

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

DANIEL GOULD,
Appellant

v.

Case No. G1-10-101

CITY OF BOSTON and
HUMAN RESOURCES DIVISION,
Respondents

Appearance for Appellant:

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Appearance for City of Boston:

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Appearance for Human Resources Division:

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Commissioner:

Cynthia A. Ittleman¹

DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Mr. Daniel Gould (“Appellant” or “Mr. Gould”), filed a timely appeal with the Civil Service Commission (“Commission”) on May 18, 2010, contesting the decision of the City of Boston (“City” or “Appointing Authority” or “Respondent”) and the Massachusetts Human Resources Division (“HRD”) to remove his name from the eligible list of candidates as a resident of Boston for purposes of consideration for

¹ The Commission acknowledges the assistance of Law Clerk Beverly J. Carey, Esq., in the drafting of this decision.

appointment to the position of Firefighter with the Boston Fire Department (“BFD” or “Department”).

Procedural History

A pre-hearing conference was held on June 28, 2010, at the offices of the Commission. A full hearing was initially scheduled on September 23, 2011, but the Appellant did not appear.² As a condition to rescheduling the hearing, the Commission required the Appellant to file and serve a written proffer that contained a complete statement of the evidence that the Appellant intended to introduce to establish his claim of residency. The BFD subsequently filed a motion for summary disposition on or about September 29, 2011. Also on or about September 29, 2011, the Appellant submitted a motion for summary disposition and renewed a prior motion for summary disposition that was originally filed on or about June 9, 2010 and held in abeyance.³ On or about November 22, 2011, Mr. Gould filed an Opposition to the BFD’s motion for summary disposition. Before deciding the motions, the Commission made a final request for supplemental information from the parties. A Decision on Cross-Motions for Summary Decision, granting the Appellant’s Motion for Summary Decision and denying the BFD’s Motion for Summary Disposition, was issued by the Commission April 19, 2012. Upon judicial review, the court found that Mr. Gould’s residence at the pertinent times was a material fact still in dispute. Therefore, the court remanded the matter to the Commission on April 25, 2013 for an evidentiary hearing.⁴

² It appears that the Appellant’s attorney unintentionally overlooked the notice of hearing received from the Commission. (Affidavit by Mr. Galen Gilbert, dated September 28, 2011)

³ This motion had been held in abeyance pending an earlier motion to dismiss, which was ultimately denied.

⁴ SUCV2012-1752-A. The court stated that the Commission’s Decision ordered the BFD to hire the Appellant. However, the Commission ordered the Appellant to be considered, not hired, which is the extent of the Commission’s authority. *See id.*

Two (2) days of full hearing were held at the offices of the Commission on the following dates: June 17, 2013 and July 8, 2013. The witnesses were sequestered, other than the Appellant and Captain Carolos Nieves, BFD's first witness. The hearing was digitally recorded and the parties were provided with copies of the CD. The parties submitted post-hearing memoranda on or about August 5, 2013.

FINDINGS OF FACT

Based on the forty-nine (49) exhibits entered into evidence, the stipulations of the parties, the testimony of:

Called by the City:

- Capt. Carlos Nieves, BFD;
- Mr. Robert Moran, Personnel Director – BFD;

Called by Mr. Gould:

- Mr. Ernest Gould, Appellant's father;⁵
- Mr. Daniel Gould, Appellant;
- Mr. Khalil Abdo, Appellant's uncle;⁶
- Lt. Kevin McCarthy, BFD;

and taking administrative notice of all matters filed in the case⁷ and pertinent statutes, regulations, and policies, a preponderance of the credible evidence and reasonable inferences therefrom, establishes the following findings of fact:

1. The Appellant worked as a part-time call firefighter with the Lunenburg Fire Department beginning on or about May 5, 2005. It is unknown when his employment with the Lunenburg Fire Department ended.⁸ (Testimony of the Appellant; Ex. 1)

⁵ Mr. Ernest Gould's testimony was heard out of order by agreement of the parties, as he had traveled from Florida, where he resides, in order to testify at the hearing.

⁶ Mr. Abdo testified via telephone, as permitted by 801 CMR 1.01(7)(e).

⁷ While a representative from HRD appeared early in the hearing at the Commission, after agreeing to provide an affidavit, HRD did not participate further in the hearing. As requested, the affidavit of Regina Caggiano, with attachments, was provided to the Commission.

