

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**NICKLAS W. HAAG**

*Appellant*

**CASE NO. G1-20-037**

v.

**CITY OF WORCESTER,**

*Respondent*

Appearance for Appellant:

Nicklas Haag , Pro Se

Appearance for Respondent:

William R. Bagley, Jr., Esq.  
City of Worcester  
455 Main Street – Room 109  
Worcester, MA 01608

Commissioner:

Paul M. Stein

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

The Appellant, Nicklas W. Haag, appealed to the Civil Service Commission (Commission), purporting to act pursuant to G.L.c.31, §2(b) & §27, to contest his non-selection by the Respondent, City of Worcester (Worcester) for appointment to the position of Firefighter with the Worcester Fire Department (WFD). Pursuant to the Procedural Order issued after the pre-hearing conference (held via Webex Video Conference) before the Commission on March 24, 2020, Worcester filed a Motion to Dismiss the appeal for lack of jurisdiction on the grounds that the Appellant’s non-selection was not a bypass.

**FINDINGS OF FACT**

Based on the submissions of the parties, I find the following material facts are not disputed:

1. The Appellant, Nicklas Haag, took and passed the civil service examination for firefighter administered on March 24, 2018 by the Massachusetts Human Resources Division (HRD). His

name was placed on the eligible list established on December 1, 2018. (*Administrative Notice [HRD Letter on File]; Stipulated Facts*)

2. On July 19, 2019, HRD issued Certification #06487 to Worcester for appointment of new WFD Firefighters. Mr. Nicklas's name was listed on the Certification in the 22<sup>rd</sup> tie group. Eventually, Worcester made 27 appointments from the Certification, including candidates whose names appeared in the 22<sup>nd</sup> tie group. No candidates ranked below the 22<sup>nd</sup> tie group were appointed. (*Administrative Notice [HRD Letter on File]; Stipulated Facts*)

3. By letter dated February 4, 2020, sent by certified mail, Worcester informed Mr. Haag that he had been "bypassed". (*Claim of Appeal; Stipulated Facts*)

4. On March 5, 2020, Mr. Haag filed this appeal. (*Claim of Appeal*)

#### **APPLICABLE LEGAL STANDARD**

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "viewing the evidence in the light most favorable to the non-moving party", the undisputed material facts affirmatively demonstrate that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case". See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

#### **ANALYSIS**

The undisputed facts, viewed in a light most favorable to Mr. Haag, establish that Worcester's letter dated February 4, 2020 erroneously stated that he was "bypassed" for appointment, when, in fact, he was not bypassed within the meaning of G.L.c.31, §2(b) & G.L.c.31, §27. In particular, a

non-selected candidate may appeal to the Commission only when his or her name appears “high[e]r” than one or more candidates who were appointed and, in this regard, appointment of a candidate in one tie group is not the appointment of a higher ranked candidate. See, e.g., Damas v. Boston Police Dep’t, 29 MCSR 550 (2016); Servello v. Department of Correction, 28 MCSR 252 (2015). See also, Personnel Administration Rules, PAR.02. Thus, as no candidates ranked below him on the certification were selected, Mr. Haag’s appeal must be dismissed for lack of jurisdiction.

### **CONCLUSION**

In sum, for the reasons stated herein, the Motion to Dismiss is hereby ***granted*** and the appeal of the Appellant, Nicklas W. Haag, CSC No. G1-20-037, is ***dismissed***.

Civil Service Commission  
/s/Paul M. Stein  
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on April 23, 2020.

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)(1), 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:  
Nicklas W. Haag (Appellant)  
William R. Bagley, Jr., Esq. (for Respondent)