

Notice

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION
NO. 09-4555

Notice sent
1/14/2011
R. L. Q., JR.
K. G. H.
M. G.

MICHAEL GAILLIARD

vs.

(sc)

MASSACHUSETTS CIVIL SERVICE COMMISSION

RECEIVED

JAN 18 2011

OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATIVE LAW DIVISION

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

The plaintiff, Michael Gailliard ("Gailliard") brought this action pursuant to G. L. c. 30A, §14 to appeal a determination by the Civil Service Commission (the "Commission") affirming a decision of the Massachusetts Human Resources Division ("HRD") to bypass Gailliard for appointment to the position of Field Parole Officer. The matter is before the court on Gailliard's motion for judgment on the pleadings. For the reasons set forth below, the decision of the Commission is affirmed and Gailliard's motion is **DENIED**.

BACKGROUND

The facts are taken from the administrative record. On June 20, 2008, the HRD certified a protected eligibility list for the promotion of one permanent, full-time Field Parole Officer position to be located in Springfield. While the eligibility list was only for the position located in Springfield, the Parole Board later obtained verbal permission from the HRD to add a second position located in Natick ("the Natick position"). On the eligibility list, Gailliard, who had veteran's status, was listed as the third candidate for the position and Lisa Armstrong ("Armstrong") was listed as the fourth candidate.

On July 25, 2008, a three-person panel at the Parole Board interviewed Gailliard and

other candidates on the eligibility list. The interview process was conducted in a uniform manner, with each candidate receiving the same eight questions. The panel evaluated each candidate on education/work experience; problem solving skills; and interpersonal and communication skills.

On August 12, 2008, the Parole Board bypassed Gailliard on the eligibility list, and recommended Armstrong. The Parole Board filed written reasons for the bypass with the HRD. The Parole Board stated that Gailliard had a lower score than Armstrong on the civil service exam; that Gailliard had neither the problem solving skills nor the interpersonal skills that Armstrong possessed; and that he had responded inappropriately to one of the questions in the interview. The HRD approved the reasons, and Gailliard appealed to the Commission on September 9, 2008. By a decision dated September 25, 2009, the Commission denied the appeal and upheld the Parole Board's decision to bypass Gailliard.

DISCUSSION

I. Standard of Review

An agency's decision may be set aside by the court only on the grounds set forth in Section 14 of Chapter 30A of the General Laws of Massachusetts. Howard Johnson Co. v. Alcoholic Beverages of Control Comm'n, 24 Mass. App. Ct. 487, 490 (1987). The grounds for which a court may set aside or modify an agency decision include such reasons as the decision was based upon an error of law, was unsupported by substantial evidence, or was "arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law." G.L. c. 30A, §14(7)(c), (e), (g).

In reviewing an agency's decision, the court must "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." Iodice v. Architectural Access Bd., 424 Mass. 370, 375 (1997). A reviewing court may not substitute its judgment for that of the agency, even if the record indicates that a different conclusion might have been reached. Commonwealth v. Labor Relations Comm'n, 60 Mass. App. Ct. 831, 833 (2004). As the party challenging the Commission's decision, Gailliard bears the burden of establishing its invalidity. Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002).

II. Analysis

A review of the record demonstrates the decision of the Commission to be supported by substantial evidence. Indeed, Gailliard does not challenge the Commission's findings or claim that the reasons for his bypass were insufficient.¹ The sole basis for his appeal is his claim that the Commission failed to investigate the handling of the second parole officer position (the Natick position). Specifically, Gailliard contends that the HRD deceived all non-minority veterans who took the civil service examination by failing to send out notification cards for the Natick position. As a result of the improper notification process, Gailliard argues that the non-minority veterans were not given a fair chance to be selected for this second position. He thus argues that this Court should either (1) declare the Natick position "invalid," remove the successful candidate from her job, and restart the selection and hiring process; or order reimbursement of the Civil Service Examination fee to all applicants who took the examination

¹ At the hearing, the court specifically inquired as to whether Gailliard was contesting the grounds for the decision and he confirmed that he was not.

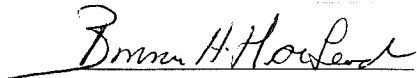
for the position of Parole Officer. This Court declines to address the merits of these contentions, as Gailliard lacks standing to seek to invalidate the Natick position.

To have standing, Gailliard must show substantial injury as a result of the action complained of, and the injury must fall within the area or concern of the statute or regulatory scheme under which the injurious action has occurred. Ginther v. Commissioner of Ins., 427 Mass. 319, 323 (1988). Here, Gailliard does not claim that he was injured by the HRD's failure to send out notification cards of the second parole officer position. Rather, Gailliard raises an alleged injury to non-minority veterans who ought to have been considered for the second position but were not. Since Gailliard was listed on the eligibility list and informed of and considered for the second parole officer position, he cannot show that he was injured. He thus lacks standing.

ORDER

For the above-mentioned reasons, it is hereby **ORDERED** that Gailliard's motion for judgment on the pleadings be **DENIED**, and the decision of the Commission be, and is hereby,

AFFIRMED.


Bonnie H. MacLeod
Justice of the Superior Court

Dated: January // , 2011

Dated: January 11, 2011