2. On or about June 20, 2006, Mr. Gould took and passed the Entry Level Firefighter Examination. He submitted a Residency Preference form for that examination, claiming residency in the City of Boston. Mr. Gould's name was placed on the eligible list as a non-veteran resident of Boston. (Testimony of Mr. Gould)
3. The relevant time period for the purposes of establishing residency (in Boston) was June 20, 2005 to June 19, 2006. (G.L. c. 31, § 58; Administrative Notice)
4. According to the Residency Preference Claim & Employment Selection Worksheet, which is considered to be part of the examination, a "resident" is defined as "a person who has lived in the same city or town for the full year before the date of the examination." Additionally, the form states: "Your residence, for the purpose of civil service law, is the place where you actually lived and intended as your permanent home. A temporary living place, such as a summer cottage, a school dormitory, a relative's or friend's house or apartment, etc., is not a residence." (Ex. 29)
5. Prior to taking the firefighter examination, Mr. Gould's cousin, who is a firefighter with the BFD, gave Mr. Gould advice about moving to Boston and taking the examination. He informed Mr. Gould that he would need to have Boston residency for one (1) year prior to the test. When asked if his cousin told him to claim his uncle's Boston apartment as his address for purposes of obtaining residency, Mr. Gould could not recall his cousin's exact words about it. (Testimony of the Appellant)
6. On or about December 13, 2007, Mr. Gould was informed via letter from the BFD that his name had not been reached on Certification No. 270615, from the 2006 exam, which was

⁸ Although Finding of Fact #18 indicates that Mr. Gould began working full-time at the Townsend Fire Department in or about July 2008.

issued by HRD on or about June 22, 2007. This letter was sent to Mr. Gould at 1313 Washington Street in Boston, MA. (Ex. 21)

7. In early April 2008, Mr. Gould moved to 401 Mt. Vernon Street in Dorchester⁹, MA. (Testimony of the Appellant; Ex.)
8. On or about May 29, 2008, Mr. Gould was informed via letter from the BFD that his name had not been reached on Certification No. 280097, also from the June 2006 examination, which was issued by HRD on or about February 7, 2008. This letter was sent to Mr. Gould at 401 Mt. Vernon Street in Dorchester, MA. (Ex. 22)
9. HRD issued Certification No. 280786, from the June 2006 examination, to the BFD for the appointment of twenty-seven (27) full-time firefighters on two occasions: the first names were issued on or about August 12, 2008,¹⁰ and additional names were issued on or about August 15, 2008. Mr. Gould's name appeared on the second set of names,¹¹ issued August 15, 2008, as a resident, with his address listed as 401 Mt. Vernon Street, Dorchester, MA. Mr. Gould signed the list indicating that he was willing to accept appointment. (Ex. 23; Affidavit of Regina Caggiano)
10. Certification No. 280786 was the first certification for the eligible list relating to the June 2006 examination that contained non-veterans (including Mr. Gould) following the June 2006 examination. (Testimony of Mr. Moran; Administrative Notice)

⁹ I take administrative notice that Dorchester is part of Boston.

¹⁰ There is no indication whether the June 2006 eligibility list was extended beyond the two (2) year period prior to the hiring freeze and Special Act of 2009. (See Findings of Fact Nos. 22, 24, 25 below).

¹¹ Mr. Gould's name appeared in a band of the second tie group of the additional names certification issued by HRD on or about August 15, 2008. (Affidavit of Regina Caggiano)

11. All certifications in connection with the June 2006 examination included only residents of Boston.¹² Thus, unless an individual was a resident between June 20, 2005 and June 19, 2006, he would not be eligible for consideration. (Testimony of Mr. Moran; Exs. 23 & 26)
12. On or about August 19, 2008, Mr. Gould signed an authorization for release of information, consenting to investigation by the BFD as part of the appointment process. (Ex. 7) In late August, 2008, Mr. Gould submitted his completed application packet to the BFD. (Ex. 6)
13. On or about November 20, 2008, HRD was provided a list of candidates that the BFD selected from Certification No. 280786 and the signed certification; the Appellant's name did not appear on this selection of names. Shortly thereafter, on or about November 26, 2008, HRD was provided a list of the candidates who received conditional offers of employment from Certification No. 280786. (Affidavit of Regina Caggiano)
14. There is no record that Mr. Gould was sent a bypass letter from HRD. (Affidavit of Regina Caggiano)
15. In or about April 2008, Lt. Kevin McCarthy of the BFD investigated Mr. Gould, in connection with his firefighter application in regards to Certification No. 280786. Lt. McCarthy first visited the 1313 Washington Street address in Boston, which Mr. Gould had provided on his application form, but discovered that Mr. Gould was no longer living there. After phoning Mr. Gould, Lt. McCarthy learned that Mr. Gould had moved to a new residence and set up an appointment to visit him in a few days. (Testimony of Lt. McCarthy)
16. On or about April 17, 2008, Lt. McCarthy of the BFD visited Mr. Gould at 401 Mt. Vernon Street in Dorchester. (Testimony of the Appellant)

