

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

CHRISTOPHER GAGNE,
Appellant

v.

G1-22-044

CITY OF METHUEN,
Respondent

Appearance for Appellant:

Pro Se
Christopher Gagne

Appearance for Respondent:

Kenneth J. Rossetti, Esq.
City Solicitor
41 Pleasant Street
Methuen, MA 01844

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

On March 15, 2022, the Appellant, Christopher Gagne (Appellant), filed a bypass appeal with the Civil Service Commission (Commission), contesting the decision of the City of Methuen (City) to bypass him for original appointment as a permanent, civil service, reserve police officer in the City’s Police Department in January 2015.

On April 12, 2022, the City filed a motion to dismiss the Appellant’s appeal, arguing that the Appellant, after being notified of his bypass in 2015, failed to file a timely bypass appeal with the Commission. On April 19, 2022, I held a remote pre-hearing conference which was attended by the Appellant and counsel for the City. Based on the discussion at the pre-hearing conference and documents reviewed prior to and after the pre-hearing conference, it appears that the following is not in dispute, unless otherwise noted:

- A. On January 16, 2013, the Appellant took and passed the civil service examination for police officer.
- B. On or after February 6, 2014, the Appellant's name appeared on Certification No. 01595, from which the City ultimately appointed permanent, civil service, reserve police officers, including candidates ranked below the Appellant.
- C. On February 3, 2015, the Appellant took and passed a subsequent examination for police officer.
- D. In 2017, the Appellant applied for employment as a police officer in Derry, NH and Merrimack, NH. After participating in an interview in Derry, NH, the Appellant was not selected for appointment. The Appellant reports that he failed the written portion of an examination in Merrimack, NH and, thus, was not selected for appointment.
- E. On September 13, 2017, the Appellant's name appeared on Certification No. 04941 issued to the City of **Haverhill**. The Appellant was ranked 23rd on that Certification. He withdrew from the selection process.
- F. At or around the time he graduated from a local police academy in 2018, the Appellant reports that he had a one-on-one meeting with then-Methuen Mayor James Jajuga, who, according to the Appellant, agreed to appoint him as a **non-civil service** intermittent police officer in Methuen. [The Civil Service Commission is conducting an ongoing investigation reviewing, among other matters, whether the employment of non-civil service intermittent police officers, including those who served on a full-time basis, was a violation of the civil service and/or other laws.]
- G. As part of the 2018 background investigation, the Appellant was asked about prior applications to be a police officer. He wrote in his response that he had applied to be a

police officer in Methuen in 2015, but failed to check either “hired” or “rejected” on the questionnaire. According to the Appellant, he did not select either option because “at the time [he] was not ‘hired’ and [he] was unaware [he] was ‘rejected’”. According to the Appellant, he thought that others who were appointed were ranked higher than him.

H. Other than this one reference, the 2018 background investigation makes no reference to the Appellant’s 2015 application for employment and subsequent rejection.

I. For approximately two years after being designated as a non-civil service intermittent officer in September 2018, the Appellant reports that he performed all of the duties of a full-time Methuen Police Officer.

J. The City ultimately laid off all full-time non-civil service intermittent police officers.

K. According to the Appellant, he subsequently took civil service examinations in 2017, 2019 and 2021. The Appellant stated that: “I was advised by then Chief Solomon that I was one of the top candidates on the list and was going to be a full-time officer.

However, Mayor Perry stopped that process after the full background, interview and hiring process.” According to the Appellant, another candidate was subsequently hired from the process and sent to the full-time academy.

L. According to the City, the Appellant was recently appointed as a permanent, full-time police officer on March 13, 2022 from Certification No. 08393.

