

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

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

SEAN GNERRE,  
Appellant

v.

G1-21-204

CITY OF WOBURN,  
Respondent

Appearance for Appellant:

Sean Gnerre, *Pro Se*

Appearance for Respondent:

Ellen Callahan Doucette, Esq.  
City Solicitor  
Woburn City Hall  
10 Common Street  
Woburn, MA 01801

Adjudicator:

Robert L. Quinan, Jr.

**RECOMMENDED DECISION ON RESPONDENT'S MOTION TO DISMISS**

On October 29, 2021, the Appellant, Sean Gnerre ("Gnerre"), a candidate for appointment as an Intermittent/Reserve Police officer for the Woburn Police Department, filed a bypass appeal form with the Civil Service Commission ("Commission"). At a pre-hearing conference held on November 30, 2021, the Respondent City of Woburn ("City") asserted that Gnerre's appeal was premature as the City had not yet actually made any appointments from the relevant certification and thus had not formally bypassed Gnerre up to that point. Upon the City Solicitor's representation that appointments, and any necessary bypasses, would be announced soon, all parties agreed that the Commission's pre-hearing conference would be continued to January 4, 2022. The Commission's General Counsel instructed the Appellant that he would need to file a

new bypass appeal form with the Commission should he wish to appeal any actual formal bypass decision. As of January 4, 2022, the Appellant had received notice some three weeks earlier that he was in fact being formally bypassed but he did not appear at the rescheduled pre-hearing conference and nor did he make any contact with the Commission over the ensuing weeks. On February 15, 2022, in response to the filing of a motion to dismiss appeal by the Respondent, the Commission issued a final notice reminding the Appellant that he needed to take action by March 1, 2022 to preserve his civil service appeal rights. As of April 1, 2022, however, the Appellant had not responded within a timely manner and he still had not filed a proper bypass appeal form.

The following facts are not disputed, unless otherwise noted.

I. FINDINGS OF FACT

1. In the summer of 2021 (following a civil service entry-level police examination administered in late June and an eligible list of passers established in early August), the City of Woburn initiated Requisition #08080 with the state Human Resources Division (HRD), which authorized the appointment of six (6) Intermittent Reserve Police Officers from amongst a certification list of the 13 highest candidates willing to accept the appointment. The Roster Certification for Requisition #08080, issued by HRD on September 8, 2021, contained the names of 28 candidates. The Appellant, Sean Gnerre, was the first of the 13 highest-ranked candidates willing to accept. He placed fourth overall on the roster.
2. In late September 2021, Gnerre, a Marine Corps veteran, attended a mandatory orientation session for potential Woburn reserve officer recruits and submitted to a required drug test. On October 6, 2021, AllOne Health Resources notified the City of Woburn that the Appellant's drug test had returned positive for marijuana use.

3. On October 15, 2021, the City notified the Appellant by letter that, as a result of the positive drug test, he was being disqualified from further consideration for appointment. The Appellant filed a bypass appeal within ten business days following notice of his disqualification.
4. At a pre-hearing conference held on November 30, 2021, presided over by the Commission's General Counsel, Robert Quinan, the Appellant stated that he had a medical marijuana card which expired on September 30, 2021 (the day before he submitted to a drug test); that he had recently discussed discontinuing use of medical marijuana with his doctor; that his doctor told him it might take up to three (3) months for the marijuana to clear his system; and that he had not used medical marijuana for two (2) months prior to the drug test taken during the late-September orientation session.
5. Given that Woburn's mayor (the appointing authority for the Woburn Police Department) had not yet made any appointments from Requisition #08080 at the time the Appellant filed his bypass appeal with the Commission, the City asserted prior to (via pre-hearing memorandum) and during the November 30 pre-hearing conference that Gnerre's appeal had been filed prematurely. The City's solicitor agreed, however, to arrange an interview of Gnerre by Woburn's mayor in early December. Gnerre was informed on the record that if he received a bypass letter as a result of either this interview or further processing of his employment application, he would need to file a new bypass appeal form with the Commission. He would not be required to pay a new filing fee, however. Gnerre stated that he understood this procedure.
6. By agreement of both parties, the Commission's pre-hearing conference was then continued to January 4, 2022, and a new notice to appear on that date duly issued.