¹² The post-Special Act of 2009 certification (*see* Findings of Fact Nos. 22, 24, 25 below), Certification No. 807180, does not specifically indicate "resident" status. However, the names appearing on this certification were previously listed as residents on Certification No. 280786 (Ex. 26) and the testimony of Mr. Moran also indicates that these candidates were residents.

17. During the meeting, Lt. McCarthy recalls advising Mr. Gould that his residency could be a problem; specifically, Lt. McCarthy expressed concern that the Lunenburg Fire Department thought Mr. Gould was living in Lunenburg. In addition, Lt. McCarthy questioned Mr. Gould's vehicle registration, which was also in Lunenburg. In response, Mr. Gould told Lt. McCarthy that the truck belonged to his father, but the truck was in fact registered to the Appellant and his mother. (Testimony of Lt. McCarthy; Ex. 8)
18. In July 2008, Mr. Gould was hired as a full-time firefighter with the Townsend Fire Department, which required that he move within fifteen (15) miles of Townsend within six (6) months. (Ex. 48)
19. In or about October 2008, Lt. Christopher Jerry of the BFD was also involved in the investigation of Mr. Gould. (Ex. 1; Testimony of Capt. Nieves)
20. There was nothing in Lt. Jerry's report to explain discrepancies regarding Mr. Gould's residence; specifically, the existence of multiple addresses (Lunenburg and Boston) during the relevant time period. (Testimony of Capt. Nieves)
21. In or about October 2008, Mr. Gould phoned the BFD and was told by a staff person in the office of Mr. Moran, at BFD, that he had been "removed from the list because of residency." Erica would not answer any additional questions that Mr. Gould had and, instead, told him that he should await notification from HRD. When Mr. Gould did not receive any information from HRD, he telephoned HRD and was told that he should wait for a letter before appealing. While Mr. Gould was given some idea that there was an issue with his residency, he never received any written notice from HRD or the BFD in this regard. (Testimony of the Appellant; Ex. 48)

22. On or about December 29, 2008, Boston's then-Mayor Thomas Menino sent a letter to HRD stating that due to budgetary issues, the BFD's Recruit Training class had been cancelled. As a result, Mayor Menino requested that HRD change the status of the eligible candidates that met all the requirements of the hiring process for Certification No. 280786 to reserve status so they could be hired when funding was available. (Ex. 24)
23. On or about January 1, 2009, Mr. Gould moved to an apartment in Lunenburg. He was still residing at his Lunenburg apartment at the time of the hearing at the Commission. (Testimony of the Appellant)
24. In November 2009, Chapter 173 of the Acts of 2009 ("Special Act of 2009") was enacted, which authorized Boston to use Certification No. 280786 from which to make the next original appointments. (Ex. 25)
25. On or about March 29, 2010, pursuant to the Special Act of 2009, HRD issued Certification No. 807180 to the BFD, which contained the names of candidates from Certification No. 280786 who had been given conditional offers of employment, for selection of the next class of firefighters to be hired. (Ex. 26; Affidavit of Regina Caggiano)
26. Mr. Gould's name did not appear on Certification No. 807180. (Ex. 26) Mr. Gould did not receive any written notice from the BFD or HRD indicating that his name was not on the list. (Testimony of the Appellant)
27. Mr. Gould filed this timely appeal with the Commission shortly after learning that candidates that were formerly listed on Certification No. 280786 were being hired in or about April 2010. (Testimony of the Appellant)

