

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

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

JOSHUA M. HALLBERG,  
*Appellant*

v.

LOWELL FIRE DEPARTMENT,  
*Respondent*

Docket Number: G1-24-041

Appearance for Appellant: *Pro Se*  
Joshua Hallberg

Appearance for Respondent: Garrett Beaulieu, Esq.  
City of Lowell  
City Hall, 375 Merrimack Street  
3<sup>rd</sup> Floor  
Lowell, MA 01852

Commissioner: Christopher C. Bowman

**SUMMARY OF DECISION**

The Commission dismissed the Appellant's bypass appeal after concluding that no bypass occurred as no candidate ranked below him was appointed to the position of Lowell reserve firefighter.

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

On April 2, 2024, the Appellant, Joshua M. Hallberg (Appellant), filed an appeal with the Massachusetts Civil Service Commission (Commission) after being notified by the Lowell Fire Department (LPD) that he had been bypassed for appointment as a permanent, reserve firefighter. On April 23, 2024 and May 14, 2024, I held pre-hearing conferences, the latter of

which was attended by the Appellant, counsel for the City and the City's Fire Chief. The LPD filed a motion to dismiss the Appellant's appeal and the Appellant filed a reply.

## **UNDISPUTED FACTS**

Based on the documents submitted and the statements at the pre-hearing conferences, the following is undisputed, unless otherwise noted:

1. On October 30, 2021, the Appellant took the written portion of the examination for firefighter, followed by the entry-level physical abilities test portion of the examination, administered by the state's Human Resources Division (HRD).
2. On February 18, 2022, HRD established the eligible list for Lowell firefighter.
3. On October 30, 2023, HRD sent Certification No. 09524 to the LPD to appoint permanent, reserve firefighters.
4. The Appellant's name appeared tied for 11<sup>th</sup> on the Certification.
5. The LPD identified 16 candidates whom it seeks to appoint as permanent, reserve firefighters, none of whom were ranked below the Appellant.
6. The Appellant was not selected for appointment.
7. By letter dated March 15, 2024, the LPD erroneously notified the Appellant that he had been bypassed for appointment and that he had a right of appeal to the Commission. He was not provided with the reasons for the supposed bypass, but, rather, was directed to contact a non-existent "Bureau of Local Government Services" purportedly located at One Ashburton Place in Boston.
8. Seeking to correct their error, the LPD sent the Appellant a letter dated April 4, 2024, erroneously notifying the Appellant that he had "not been reached" and that he could file an appeal with the Commission.

9. Neither of the statements in the LPD's April 4, 2024 letter were accurate. Rather, the Appellant was indeed *reached* for appointment (within the 2N+1 formula of candidates who expressed a willingness to accept appointment), and he was indeed *considered* for appointment, but he was not *selected* for appointment after failing a pre-employment drug test. His non-selection, however, did not constitute a bypass appealable to the Commission as no candidate ranked *below* the Appellant has or will be appointed from Certification No. 09524 according to the LPD.

#### **RULE REGARDING DISMISSAL FOR LACK OF JURISDICTION**

The Presiding Officer may at any time, on his or her 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. 801 CMR 1.01 (7)(g)(3).

#### **RELEVANT CASELAW REGARDING SELECTION AMONG TIED CANDIDATES**

The Commission has long held that the appointment of a candidate among those with the same rank on a Certification is not a bypass. See Edson v. Reading, 21 MCSR 453 (2008) (upheld by Superior Court *sub nom.* Edson v. Civil Service Comm'n, Middlesex Sup. Ct. No. 08-CV3418 (2009)); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1998); Servello v. Dep't of Correction, 28 MCSR 252 (2015). See also Thompson v. Civil Service Comm'n, Suffolk Superior Ct. No. MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass); Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 261 (2001) ("In deciding bypass appeals, the commission must determine whether the appointing authority has complied with the requirements of Massachusetts civil service law for

selecting lower scoring candidates over higher scoring candidates); Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002) (citing HRD's guide), rev'd in part on other grounds, 323 F.3d 160 (1st Cir. 2003) ("when a civil service exam results in a tie -score, and the appointing authority ... promotes some but not all of the candidates, no actionable 'bypass' has taken place in the parlance of ... civil service").

## **ANALYSIS**

The series of missteps here by the LPD, including providing the Appellant with incomplete and inaccurate information on multiple occasions, is highly unfortunate. First, the Appellant was erroneously notified that he was bypassed for appointment for reserve firefighter when he was not. That same correspondence failed to notify the Appellant of the purported bypass reasons and then sent him on a proverbial wild goose chase to find the bypass reasons, including referring him to a non-existent state agency. Then, to correct these missteps, the LPD provided the Appellant with *further* misinformation, stating that he was never even "reached" for appointment, which was clearly not true, as the Appellant had indeed been reached – and considered – for appointment.

To ensure clarity, an appointing authority's obligations regarding a bypass are straightforward. If a candidate has been bypassed for appointment (i.e. – the appointing authority appoints someone ranked below the candidate), the appointing authority is required to: a) provide the bypassed candidate with the reasons for bypass; and b) notify the bypassed candidate that they have 60 days to file an appeal with the Civil Service Commission. The LPD's failure to comply with these requirements caused the Appellant considerable inconvenience for which he is due an apology by the LPD.

Notwithstanding these missteps, it is undisputed that the Appellant was not bypassed for appointment and, thus, the Commission lacks jurisdiction to hear his bypass appeal. Based on the troubling sequence of events here, however, the LPD, at my request, provided the Commission with all relevant documents related to the LPD's non-selection of the Appellant, to at least ensure that there were no additional errors, such as misidentifying the candidate associated with the non-selection reasons, etc. I have reviewed the documents and confirmed that they do indeed relate specifically to the Appellant and the LPD's reason for non-selection.

## CONCLUSION

The Appellant's appeal under Docket No. G1-24-041 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Markey, McConney and Stein [Dooley-Absent]) on June 13, 2024.

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. 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:  
Johsua M. Hallberg (Appellant)  
Garrett Beaulieu, Esq. (for Respondent)