

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MANUEL FORTUNATTI,
Appellant

v.

E-15-71

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Rachel Rosenberg, Esq.
Moriarty Law Firm, Inc.
34 Mulberry Street
Springfield, MA 01105

Appearance for Human Resources Division:

Patrick Butler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Appearance for Springfield Fire Department:

Maite Parsi, Esq.
City of Springfield
36 Court Street
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

DECISION

On April 10, 2015, the Appellant, Manuel Fortunatti (Mr. Fortunatti), filed an appeal with the Civil Service Commission (Commission), alleging that he had been harmed by the alleged failure of the state's Human Resources Division (HRD) to notify him that: a) his name appeared on Certification No. 02567, issued on January 16, 2015, for the position of firefighter in the Springfield Fire Department (SFD); and/or b) that he was required to sign Certification No.

02567 on or before January 29, 2015 in order to be considered for appointment. As such, Mr. Fortunatti argues that he is an aggrieved person for whom relief is warranted.

On May 5, 2015, I held a pre-hearing conference which was attended by Mr. Fortunatti, his counsel, counsel for HRD, an HRD representative, counsel for the SFD and a Deputy Fire Chief from the SFD who was knowledgeable about the hiring process in question.

At the pre-hearing, I heard arguments from counsel and statements from Mr. Fortunatti and the representatives from HRD and the SFD and reviewed various documents presented by the parties as part of their written submissions. As part of that pre-hearing, I asked Mr. Fortunatti to provide some additional information related to his email account. HRD subsequently filed a Motion to Dismiss and Mr. Fortunatti filed an opposition.

Unless otherwise noted, the following is undisputed:

1. On April 17, 2014, Mr. Fortunatti, a Springfield resident, took the civil service examination administered by HRD for the position of firefighter and received a passing score of 93.
2. On November 1, 2014, HRD established the eligible list for the position of firefighter in the SFD. Mr. Fortunatti's name appeared on the eligible list in rank order based on his examination score and veteran status.
3. On January 16, 2015, HRD issued Certification No. 02567 to the SFD, from which the SFD selected twenty-eight (28) candidates.
4. Mr. Fortunatti's name was among those within the statutory "2N + 1" formula, allowing him to be considered for appointment.
5. When HRD issues a Certification to a city or town, it simultaneously sends a notification, via email, to those individuals whose name appears on the Certification. The notification

informs the candidates of his/her obligation to appear and sign the Certification, indicating their willingness to accept appointment if appointed.

6. As part of these proceedings, HRD produced two (2) documents which, according to HRD, shows that Mr. Fortunatti was sent this email notification.
7. The first document submitted by HRD is a computer-generated printout showing various entries, including one stating that a “Referral Notice to Appear” was sent to Mr. Fortunatti on January 16, 2015 at 1:31 P.M.
8. The email address listed on the HRD printout is the same “@yahoo” email address that Mr. Fortunatti provided to HRD when he took the examination.
9. The second document submitted by HRD is a copy of the letter which HRD states was contained in the email sent to Mr. Fortunatti and all others whose names appeared on Certification No. 02567.
10. HRD’s automated system does not generate or retain a copy of the actual email sent to the candidates.
11. Mr. Fortunatti stated at the pre-hearing conference that he did not receive an email from HRD on January 16, 2015. He stated that he did receive all prior email communication from HRD, including the notice to appear for the examination.
12. At the pre-hearing conference, I asked Mr. Fortunatti to produce any other emails that he may have received on January 16, 2015. In response, counsel for Mr. Fortunatti submitted a written reply, stating in relevant part, “Mr. Fortunatti has been unable to recover any such emails.”

13. On February 3, 2015, Mr. Fortunatti received an email from the SFD notifying him that he was being bypassed for appointment as he failed to sign Certification No. 02567, indicating his willingness to accept appointment.

14. Mr. Fortunatti's name will remain on the eligible list for SFD firefighter until it expires, which is currently anticipated to be October 2016.

15. The SFD anticipates that there will be another hiring cycle between now and October 2016.

Appellant's Argument

Mr. Fortunatti argues that he never received the January 16, 2015 email from HRD. Thus, he argues that he was deprived of the opportunity to be considered for appointment as a Springfield firefighter in the most recent hiring cycle. If and when he is appointed in a subsequent hiring cycle, he is asking the Commission to grant him a retroactive civil service seniority date the same as those appointed from Certification No. 02567. Finally, he argues against disposing of this matter without a full evidentiary hearing.

HRD's Argument

HRD argues that it has successfully demonstrated that it sent Mr. Fortunatti a notification via email on January 16, 2015, notifying him to appear at the Springfield Fire Department and sign Certification No. 02567 on or before January 29, 2015. Thus, HRD effectively argues that he was not harmed through no fault of his own and he is not an aggrieved person for whom relief is warranted.

SFD's Argument

The SFD concurs with HRD, arguing that any prejudice to Mr. Fortunatti is solely attributable to him. They oppose the granting of a retroactive civil service seniority date, if and when Mr. Fortunatti is appointed in a future hiring cycle.

Legal Standard

G.L. c. 31, § 2(b) states in relevant part that the Commission may:

“ ... hear and decide appeals by a person aggrieved by any decision, action, or failure to act by the administrator [HRD] ... provided that no decision or action of the administrator shall be reversed or modified nor shall any action be ordered in the case of a failure of the administrator to act, except by an affirmative vote of at least three members of the commission, and in each such case the commission shall state in the minutes of its proceedings the specific reasons for its decision.

No person shall be deemed to be aggrieved under the provisions of this section unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.”

Chapter 310 of the Acts of 1993 allows the Commission to grant relief to persons whose rights have been prejudiced through no fault of their own.

Analysis

I carefully reviewed all of the documents submitted along with the statements made in this case, including the statements of the HRD representative and Mr. Fortunatti. Based on this review, I am sufficiently persuaded that HRD, by a preponderance of the evidence, has shown that it did indeed notify Mr. Fortunatti of his obligation to sign the Certification in question. HRD has produced documentation that sufficiently shows that such notification was sent.

Other than stating that he didn't receive the email communication from HRD, Mr. Fortunatti has done nothing to rebut this evidence, nor has he stated any intention to present any evidence to rebut this at a full hearing. Rather, it appears that Mr. Fortunatti, at a full hearing, would simply re-state his position that, absent HRD producing the actual email that was sent to him (which the automated system cannot do), that HRD cannot show that the email was sent. First, I don't believe such a showing is required here to meet the preponderance of evidence test.

Second, given that Mr. Fortunatti has not stated any intention to present further evidence at a full hearing, such a hearing would be a waste of valuable resources – for all parties. (See Zachary v. Civ. Serv. Comm’n & another, Suffolk Sup. Ct. No. 07-3197 (2008).

In summary, I find that HRD did forward email notification to Mr. Fortunatti informing him of the requirement to sign Certification No. 02567. As he failed to do so, the SFD did not consider him for appointment as a firefighter during that hiring cycle. If and when his name appears within the statutory 2N+1 formula on a future Certification, and Mr. Fortunatti signs the Certification indicating his willingness to accept appointment, he will be considered at that time. For these reasons, Mr. Fortunatti is not an aggrieved person and he is not entitled to the relief he is requesting, a retroactive civil service seniority date if and when he is appointed from a subsequent Certification.

Mr. Fortunatti’s appeal under Docket No. E-15-71 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on June 11, 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)(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.

Notice:

Rachel Rosenberg, Esq. (for Appellant)

Maite Parsi, Esq. (for Springfield Fire Department)

Patrick Butler, Esq. (for HRD)