Information Relating to the Appellant's Connections to Lunenburg

28. Since approximately December 2004, Mr. Ernest Gould, the Appellant's father, lived in Lunenburg, MA. The house had three (3) bedrooms and a sofa bed. Mr. Gould's second wife and their two (2) children also lived at this address. Mr. Ernest Gould moved from this address to Florida in August 2011. (Testimony of Mr. Ernest Gould)
29. Mr. Ernest Gould was employed by the Lunenburg Police Department as a Sergeant for approximately thirty (30) years. At the time of the hearing before the Commission, he was retired. (Testimony of Mr. Ernest Gould)
30. As mentioned above, the Appellant worked as a part-time call firefighter with the Lunenburg Fire Department beginning on or about May 5, 2005. (Testimony of the Appellant; Ex. 1)
31. The Lunenburg Fire Department is located approximately 1.2 miles from Mr. Gould's father's former house in Lunenburg and would take about four (4) minutes to travel to drive there. (Ex. 42)
32. The Appellant's name appears on an automobile insurance policy effective from approximately May 18, 2005 to May 18, 2006, which includes a period of time in which the Appellant was required to have resided in Boston in order to receive the Boston residency preference. The policy provides coverage for a 2004 Ford F150 pickup truck. The place of principal garaging listed on the policy is Lunenburg, MA. (Ex. 9)
33. The Appellant's truck was registered in both his name and his mother's name with the Massachusetts Registry of Motor Vehicles and listed his father's Lunenburg address, as that was the address where the truck was principally garaged. (Testimony of the Appellant; Ex. 8)

34. The Appellant's W-2 wage and tax statements from the Town of Lunenburg from 2005 through 2010, which includes a period of time in which the Appellant was required to have resided in Boston in order to receive the Boston residency preference, all listed his father's Lunenburg address as the Appellant's address. (Exs. 13 & 48)
35. The Appellant's 2006 income tax return listed his father's address in Lunenburg as the Appellant's address. (Ex. 16)
36. The Appellant paid excise tax on his truck in Lunenburg, MA in 2005, 2006, and 2007, although the tax record was addressed to his mother at the Appellant's father's Lunenburg address. (Testimony of the Appellant; Ex. 20)
37. While he was working as a part-time call firefighter with the Lunenburg Fire Department, beginning in May, 2005, Mr. Gould did not change his address to the Boston address with the Lunenburg Fire Department. (Testimony of the Appellant)
38. As part of the appeal Mr. Gould filed with the Commission, on or about May 18, 2010, Mr. Gould stated: "Because of employment as a firefighter in the city of Lunenburg, Mr. Gould also was a resident of Lunenburg; when he was on duty in Lunenburg, he slept in the fire house there." (Ex. 27 (emphasis added))

Information Relating to the Appellant's Connections to Boston

39. Mr. Gould's uncle, Mr. Khalil Abdo, owned an apartment located at 1313 Washington Street in Boston, MA, at pertinent times. The unit was purchased on or about May 2, 2005, approximately one and one-half months before June 20, 2005, the first date which the Appellant was required to reside in Boston. The unit was purchased for vacation purposes and was used by Mr. Abdo periodically, when visiting Boston or en route to visit family living in New Hampshire. The apartment was completely furnished by Mr. Abdo. The unit

was sold sometime in 2009 because Mr. Abdo was not using the apartment very much.
(Testimony of Mr. Abdo; Ex. 30)

40. Approximately “one month and half (1½) to two (2) months” following the May 2, 2005 purchase of the apartment, Mr. Abdo had a conversation with his sister, the Appellant’s mother, about allowing Mr. Gould to live in the apartment. (Testimony of Mr. Abdo)

41. Mr. Gould did not pay any rent for the apartment at 1313 Washington Street. (Testimony of Mr. Abdo) In addition, there is no evidence that Mr. Gould paid any utility bills at this address. (Administrative Notice)

42. On his application with the BFD, Mr. Gould stated that he lived at 1313 Washington Street in Boston beginning May 5, 2005. However, he testified before the Commission that he moved in on May 19, 2005. (Ex. 6; Testimony of the Appellant)

43. A Massachusetts driver’s license was issued to Mr. Gould on or about May 19, 2005, listing the 1313 Washington Street address in Boston. (Ex. 31)

44. A statement from the Fitchburg Municipal Employees Federal Credit Union dated April 26, 2005 to May 25, 2005 lists Mr. Gould’s address as 1313 Washington Street in Boston. The monthly statement dated May 26, 2006 to June 25, 2006 also lists Mr. Gould’s address as 1313 Washington Street in Boston. (Ex. 39)

45. Mr. Gould’s name appears on a 2005 residential list, under Ward three (3), with a registration date of May 18, 2005.¹³ (Ex. 38)

46. Mr. Gould’s W-2 wage and tax statement from Patriot Ambulance for 2006 listed the 1313 Washington Street address in Boston, MA.¹⁴ (Ex. 36) Mr. Gould was employed by Patriot

¹³ The exact source and nature of this document is unclear.

¹⁴ As stated in Finding of Fact No. 35, *supra*, Mr. Gould’s 2006 W-2 wage and tax statement from the Town of Lunenburg listed his father’s address in Lunenburg, not the Boston address.

