

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Decision mailed: 1/28/11
Civil Service Commission *CS*

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

JOHN P. GILLAN,
Appellant
v.

CITY OF QUINCY,
Respondent

Case No.: E-10-289

**DECISION ON REQUEST FOR RELIEF UNDER
CHAPTER 310 OF THE ACTS OF 1993**

The Appellant, John P. Gillan, filed this appeal with the Civil Service Commission pursuant to G.L. c.31, § 2(b) seeking a retroactive civil service seniority date. Neither the City of Quincy or the state's Human Resources Division (HRD) opposes his request.

On November 23, 1985, the Appellant took and passed a civil service examination, with a score of 99, for the position of firefighter in the City of Quincy.

From April 1986 to October 1991, the Appellant served on active duty in the military.

On May 6, 1987, the Appellant notified HRD in writing that he was on active military duty and requested that his eligibility be extended for the period of time he was on active military duty.

On March 24, 1987, while the Appellant was on active military duty, the Appellant's name appeared on Certification No. 863211, from with the City selected seven (7) permanent full-time firefighters. The Appellant could not be considered because he was on active duty in the military.

On June 23, 1987, the City returned Certification No. 863211 to HRD and appointed seven (7) firefighters with an appointment date of July 11, 1987.

On October 9, 1991, upon being honorably discharged from the military, the Appellant filed a written request with HRD asking that his name be restored to the eligible list. This did not occur.¹

The Appellant subsequently took and passed another civil service examination for firefighter and was ultimately appointed as a firefighter with an appointment date of April 11, 1994.

The Appellant seeks a retroactive civil service seniority date of July 11, 1987, the same date as individuals appointed from Certification No. 863211, on which his name appeared but was not considered due to his active military duty.

¹ Had the Appellant not promptly notified HRD, in writing, of his active military duty status and his desire to be restored to the list, in writing, at the time, this appeal would have been deemed untimely and denied.

A March 7, 2003 HRD Memorandum to Appointing Authorities; Mayors; Town Managers and Selectmen in Massachusetts states in part, "Although there is no requirement pursuant to federal or state law that requires a community to select a military candidate, this same candidate cannot be dismissed without consideration because they have been called to active military duty. When a community that is in the process of selecting individuals for appointment to the police or fire force, discovers that the top individuals appearing on a certification list are on active military service and are not available to accept an appointment, it may request to establish an intermittent Police or Fire force".

The U.S. District Court of Massachusetts recently applied the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C.S. § 4311, et seq.) to a case involving an active duty applicant for the position of Somerville police officer. McLain v. Somerville, 424 F. Supp. 2d 329 (D. Mass. 2006). In McLain, the federal court found that the plain meaning of the federal statute bars discrimination against an applicant for employment who is in the uniformed services.

For all of the above reasons, the Appellant's request is allowed and his civil service seniority date is to be adjusted to July 11, 1987.

This retroactive seniority date should not be used to determine time served in any position in regard to eligibility for any future civil service promotional examinations and is not intended to provide the Appellant with any additional creditable service for the purposes of retirement.

Civil Service Commission

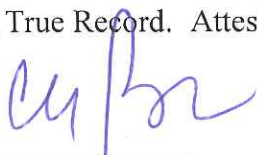


Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and McDowell, Commissioners) on January 27, 2011.

**Commissioner Marquis was
absent on January 27, 2011**

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:

John P. Gillan (Appellant)

Deirdre Jacobs Hall, Esq. (for Appointing Authority)

Lyndsey Boyle, Esq. (for HRD)