7. On or about December 2, 2021, the Mayor reviewed the Appellant's application and interviewed Gnerre.
8. The next day the City mailed Gnerre a bypass letter dated December 3, 2021. The reasons stated within that letter for the bypass of the Appellant were both detailed and entirely unrelated to Gnerre's earlier 2021 positive drug test results.
9. The Appellant did not appear at the January 4, 2022 pre-hearing conference, which was held via WebEx. Nor did he notify the Commission that he would be unable to attend. The City informed the Commission's General Counsel in early January 2022 that the Appellant had been formally bypassed. Woburn presented evidence that Gnerre had retrieved from the post office the bypass letter the city had issued a month before on December 14, 2021. Woburn's city solicitor stated that she would file a formal motion to dismiss Gnerre's appeal should he not file a new bypass appeal form and explain his absence from the January 4 pre-hearing conference.
10. On February 15, 2022, the Respondent filed the anticipated motion to dismiss and presented evidence that the motion had been served on the Appellant (both via email and first class mail to his registered address in Woburn). In response, the Commission sent Gnerre notice informing him that he had two (2) weeks in which to respond to the Respondent's motion to dismiss. As of this date, the Appellant has not responded or made any contact with the Commission since the end of November 2021.
11. As of April 1, 2022, over one hundred (100) days had elapsed from the date when the Appellant actually picked up the city's bypass letter from the post office, and yet the Appellant has neither responded to the city's motion to dismiss nor filed another bypass appeal.

## II. CONCLUSION AND RECOMMENDED DECISION

The Standard Adjudicatory Rules of Practice and Procedure (the “SARPP”)—a set of regulations that govern appeals pending before the Commission—state that “[a]ny Person with the right to initiate an Adjudicatory Proceeding may file a notice of claim for an Adjudicatory Proceeding with the Agency within the time prescribed by statute or Agency rule. In the absence of a prescribed time, the notice of claim must be filed within 30 days from the date that the Agency notice of action is sent to a Party.” 801 Code Mass. Regs. § 1.01(6)(b).

As stated in the case of *Ryan Costa v. City of Brockton*, G1-14-238 (MA CSC January 22, 2015), the Commission has adopted a sixty-day period for the filing of an appeal from a bypass under G.L. c. 31, § 2(b). “This sixty (60)-day window commences upon the employee's receipt of notice that makes the employee aware of his or her non-selection and right of appeal to the Commission.” *Id.*

February 12, 2022, marked sixty days after Gnerre received actual notice of the Respondent’s decision to bypass him for appointment as a reserve police officer. The City of Woburn promptly thereafter filed a motion to dismiss the Appellant’s appeal and served a copy on Gnerre at his registered and last known address. The Appellant has failed to respond to the motion or the Commission’s final warning on February 15, 2022, that he needed to take prompt action to preserve his civil service appeal rights.

Sub-section (7)(g)(2) of the SARPP (801 C.M.R. 1.01) provides as follows:

When the record discloses the failure of a Party . . . to respond to notices or correspondence, to comply with orders of the Presiding Officer, or otherwise indicates an intention not to continue with the prosecution of a claim, the Presiding Officer may initiate or a Party may move for an order requiring the Party to show cause why the claim shall not be dismissed for lack of prosecution. If a Party fails to respond to such order within ten days, . . . the Presiding Officer may dismiss the claim with or without prejudice.

For the reasons stated above, I recommend that the Appellant's appeal under docket No. G1-21-204 be *dismissed with prejudice*.

Civil Service Commission

/s/ Robert L. Quinan, Jr.  
Robert L. Quinan, Jr.  
General Counsel

The Presiding Adjudicator's Recommendation is accepted and case no. G1-21-204 is hereby ordered dismissed, with prejudice, by a vote of the Civil Service Commission (Bowman, Chair; Stein, and Tivnan, Commissioners [Camuso – Absent]) on April 21, 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 SARPP at 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 to:  
Sean Gnerre (Appellant)  
Ellen Callahan Doucette, Esq. (for Respondent)