

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

Tracking Number: I-25-103

Re: Request for Investigation by Jonathan Gurfinkel regarding residency preference designation.

RESPONSE TO REQUEST FOR INVESTIGATION

Procedural History

On April 14, 2025, the Petitioner, Jonathan Gurfinkel (Petitioner), filed a petition with the Civil Service Commission (Commission), asking the Commission to investigate whether, notwithstanding existing policy to the contrary, he should be able to retain his Newton *residency preference* on the firefighter eligible list based on an initial, albeit erroneous, determination by the state's Human Resources Division (HRD) to grant his request for such preference.

On May 13, 2025, I held a remote show cause conference which was attended by the Petitioner and counsel for HRD. HRD subsequently submitted a position statement arguing that an investigation is not warranted and the Petitioner submitted a reply. The Petitioner also submitted multiple other emails and documents that were added to the record and considered as part of my review here.

Commission's Authority to Conduct Investigations

The Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an alleged violation of the civil service law's provisions to decide whether and to what extent an investigation might be appropriate.

Further, Section 72 of Chapter 31 provides for the Commission to "investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services."

The Commission exercises its discretion to investigate only "sparingly," typically only when there is clear and convincing evidence of systemic violations of Chapter 31 or an entrenched political or personal bias that can be rectified through the Commission's affirmative remedial intervention.

Relevant Facts

As stated by the Petitioner at the show cause conference, except for his active military duty, he resided in Sharon, Massachusetts since at least 2016. According to the Petitioner, which I accept as fact for the purposes of this review, he moved from Sharon to Newton, Massachusetts in June 2024.

The firefighter examination in question here was administered on October 14, 2023. The Petitioner took a military make-up examination on December 16, 2023. He was placed on the eligible list for firefighter appointment on April 1, 2024.

The Petitioner does not contest that, pursuant to existing HRD policy, he is not eligible for Newton residency preference on the eligible list for Newton firefighter. Rather, the Petitioner argues that, based on HRD's initial, albeit erroneous determination to grant his request for such a preference, the Commission should grant him relief, ordering that such preference be retained or restored. The Petitioner argues that he has been harmed by HRD's initial erroneous determination as: a) he relied on HRD's initial determination when deciding to not participate in a subsequent firefighter examination (administered annually) in October 2024; and b) had he taken and passed that subsequent examination, he would now be eligible for Newton residency preference based on HRD's policy, an assertion that is not disputed by HRD.

The residency preference statute

Chapter 31, section 58 permits cities and towns to ask that residents be placed on entry-level police and firefighter eligible lists before nonresidents. A 'resident' is a person who has lived in the same city or town for the full year (12 months) before the original date of the examination.

Applied here, since the applicable firefighter examination was administered on October 14, 2023, the Petitioner would need to have continuously resided in Newton from October 14, 2022 to October 14, 2023 (the "residency preference window") to be eligible for this statutory residency preference in Newton. There is no dispute that the Petitioner did not reside in Newton at any time between October 14, 2022 and October 14, 2023. Thus, he was not entitled to the residency preference as outlined in the statute as it pertains to the Newton firefighter eligible list that was established based on this October 14, 2023 examination.

The active military duty exception

To ensure that members of the military are not penalized or disadvantaged due to their active military duty status, HRD has a longstanding policy that allows for an exception to qualify for residency preference. In summary, if any part of a candidate's most recent active military duty falls within the statutory "residency preference window" for an examination, they may still claim residency preference in a city or town, even though they did not reside in that city or town continuously for 12 months. HRD allows the active military duty candidate to claim residency preference either in the city or town where they resided at the time of deployment *or* any other

city or town in which they establish residency within 90 days of discharge from their most recent active military duty. Since Sharon is not a civil service community, the Petitioner's residency in Sharon would not provide any residency preference eligibility.