Ambulance, which was based in Chelmsford, MA, from approximately April 2006 until December 2006. (Testimony of the Appellant)

47. On or about April 16, 2008, Mr. Gould's aunt, the wife of his uncle, Mr. Abdo, signed an affidavit stating that Mr. Gould resided at the 1313 Washington Street address in Boston from May 2005 until April 2008. (Ex. 37)

48. A credit report for Mr. Gould dated August 22, 2008 fails to list the 1313 Washington Street address in Boston under "Associated Addresses." It does, however, list Mr. Gould's Dorchester address and an address in Florida. (Ex. 17)

49. The Lunenburg Fire Department is located approximately fifty (50) miles by car from the 1313 Washington Street address in Boston. (Ex. 43)

50. Public transportation from 1313 Washington Street to various commuter rail stations near the Lunenburg Fire Department could take almost two (2) hours. (Testimony of the Appellant)

DISCUSSION

Applicable Law

Under M.G.L. c. 31, § 2(b), the Commission has the authority "to hear and decided appeals by a person aggrieved by any decision, action, or failure to act by the administrator. . . ." Pursuant to M.G.L. c. 31, § 2(b), "[n]o decision of the administrator involving the application of standards established by law or rule to a fact situation shall be reversed by the commission except upon a finding that such decision was not based upon a preponderance of evidence in the record."

The Commission must affirm an appointing authority's decision unless there was no "reasonable justification for the action taken." City of Cambridge v. Civil Serv. Comm'n, 43 Mass.App.Ct. 300, 304, *rev. den.*, 426 Mass. 1102 (1997). Reasonable justification is

established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and correct rules of law.” Comm’rs of Civil Serv. v. Municipal Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

“In its review, the commission is to find the facts afresh, and in doing so, the [C]ommission is not limited to examining the evidence that was before the appointing authority.” City of Beverly, 78 Mass.App.Ct. 182, 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983). As a result, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown.” City of Beverly, 78 Mass.App.Ct. at 188.

“In making that analysis, the commission must focus on the fundamental purposes of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions” City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. at 304 (citing Murray v. Second Dist. Court of E. Middlesex, 389 Mass. 508, 514 (1983); Kelleher v. Personnel Adm’r of the Dept. of Personnel Admin., 421 Mass. 382, 387 (1995); Police Comm’r of Bos. v. Civil Serv. Comm’n, 22 Mass.App. Ct. 364, 370, *rev. den.*, 398 Mass. 1103 (1986)). “When there are, in connection with personnel decisions, overtones of

political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.” City of Cambridge, 43 Mass.App.Ct. at 304. “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” City of Cambridge, 43 Mass.App.Ct. at 304 (citing Sch. Comm’n of Salem v. Civil Serv. Comm’n, 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm’r of Health & Hosps. of Bos. v. Civil Serv. Comm’n, 23 Mass.App.Ct. 410, 413 (1987)).

Boston gives preference to candidates for civil service positions who have maintained a Boston residence, as authorized by Mass. G.L. c. 31, § 58, which states, in pertinent part:

[U]pon written request of the appointing authority to the administrator, the administrator shall, when certifying names from said eligible list for original appointment to the police force or fire force of a city or town, place the names of all persons who have resided in said city or town for one year immediately prior to the date of examination ahead of the name of any person who has not so resided.

“The term ‘reside’ is used to designate the physical location of the employee’s house or other dwelling place.” Crete v. City of Lawrence, 18 MCSR 22, 23 (2005) (citing Doris v. Pol. Comm’r of Bos., 374 Mass. 443, 444 (1978)).

In LaFlamme v. Town of Shrewsbury, the Commission rejected the recommendation of the administrative magistrate, who found that the Appellant was not entitled to a residency preference for appointment to the Shrewsbury Fire Department. LaFlamme v. Town of Shrewsbury, 21 MCSR 440 (2009). The magistrate determined that the Appellant did not reside in the town of Shrewsbury, notwithstanding his many ties to the town, such as the address on his driver’s license, pilot’s license, automobile insurance, and joint bank account, because he physically resided in another town in close proximity to his two (2) employers during the critical

