibility list for the position of Clerk in the City of Waltham, effectively allowing the City to appoint the Appellant to the civil service position of Clerk.

The instant case is distinguishable from others in which the Commission has granted 310 Relief.

In Bradshaw et al v. City of Attleboro, CSC Case Nos. D-06-241-246 (2007), the Appellants,

¹ This appeal was initially docketed with a "J" prefix, as the Appellant had sought to have the Commission make her permanent in the civil service title of "Clerk" via the "Provisional Population Process (PPP)". As both parties agree that the Appellant does not serve in the position in question *provisionally*, the parties subsequently amended the appeal, seeking to have the Commission provide equitable relief pursuant to Chapter 310 of the Acts of 1993. Such appeals are typically docketed with an "E" prefix at the Commission.

due to inadvertence, were not permanently appointed to the civil service positions they each held provisionally, despite having taken and passed the applicable civil service examination. In that case, the Commission granted the Appellants "310 Relief" by directing HRD to certify the Appellants as permanent civil service employees in their respective positions.

In Moody and Others v. Lancaster Board of Selectmen, CSC Case Nos. E-690-E692 (1999), the Commission granted 310 relief (granting permanent civil service status) to four provisional reserve police officers who had served the Town of Lancaster for several years. In Moody, the then-Chairman of the Lancaster Board of Selectmen asked the Commission to grant 310 relief to "...ameliorate the potential injustice caused by the failure of the previous administration to comply with certain statutory requirements through no fault of the individual officers involved."

In both Bradshaw and Moody, the Appellants held a civil service title provisionally. In the instant case, the Appellant does not hold the civil service title of Clerk provisionally. Rather, she holds the non-civil service title of Building Aide.

Further, in Moody, the Town of Lancaster cited the Town's "failure to comply with certain statutory requirements (presumably the civil service law) through no fault of the individual officers involved." In the instant case, the City states in their August 18, 2008 letter to the Commission that the Appellant had no opportunity to be appointed to the position of Clerk because, "a certification of names for vacancies was never issued to the School Department from the eligible civil service lists." This does not appear to be the case. Various civil service Clerk positions have indeed been filled within the School Department during the relevant time period, based upon a civil service list established by the City after individuals took and passed the civil service clerical examination. As referenced above, the Appellant failed on more than one occasion to score high enough in order to be considered for appointment.

As to whether the Appellant's employment status was prejudiced "through no fault of her own," the City indicated at the prehearing conference that the Building Aide position probably should have been posted and filled as a Clerk position. If that is the case, the Appellant could not have been appointed to the position since she had not taken the required civil service examination for the position of Clerk.

In Certain Boston Municipal Police Officers & Sergeants v. the City of Boston, CSC Case No. G-06-113 (2006), the Commission did grant "310 Relief" (civil service permanency) to 33 Boston Municipal Police Officers who were initially hired through a non-civil service process. In that case, however, the "310 Relief" proceeded a lengthy earlier investigation in which the Commission determined that all individuals holding the title of Boston Municipal Police Officer should be classified as civil service employees. That is not the case here.

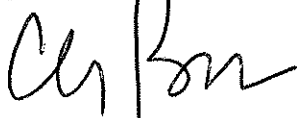
While the City has provided the Commission with a copy of a 1999 Commission decision, Brophy, Curry, Drew and Vazquez v. City of Waltham, CSC Case Nos. G-4430-33, in which relief similar to that being requested here was granted, there is insufficient information to determine if the facts underlying that request were similar to the instant appeal.

In summary, the Appellant was hired into a non-civil service position through a non-civil service process in 1998 and does not currently hold a civil service position, either permanently or provisionally. Had the position in question been posted as a civil service

Clerk position in 1998, it appears that the Appellant would not have been eligible for appointment then.

For all of the above reasons, relief under Chapter 310 of the Acts of 1993 is not warranted in the instant case. Therefore, the Joint Request for 310 Relief is hereby *denied*.

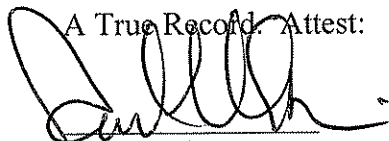
Civil Service Commission



Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on August 28, 2008.

A True Record. Attest:


Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. 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.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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:

Brenda D. Capello (for the Appointing Authority)
Jacqueline Foley (Appellant)
Martha O'Connor, Esq. (HRD)