Applied here, it is undisputed that the Petitioner's most recent active military duty occurred between February 1, 2024 and April 30, 2024 -- well outside the above-referenced "residency preference window" for the October 14, 2023 examination (October 14, 2022 to October 14, 2023). Thus, HRD argues, and the Petitioner now does not contest, that he was not eligible for an active military duty military residency preference exception as it relates to the October 14, 2023 examination.

However, on April 8, 2024, the Petitioner emailed HRD stating "I'm currently on active military duty till the end of May. I'm moving to Newton at the end of June. I took the firefighter exam this year [sic] and I'm currently on the list. Would I be able to claim residency in Newton?" The Petitioner had not actually taken the firefighter exam "this year" (2024). Rather, the firefighter exam was initially administered on October 14, 2023 and the Petitioner took a military make-up exam on December 16, 2023. A few moments later, the Petitioner sent a follow-up email to HRD stating "My current residency is Boston." As referenced above and discussed in more detail below regarding a *prior* request by the Petitioner related to a residency preference exception request, the Petitioner has never resided in Boston.

HRD *should have* responded to the Petitioner's above inquiry by directing him to the [guidelines for the exception on their website](#) and/or letting the Petitioner know that HRD would need to first review the records related to his active military duty to determine if it actually fell within the residency window of the examination that he last took (in 2023) before making a determination. Instead, HRD responded by telling the Petitioner that "[o]nce you are discharged, you have 90 days to establish residency in Newton. Once you do, you can claim either Newton or Boston."

Three weeks later, on April 29, 2024, the Petitioner emailed HRD stating:

I'm being discharged from Active duty as of tomorrow April 30th, 2024. I would like to switch my residency preference to Newton, MA [address redacted]. I submitted paperwork for a DD-214 with my unit which I was advised that it could take "months" to receive. I attached a signed Statement of Service in the meantime as well as a signed lease form by both me and the landlord.

The Statements of Service indicated the following periods of active duty service:

- April 25, 2023 to July 7, 2023;
- July 23, 2023 to November 3, 2023
- **February 1, 2024 to April 30, 2024**

One day later, on April 30, 2024, HRD responded by stating, “Your residency preference has been changed to Newton” and the eligible list for Newton firefighter was updated accordingly, providing the Petitioner with Newton residency preference. However, since the Petitioner’s most recent active military duty fell outside the residency preference window required of the only examination the Petitioner had taken in 2023, HRD asserts, and the Petitioner does not contest, that this determination was made in error.

The Petitioner did not take the next annually-administered firefighter examination in the Fall of 2024. He is free, of course, to do so this coming Fall.

Email exchanges immediately preceding the Petitioner’s current request for investigation to the Commission

Starting in March 2025, months after HRD had adjusted the Petitioner’s residency preference to Newton, the Petitioner began emailing HRD again, generally inquiring about how long his name would remain on the current eligible list (through 4/1/26) but also asking further clarifying questions about the military residency preference exception. The last email exchange between the Petitioner and HRD occurred on March 20, 2025, when the Petitioner asked HRD: “Is there a way to check if my residency preference is applied to Newton in the civil service profile. Can’t seem to find it on [my] profile?”

Also on March 20, 2025, HRD reports that they received the Petitioner’s DD214 which, consistent with the Statements of Service previously submitted, showed that the Petitioner’s most recent active military duty (February 1, 2024 to April 30, 2024) did not include any period of service during the residency preference window (October 14, 2022 to October 14, 2023) for the October 2023 examination in question.

Although HRD reports that, upon review of the Petitioner’s DD214 on March 20, 2025, “it became evident” that he was not eligible for the active military duty residency preference exception in Newton, the eligible list for Newton firefighter was not adjusted at that time.

Three weeks later, on April 14, 2025, the Petitioner filed the instant request for investigation with the Commission, effectively seeking to prevent HRD from removing his Newton residency preference from the Newton firefighter eligible list. HRD subsequently updated the eligible list to remove the Petitioner’s residency preference and the Petitioner now seeks restoration of that preference.

Commission's Response

As a preliminary matter, I acknowledge and recognize the Petitioner's service to our country and the consequential nature of his request on his short-term chances of being appointed as a Newton firefighter.