time period, spending more than half his time there. Id. at 445. The Commission adopted the magistrate's Findings of Fact as to residency, but in a divided vote reversed the magistrate's decision and concluded that the Appellant was a resident of Shrewsbury because he produced evidence showing his long term establishment of residence in the town and his intention of continuing it as his place of residence. Id. at 442. The Superior Court reversed the Commission's decision and adopted the magistrate's recommended decision. Town of Shrewsbury v. Mass. Civ. Service Comm'n & LaFlamme, 26 Mass. L. Rptr. 113 (2009). The court determined that M.G.L. c. 31, § 58 and Doris v. Pol. Comm'r of Bos., 374 Mass. 443, 44 (1978) set forth the proper residency preference standard and definition, and that the Commission erroneously defined residence "as whether the job applicant 'intended [the address] to be [his or her] permanent residence.'" Town of Shrewsbury v. Civ. Service Comm'n & LaFlamme, 26 Mass. L. Rptr. 113 (2009). In its conclusion, the court quoted the magistrate, stating "[h]e can't have it both ways, he can't reside in two places." Id.

The Respondent's Argument

The City's position is that Mr. Gould was incorrectly listed as a Boston resident on Certification No. 280786 and, therefore, he was not eligible for appointment as no non-residents were considered. The City also points to the numerous statements made by the Appellant during the course of the proceedings in which Mr. Gould argued that he was entitled to have more than one (1) residence. The City argues that the investigation of Mr. Gould's residency demonstrated that he resided in Lunenburg, MA and cited numerous ties that Mr. Gould had with Lunenburg during the relevant time period (June 20, 2005 to June 19, 2006). The City claims that given the terms and conditions of employment of call firefighters, it was not plausible that Mr. Gould resided in Boston during relevant time period. In addition, the City argues that Mr. Gould's

appeal of this matter is untimely because Mr. Gould received verbal indications over the phone with an employee from Mr. Moran's office in or about October 2008 stating that he had been "removed from the list because of residency."¹⁵

The Appellant's Argument

In Mr. Gould's prior Motion for Summary Decision (Ex. 28), he argued that the legal issue was whether an applicant may have residences in several different municipalities and still qualify for a residency preference. Mr. Gould's Motion for Summary Decision states: "It is apparent that Mr. Gould had two residences in 2006." In Mr. Gould's post-hearing memorandum, he instead argues that the issue is whether or not he was a resident of Boston between June 20, 2005 and June 19, 2006. Mr. Gould argues that he was indeed a resident of Boston for this time period. Mr. Gould claims that he used his father's address in Lunenburg merely as a mailing address for important mail and did not spend the night there.

Analysis

Mr. Gould first learned of his non-selection relating to Certification No. 807180 in or about April 2010. He filed an appeal with the Commission. Mr. Gould's appeal was filed with the Commission on May 18, 2010, within the sixty (60) day period within which a person may challenge non-selection under the Commission's sixty (60) day limitations period for filing a bypass appeal. As a result, Mr. Gould's appeal is timely.

The substantive issue presented in this case is whether Mr. Gould resided in Boston for one (1) year immediately prior to the date of the June 20, 2006 firefighter examination and, thus, entitled to a residency preference in Boston. Pursuant to M.G.L. c. 31, § 58, the relevant time period for the purposes of establishing residency for the June 20, 2006 examination was June 20, 2005 to June 19, 2006. (*See* Ex. 29) While there is some evidence connecting Mr. Gould to the

¹⁵ *See* Exs. 47 & 48.

1313 Washington Street address in Boston during this time period, the City had reasonable justification to doubt whether Mr. Gould actually resided at this address between June 20, 2005 and June 19, 2006.

Mr. Gould testified before the Commission that he moved into the apartment at 1313 Washington Street in Boston on May 19, 2005.¹⁶ However, his uncle, Mr. Abdo, the owner of the apartment, testified that he did not speak to his sister, Mr. Gould's mother, about arranging for Mr. Gould to live in the apartment until one and a half (1½) to two (2) months following the purchase of the unit on or about May 2, 2005. Mr. Abdo could not provide an exact date that Mr. Gould actually moved into the apartment. Mr. Gould's father, Mr. Ernest Gould, testified that his son moved into the apartment in Boston after his graduation from college in Florida, but could not provide an exact date. Mr. Gould submitted a notarized letter, dated April 16, 2008, from his aunt, Susan Fairbanks, Mr. Abdo's wife, into evidence that states that Mr. Gould resided at 1313 Washington Street in Boston from May 2005 until April 2008. (Ex. 37) The letter does not contain a specific date that Mr. Gould moved into the unit. Mr. Gould testified that he provided this letter to Lt. McCarthy during his background investigation but Lt. McCarthy testified that he could not recall if he had seen this letter before and it is simply addressed "To Whom It May Concern." Since Mr. Gould did not pay rent to live in the apartment or have any utility bills in his name in connection with the address, the only evidence offered in support of the specific date that he allegedly moved to the 1313 Washington Street address in Boston, other than his own testimony, is a Massachusetts driver's license that was issued on or about May 19, 2005, a residential list with a registration date of May 18, 2005, and statements from his credit union account. However, it is unknown if the driver's license was obtained as an out-of-state conversion, a renewal, or if it was simply a change of address and,

