

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

RONALD GUERIN,
Appellant

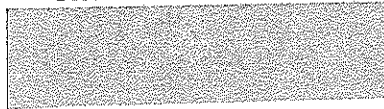
v.

G2-08-111

CITY OF NEW BEDFORD,
Respondent

Appellant's Attorney:

Pro Se
Ronald Guerin



Respondent's Attorney:

Jane Medeiros Friedman, Esq.
First Assistant City Solicitor
City of New Bedford
City Solicitor's Office
133 Williams Street
New Bedford, MA 02740

Commissioner:

Donald R. Marquis

DECISION ON APPOINTING AUTHORITY'S MOTION TO DISMISS

Background

Pursuant to G.L. c. 31 § 2(b), the Appellant Ronald Guerin (hereinafter "Appellant"), filed the instant appeal with the Civil Service Commission (hereinafter "Commission") on May 7, 2008, claiming that the Respondent, the City of New Bedford's Police Department (hereinafter "City") as Appointing Authority, did not have reasonable justification for bypassing him for promotional appointment to the position of police

sergeant. The Appellant was notified of his bypass for appointment by the Human Resources Division (hereinafter "HRD") by letter dated April 14, 2008. The appeal was timely filed. A pre-hearing conference was held on June 9, 2008.

After the pre-hearing conference, the City filed a Motion to Dismiss the Appellant's instant appeal on the basis that the reasons for the Appellant's bypass in the instant appeal were upheld by the Commission on July 18, 2008 as part of a decision related to a prior bypass appeal. The Appellant was given ten days to file an answer to the City's Motion to Dismiss, but chose not to do so.

The Appellant was previously bypassed by the City for promotional appointment to the position of police sergeant in August and September 2007 *for the same reasons listed in the instant appeal*. See Guerin v. City of New Bedford, CSC Docket No. G2-07-385 (2008) (Full hearing held on March 14, 2008; decision issued on July 18, 2008.) In that matter, the Commission found that the City had reasonable justification for bypassing the Appellant and dismissed his appeal. The same issues before the Commission then are before the Commission in the instant appeal.

Conclusion

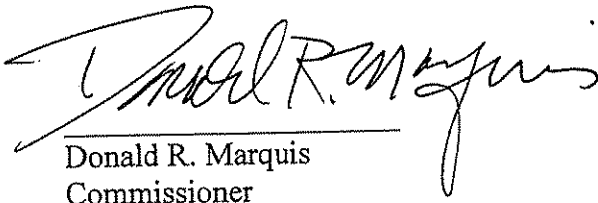
Pursuant to 801 CMR 1.01 (7) (g) (3), the presiding officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided.

The bypass reasons proffered by the City in the instant appeal filed under Docket No. G2-08-111 are the same reasons that were the subject of the Appellant's previous appeal, which was decided on July 18, 2008. The instant matter is a bypass appeal from *within*

the same hiring cycle as the previous appeal: based on the *same* civil service promotional examination.

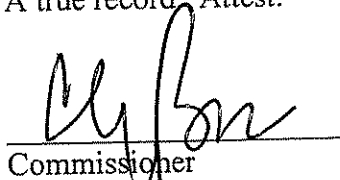
For these reasons, the Commission dismisses the appeal filed under Docket No. G2-08-111.

Civil Service Commission


Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on September 18, 2008.

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. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), 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:

Ronald Guerin (Appellant)
Jane Medeiros Friedman, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)