

COMMONWEALTH OF MASSACHUSETTS

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

TODD HEADLEY,
Appellant

v.

G1-23-071

CITY OF SOMERVILLE,
Respondent

Appearance for Appellant:

Pro Se
Todd Headley

Appearance for Respondent:

Bonnie Borche-Rote, Esq.
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

Summary of Decision

Although it is an unfortunate outcome for the Appellant, the Commission dismissed his appeal as he was unable to show that he is an aggrieved person based on his failure to check his spam email account and open a notification telling him that his name appeared on a certification for Somerville firefighter.

Background / Undisputed Facts

On June 5, 2023, the Appellant, Todd Headley (Appellant), filed a bypass appeal with the Civil Service Commission (Commission), stating that he was aggrieved by the decision of the City of Somerville (City) to not allow him to sign a certification for Somerville Firefighter beyond the prescribed deadline.

On June 27, 2023, I held a remote pre-hearing conference which was attended by the Appellant, counsel for the City, and counsel for the state's Human Resources Division (HRD). Based on the documents submitted, the discussion at the pre-hearing conference and information submitted after the pre-hearing conference at my request, the following does not appear to be in dispute:

- A. On October 26, 2022, the Appellant took the written portion of the firefighter examination administered by HRD.
- B. On March 16, 2023, HRD emailed the Appellant his passing score to his yahoo.com email address. HRD records show that the Appellant read his score notice on March 19, 2023.
- C. On April 1, 2023, HRD established the eligible list for firefighter, which included the name of the Appellant.
- D. On April 13, 2023, HRD sent Certification No. 09163 to the City from which the City is currently reviewing candidates to appoint six firefighters.
- E. On April 13, 2023 and April 14, 2023, HRD sent the Appellant notification to the same yahoo.com email address referenced above, notifying him of the requirement to sign the Certification on or before April 21, 2023 if he was willing to accept appointment, if offered, for Somerville firefighter.
- F. The Appellant did not sign the Certification on or before April 21, 2023.
- G. According to the City, only candidates who signed the Certification on or before April 21, 2023 are being considered for appointment.
- H. According to the Appellant, he became aware on June 3rd (from a fellow employee in the City's DPW where the Appellant is currently employed), that his name was on the Certification, but that he had failed to sign it prior to the signing deadline.

- I. Also according to the Appellant, he then checked his SPAM folder for his yahoo.com email account and discovered the emails notifying him of the opportunity to sign the Certification.
- J. Applicants are notified by HRD at the outset of the process to always check their SPAM and other folders to check for notices during the life of the eligible list.
- K. The parties agree that, had the Appellant signed the Certification on or before April 21st, he would be within the 2N+1 formula of candidates eligible for consideration for appointment as a firefighter.
- L. The City believes it is likely, but not certain, that additional firefighter appointments may be made prior to the expiration of the Appellant's current eligibility on the eligible list, currently set to expire on April 1, 2024.

Subsequent to the pre-hearing conference, the City submitted a motion for summary decision and the Appellant did not file a reply.

Parties' Arguments

The City argues that it has consistently enforced a policy of not considering candidates for appointment who do not sign the certification in a timely manner. Further, the City argues that the Appellant's failure to sign this Certification prior to the deadline was not "through no fault of his own" as he failed to sign the certification after being properly notified by HRD, even if, as asserted by the Appellant, that the email went to a SPAM folder which the Appellant should have been monitoring.

At the pre-hearing, the Appellant argued that his failure to sign the certification was indeed through no fault of his own, given that the email was delivered to his SPAM folder, and that a technical issue should not prevent him from being considered for appointment as a firefighter, which has been his lifelong ambition.

Analysis

The series of events here is almost identical to the facts in [Duga v. Town of West Springfield & HRD](#), 31 MCSR 100 (2018). Mr. Duga also failed to check his SPAM email account until after a deadline had passed to sign a certification. In [Duga](#), the Commission stated:

I am not unsympathetic to Mr. Duga’s plight. It is safe to assume that most individuals, myself included, do not check “spam” or “junk” email folders on a daily basis. Here, however, Mr. Duga was put on notice ... that: a) his name had been placed on an eligible list of candidates ... and b) he should check his email account, including his “spam” and “junk” email folders regularly for communication from HRD.

Given the importance of that potential communication, including notifications regarding ... vacancies, it is not unreasonable to expect that Mr. Duga should have been checking his email account, including spam and junk folders, on a regular (i.e. – daily or at least weekly) basis [while the eligible list was active].

The undisputed facts show that Mr. Duga was not. He let a period of over two (2) weeks go by where, despite explicit instructions from HRD, he failed to check his spam and junk folders. Unfortunately for Mr. Duga, it was during this approximately 4 two (2)-week period that he received, but failed to read, the time-sensitive information regarding the police officer vacancy in West Springfield.

Thus, he is not an aggrieved person as he was not harmed through no fault of his own. For this reason, and because there is no evidence that the Town has not uniformly enforced this signing deadline, and because the Appellant does not argue that the Town’s decision was based on personal or political bias, relief by the Commission is not warranted here.

Given that the facts here are indistinguishable from [Duga](#), I reach the same conclusion: the Appellant was not harmed through no fault of his own based on his failure to check his SPAM email account and relief is not warranted.

Conclusion

The City's motion for summary decision is allowed and the Appellant's appeal under Docket No. G1-23-071 is ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on October 19, 2023.

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 their 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:
Todd Headley (Appellant)
Bonnie Borche-Rote, Esq. (for Respondent)