The Appellant argues that, in 2014 / 2015, he was never informed that he was bypassed for appointment as a reserve police officer. According to the Appellant, he was not made aware of this until he had a meeting with now-Mayor Neil Perry in September 2020 regarding his layoff as a full-time, non-civil service intermittent officer. According to the Appellant, the Mayor told the Appellant at that meeting that he had been previously bypassed and that the record shows that a

bypass letter was sent to his correct mailing address. On January 12, 2021, shortly after the Commission initiated its ongoing investigation, the Appellant sent an email to the Commission stating in part:

“In September 2020, I met with Mayor Perry about my situation. He advised me that according to records from Methuen Police, I was sent a letter in 2014 informing me that I was being bypassed. This letter was supposed to explain the bypass and reason thereof. Mayor Perry provided me with a copy of the letter, however there was no reason provided. I notified him that I had never received that letter. After this meeting, it was my understanding that if Mayor Neil Perry had a letter or document from the Civil Service Administration regarding the erroneous and, or unjust nature of this bypass, I would have the opportunity to have my job restored at the Methuen Police Department with status of a full-time patrolman.

I never filed an appeal on the 2013 test, because it was not until I was hired as a full-time intermittent officer in 2018 that I noticed there were full-time officers working there that had scored lower than me on the Entry Level Police Officer Exam. I also never received a bypass letter from the city until my meeting with Mayor Perry in September 2020. At which time I was under the impression that I could not file an appeal due to the amount of time that had passed.”

At the pre-hearing conference, the City argued that the Appellant was indeed sent notification of his bypass via letter dated January 2015 and that the letter, which the City provided to the Commission, contained the reasons for bypass and notice regarding his right to appeal. Thus, according to the City, the Appellant’s appeal must be dismissed as untimely.

The Appellant is asking the Commission to order relief in the form of a retroactive civil service seniority date equivalent to those reserve police officers appointed from Certification No. 01595 in 2014 or 2015. At the pre-hearing conference, I explained that the primary value in a retroactive civil service seniority date is when layoffs occur and that such a retroactive date does not impact, unless stated otherwise in the CBA, matters covered by the applicable CBA, such as shift bidding, vacation time preference, etc.

Even when viewing the facts most favorable to the Appellant, he became aware of the

2014/2015 bypass in 2018 when he was appointed as a non-civil service intermittent officer and, also according to the Appellant, he was made aware of the 2015 bypass letter in September 2020. Yet, the earliest the Appellant contacted the Commission was January 12, 2021, well beyond the 60-day filing deadline for bypass appeals.

Prior to issuing any final orders or decisions regarding this matter, I asked the City to produce all information related to the Appellant's most recent appointment as a regular, full-time police officer, including a copy of the eligible list from which the Certification was created, a copy of (signed) Certification No. 08393, and a copy of the Appellant's application and background investigation, including any references to the 2014/2015 application for employment with the City's Police Department. The City complied with the Commission's order and provided the requested information.

Conclusion

Even when viewing the facts most favorable to the Appellant, he was aware, as early as 2020, that he was bypassed for appointment in 2015. Yet, he failed to file an appeal with the Commission until March 15, 2022, almost two years later, which is well beyond the 60-day time period for filing a bypass appeal with the Commission. The Appellant attempts to thread a needle here and argue that, while he was told, in 2020, that he was *bypassed* in 2015, he was not provided with a copy of the reasons. Even accepting this as true, the Appellant had ample opportunity, including while he served as a full-time non-civil service intermittent officer for the City, to inform City officials that he did not receive the letter and attached reasons in 2015, and obtain a copy. He chose not to do so. Rather, seven years after his bypass in 2015, after receiving a conditional offer of employment to serve as a civil service officer, he now seeks a retroactive civil service seniority date, back to the date of his bypass, to cover a period of time

that encompasses his service as a non-civil service intermittent officer. Such relief is unwarranted for multiple reasons including: a) the appeal is not timely; and b) providing the Appellant with civil service seniority for a time period in which he served as a non-civil service intermittent, a broader issue currently being investigated by the Commission, would be contrary to the civil service law and rules.

The Appellant's appeal under Docket No. G1-22-044 is hereby *dismissed*. Nothing in this decision is meant to limit the Commission's ongoing investigation and/or any findings or orders that may result from that investigation, including, but not limited to, whether the Appellant may be entitled to any form of equitable relief as part of the remedies, if any, that may be ordered after the conclusion of the on-going investigation.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein and Tivnan, Commissioners) on June 2, 2022.

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:
Christopher Gagne (Appellant)
Kenneth Rossetti, Esq. (for Respondent)