In regard to the petition before me, I address two related, but distinct questions here. First, was HRD's (final) determination that the Petitioner is not eligible for Newton residency preference correct? Second, if this final determination was correct, should the Petitioner's Newton residency preference be restored based on the Petitioner's reliance on HRD's initial determination that he was eligible for the preference?

For clarity, HRD's website states the following regarding the active military duty residency preference exception:

Q. I was away on military active service, which municipality can I select for residence preference?

A. For military personnel who were on full-time active duty during any part of or the entire 12-month period required to establish residency in a Massachusetts city or town, you may still be eligible to claim residency preference if you meet the following conditions:

- You must have served a period of **Full-Time Military Active Duty** (for which you received or will receive a DD214) during any part of the 12 month period immediately preceding the date of the original exam administration for the title you are taking the makeup exam for.

For example:

-2023 Police Officer - March 18, 2022 to March 18, 2023

-2023 Firefighter - October 14, 2022 to October 14, 2023

- You must have been a Massachusetts Resident at the time of entry into full-time active duty or your Home of Record on your DD214 for this period of active duty must be a city or town in Massachusetts.
- You must return to your Home of Record (Town **A**) or establish residency in a different Massachusetts municipality (Town **B**) within 90 days of the date of

separation/release/discharge from this period of active duty as listed on your DD214.

The Petitioner notified HRD of the following three separate dates of active military duty service:

- April 25, 2023 to July 7, 2023;
- July 23, 2023 to November 3, 2023
- February 1, 2024 to April 30, 2024

In reaching its final determination that the Petitioner is not eligible for Newton residency preference, HRD ultimately considered only the most **recent** active military duty (February 1, 2024 to April 30, 2024) which clearly falls outside the applicable residency preference window of October 14, 2022 to October 14, 2023.

I did consider, however, whether the **prior** dates of service, which do fall within the residency preference window, may require a different result here. They do not. The Petitioner did not establish residency in Newton until June 2024, well beyond 90 days after the prior discharge dates. Even more importantly, however, the break from service between November 3, 2023 and February 1, 2024 equals exactly 90 days, meaning that the Petitioner was previously afforded the full 90 (consecutive) days to establish residency in another community in relation to his prior discharge dates.

I now turn to the issue of whether HRD's initial, erroneous determination, and the Petitioner's argument that he relied on that determination to not take the next examination in 2024, warrants relief by the Commission. Generally, an administrative error or oversight by a governmental agency does not prevent a (correct) redetermination upon further review. That is particularly true when, as here, failing to correct the erroneous determination going forward would have an adverse impact on other candidates ranked on this competitive eligible list. I may have reached a different conclusion had the Appellant already been appointed to a Newton firefighter position based on the initial, erroneous determination. That, however, is not the case here. HRD discovered their error prior to any certification being issued to Newton and the names will now appear correctly on any certification sent to Newton by HRD.

Finally, I am not convinced that what occurred here was entirely through no fault of the Petitioner. I am troubled that the Petitioner, despite never having resided in Boston, also applied for, received, and maintained (for months) an active military duty residency preference exception in Boston. While I accept the Petitioner's representation that his plans to move to Boston fell through, he was nevertheless obligated to notify HRD

of this development forthwith, which he did not. In fact, the Petitioner, when applying for the Newton residency preference months later, referenced that his existing residency preference was in Boston. Together, it suggests a willingness by the Petitioner to interpret ambiguity in his favor, where the role of the Commission is to ensure fairness and uniformity for all stakeholders.

For all the above reasons, I recommend that the Commission deny the Petitioner's request for investigation.

Civil Service Commission

Christopher C. Bowman

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Chair

On June 12, 2025 the Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners [Dooley-Absent]) voted to accept the recommendation of the Chair and deny the Petitioner's request for investigation.

Notice:

Jonathan Gurfinkel (Petitioner)

Michael Owens, Esq. (for HRD)