¹⁶ This is a different date than the one he provided on his application with the BFD, which was May 5, 2005. (Ex. 6)

therefore, it is unclear what residential documentation, if any, Mr. Gould needed to provide to the Massachusetts Registry of Motor Vehicles in 2005 in order to obtain his driver's license with the 1313 Washington Street address.

Of the thirty (30) to thirty-five (35) call firefighters that Mr. Gould knew who worked at the Lunenburg Fire Department from 2005 to 2006, Mr. Gould stated that call firefighters typically responded to fires from their homes and that he was the only person living in Boston. During his testimony before the Commission, Mr. Gould acknowledged that it would not be feasible to respond to fires in Lunenburg from Boston in a timely manner. As a result, Mr. Gould claimed he would sleep at the Lunenburg Fire Station, at least occasionally, which had three (3) or four (4) bunk rooms, and tried to arrange his schedule so that he was working from Tuesday to Thursday each week.¹⁷ Mr. Gould utilized his father's address in connection with his employment at the Lunenburg Fire Department. While the Lunenburg Fire Department did not have a residency preference or requirement for call firefighters, living in close proximity to the fire house would have been a strong advantage to obtaining a position with the Lunenburg Fire Department. As Mr. Gould pointed out during his testimony, Lunenburg is not a civil service town and residency preference for initial appointments does not apply. Mr. Gould's W-2 wage and tax statements from the Lunenburg Fire Department were sent to his father's address in Lunenburg, and despite being told by Lt. McCarthy that it may be a problem that Mr. Gould told the Lunenburg Fire Department that he was living in Lunenburg at a time when he alleged he was living in Boston, Mr. Gould "never got around to changing [his] mailing address [from his

¹⁷ Mr. Gould's affidavit (Ex. 48) states that he "sometimes slept nights at the fire station when [he] was on duty." His Residency Preference Appeal (Ex. 27) also states: "Because of employment as a firefighter in the city of Lunenburg, Mr. Gould also was a resident of Lunenburg; when he was on duty in Lunenburg he slept in the fire house there." Another affidavit, submitted with Mr. Gould's Motion for Summary Decision (Ex. 28), states: "Occasionally, I slept a night at the fire station in Lunenburg, when I was on duty." On cross-examination, Mr. Gould conceded that as a call firefighter, he was only paid when actually responding to fires and he did not get paid to sleep while on duty and, therefore, his statements that he slept in the Lunenburg Fire Department *while on duty* were not correct.

father's Lunenburg address] with the Lunenburg Fire Department until . . . November 2011.” (Ex. 48)

Mr. Gould previously stated, in his Motion for Summary Decision, that he had a pickup truck registered at his father's house in Lunenburg, “which he used mainly for traveling between his call work and Boston.” (Ex. 28) However, during his testimony before the Commission, Mr. Gould stated that he did not drive his truck from Boston to Lunenburg. Mr. Gould further stated he did not park his truck in Boston because, despite the availability of resident parking, his truck was difficult to park in small parking spaces. Mr. Gould also testified that he did not recall driving his truck in Boston, but then described an incident in which he had parked his truck near the 1313 Washington Street address and the hard cover on the truck bed had been broken into. When Lt. McCarthy informed Mr. Gould during his investigation that having his truck registered in Lunenburg could potentially be an issue, Mr. Gould told Lt. McCarthy that it was his father's truck, which is not true, since the truck was registered in both the Appellant's name and his mother's. According to Mr. Gould's testimony, he typically commuted to Lunenburg from Boston via public transportation and it could take as much as two (2) hours at times. Mr. Gould claimed that he would walk from 1313 Washington Street to North Station, which could take between twenty-five (25) to thirty (30) minutes, depending on his pace.¹⁸ However, upon arriving at a commuter rail station, most often Fitchburg, Mr. Gould would need to arrange transportation with a friend to get to his father's house, where his truck was garaged. Mr. Gould would then need to drive himself to the Lunenburg Fire Station.

