

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

ADAM HEALEY,  
Appellant

v.

E-21-010

CITY OF PITTSFIELD,  
Respondent

Appearance for Appellant:

*Pro Se*  
Adam Healey

Appearance for City of Pittsfield:

Kimberly Roche, Esq.  
Dupere Law Offices  
94 North Elm Street, Suite 207  
Westfield, MA 01085

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On December 30, 2020, pursuant to G.L. c. 31, § 2(b), the Appellant, Adam Healey (Appellant), a full-time firefighter in the City of Pittsfield (City)'s Fire Department (PFD), filed a non-bypass equity appeal with the Civil Service Commission (Commission), seeking a retroactive adjustment in his civil service seniority date *from* May 15, 2017 *to* February 20, 2017. On February 16, 2021, I held a remote pre-hearing conference via Webex videoconference which was attended by the Appellant, counsel for the City and the City's Human Resources Director.

As part of that pre-hearing conference, the parties stipulated to the following:

1. On April 16, 2016, the Appellant took and passed the civil service examination for firefighter.

2. On December 1, 2016, the state's Human Resources Division (HRD) established the eligible list for firefighter.
3. On December 14, 2016, HRD issued Certification No. 04275 to the City from which the City appointed nine (9) firefighters, effective February 20, 2017. For reasons discussed below, the Appellant was not appointed from this Certification.
4. On March 10, 2017, HRD issued Certification No. 04469 to the City from which the City appointed three (3) firefighters, effective May 15, 2017. The Appellant was appointed from this Certification.

In his appeal to the Commission, filed almost four (4) years after his appointment as a firefighter, the Appellant argues that he should receive a retroactive civil service seniority date back to February 20, 2017.

According to the Appellant, he signed Certification No. 04275 and was contacted, via phone, by an employee of City's Fire Department who told the Appellant that he was scheduled for an interview on January 10, 2017. The City states that no interviews were scheduled for January 10<sup>th</sup> and that the Appellant was told to appear for an interview on January 4, 2017 at 10:00 A.M. On Saturday, January 7, 2017, a City firefighter contacted the Appellant to inquire why he had not appeared for his interview on January 4<sup>th</sup>. The Appellant, who had written January 10<sup>th</sup> on his calendar, contacted the Fire Department the same day and was told to call back on Monday and speak directly to the Fire Chief. According to the Appellant, he (the Appellant) contacted the Fire Chief on January 9<sup>th</sup> and was told that the interview process had already concluded. That same day, the Appellant sent an email to HRD, asking HRD for assistance in allowing him to be interviewed.

On January 11, 2017, the Appellant penned the following email to the Fire Chief:

“Sir,

I am just following up with you about possibly being able to interview for a position as a firefighter with the Pittsfield Fire Department. I was hoping you may be able to find time for me because of the miscommunication that occurred resulting in my unintended absence. I have worked very hard and dedicated a lot of time to try and become a firefighter. Please understand that I went through extensive measures to try and remedy the situation as soon as it was brought to my attention and that I have never been a no show to anything in my life. I have gone through immense measures to put myself in a place of possible employment with the Pittsfield Fire Department and am simply seeking a fair and honest chance. If you could please help me it would be very appreciated, my contact information has been listed below.”

As referenced above, the Appellant was not appointed on February 20, 2017 from Certification No. 04275. He was, however, subsequently appointed on May 15, 2017 from Certification No. 04469.

As part of the pre-hearing conference, the Appellant confirmed that he was seeking relief in large part to obtain a more favorable seniority date in regard to *collective bargaining agreement* - related matters (e.g. – shift bids, vacation time, etc.) which would not be impacted by a retroactive civil service seniority date. Rather, a retroactive civil service seniority date would only be relevant if the City engaged in layoffs of firefighters with civil service seniority dates back to May 15, 2017, a highly unlikely scenario given the large number of firefighters that have been appointed by the City since May 15, 2017.

In light of the above information, I asked the Appellant to inform the Commission by February 19, 2021 if he wished to withdraw his appeal. On February 19<sup>th</sup>, the Appellant indicated that he would not be withdrawing his appeal stating in part: “If the claim goes in my favor, I will attempt to resolve the seniority issue with the City at a later date. In regard to this claim, I was wronged during the hiring process and would like to establish a better system of communication and professionalism for future candidates so they do not have to suffer the same fate.”

Even when the facts are viewed most favorable to the Appellant, he knew, *for years*, that candidates ranked below him on Certification No. 04275 were appointed to the Pittsfield Fire Department. The Commission has squarely addressed this issue in the past. In Pugsley v. City of Boston et al, 24 MCSR 544, 547 (2011), the Commission stated that the Commission:

“ ... embraces the principle that a party coming before the Commission to seek equitable relief ... must exercise reasonable diligence in pursuit of that relief. Accordingly, where a person has had actual notice – whether in writing or not – of an action or inaction by HRD or an appointing authority that the person reasonably knew or show have known was a violation of civil service law or rules, that person cannot sit on those rights indefinitely. Thus, it is a fair requirement that once such a person discovers that he or she has been harmed by an action or inaction of HRD, he had an obligation to promptly file a claim of appeal, or lose the right to press it.”

See also Mulligan v. Boston Police Department, 28 MCSR 57 (2015) (The Commission denied the Appellant’s appeal which was filed years after the Appellant was purportedly bypassed for appointment, but did not receive a written notice at the time.)

Applied here, the Appellant’s appeal, filed with the Commission almost four years after he knew he was bypassed for appointment, is not timely. For that reason, the Appellant’s appeal will be dismissed.

To ensure clarity, even if the Appellant’s appeal were timely (which it is not), there is no reasonable likelihood that he would prevail. He has no written documentation to show that he was told to appear on January 10<sup>th</sup>; it appears to be undisputed that no interviews were held on January 10<sup>th</sup>; and the Appellant’s email communication to the Fire Chief makes no mention that he was purportedly told to appear on January 10<sup>th</sup>, as opposed to January 4<sup>th</sup> at 10:00 A.M. Finally, given that the City appointed the Appellant during the next hiring cycle, it is unlikely

that the Appellant could show that there were any impermissible factors in play here (i.e. – personal or political bias against him).

Since the Appellant failed to file a timely appeal with the Commission, his appeal under Docket No. E-21-010 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher C. Bowman  
Christopher C. Bowman  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 11, 2021.

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:

Adam Healey (Appellant)

Kimberly Roche, Esq. (for Respondent)