Mr. Gould's account of his commute from Boston to Lunenburg lacks credibility, particularly since he previously stated he would drive his truck from Boston to Lunenburg and

¹⁸ According to Google Maps, 1313 Washington Street is approximately two (2) miles from North Station and it is estimated that it would take around forty (40) minutes to walk there, at an average pace.

then testified to the contrary. Furthermore, it is unclear how frequently he actually stayed in the Lunenburg Fire Station. His statements in this regard varied from “occasionally” spending one night in the firehouse, to “sometimes,” to “when he was on duty, he slept in the fire house.”

Mr. Gould has many connections with Lunenburg. His father lived in very close proximity to the Lunenburg Fire Station between December 2004 and August 2011. Mr. Gould worked as a call firefighter in Lunenburg beginning in May 2005. Mr. Gould’s truck was garaged at his father’s house in Lunenburg and registered in the Appellant’s and his mother’s name at the same address. The address listed on Mr. Gould’s income tax return in 2006 was his father’s Lunenburg address. In addition, his W-2 tax and wage statements from his employment with the Lunenburg Fire Department were sent to his father’s Lunenburg address from 2005 through 2010. Furthermore, Mr. Gould himself claimed that he was a resident of Lunenburg, in addition to Boston, based on his employment with the Lunenburg Fire Department,¹⁹ and even stated that “it is apparent” that he had two (2) residences in 2006.²⁰

In contrast, Mr. Gould’s connections with Boston are far fewer. The apartment at the 1313 Washington Street address was owned by Mr. Gould’s uncle, was fully furnished, and Mr. Gould was not required to pay any rent, utilities, or even complete any paperwork in connection with living at the apartment. As previously stated, it is unknown what residency documentation, if any, Mr. Gould was required to provide to the Registry of Motor Vehicles in order to obtain a driver’s license with the 1313 Washington Street address in Boston in 2005. Mr. Gould testified that he did receive some mail at the 1313 Washington Street address. While he used his father’s Lunenburg address for important documents, he testified that he received junk mail, invitations and cards from friends, and some bank statements at the Boston address. Mr. Gould received a

¹⁹ Ex. 27 (Mr. Gould’s Residency Preference Appeal, dated May 6, 2010)

²⁰ Ex. 28 (Mr. Gould’s Motion for Summary Decision, dated June 9, 2010)

W-2 tax and wage statement from Patriot Ambulance at the 1313 Washington Street address for the 2006 tax year, but it does not include 2005. He worked at Patriot Ambulance, based in Chelmsford, MA, as a second job, for a brief period of time between approximately April 2006 and December 2006. Mr. Gould's cousin, a firefighter with the BFD, encouraged Mr. Gould to move to Boston and take the firefighter's examination, explaining that he would need to have Boston residency for one (1) year prior to the date of the examination. When asked if his cousin told him to claim his uncle's Boston apartment for purposes of obtaining residency, Mr. Gould could not recall his cousin's exact words about it. While his driver's license listing the 1313 Washington Street address that was issued on or about May 19, 2005, his name on the Boston residence list at the 1313 Washington Street address with a registration date of May 18, 2005, and credit union statements for the period of April 26, 2005 to May 25, 2005 seem to corroborate Mr. Gould's testimony that he moved to the Boston address on May 19, 2005, given that Mr. Gould was also using his father's Lunenburg address during the relevant time period, the BFD had reasonable justification to determine that these documents do not indicate whether Mr. Gould was actually residing at this location in Boston physically or merely using it as a mailing address.

As stated in Town of Shrewsbury, Mr. Gould cannot "have it both ways, he can't reside in two places." Town of Shrewsbury v. Mass. Civ. Service Comm'n & LaFlamme, 26 Mass. L. Rptr. 113 (2009). Mr. Gould attempted to claim residency in Lunenburg when it was advantageous for him to do so and claim residency in Boston for the same period of time. This resulted in the various discrepancies found by the BFD in its background investigation of Mr. Gould. Given his many connections to Lunenburg and his lack of credibility regarding his purported commute between Boston and his job at the Lunenburg Fire Department, and time he

spent in Lunenburg, the City had reasonable justification to believe that it is not plausible that Mr. Gould physically resided in Boston for the duration of the relevant time period prior to the 2006 firefighter examination. Because Mr. Gould was not entitled to a Boston residency preference, and because only Boston residents were reached for consideration, Mr. Gould was not entitled to consideration.

Conclusion

For the foregoing reasons, Mr. Gould's appeal under Docket Number G1-10-101 pursuant to G.L. c. 31, § 2(b) is hereby *denied*.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on June 12, 2014.

A True Record. Attest:

Commissioner

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:

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