

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

PETER HUMPHREY,
Appellant
v.

Case No.: E-10-310¹

CITY OF HAVERHILL,
Respondent

PROCEDURAL ORDER

On November 18, 2010, the Appellant filed an appeal with the Commission. A pre-hearing conference was held on December 13, 2010 and was attended by the Appellant, his counsel, counsel for the City and counsel for HRD.

Based on the pre-hearing conference, the procedural and factual background of this appeal appears to be as follows:

1. The Appellant has been a firefighter in the City of Haverhill since June 2004.
2. The Appellant took the 2007 promotional examination for lieutenant and, according to him, received a score of 72.
3. The above-referenced score resulted in the Appellant being placed third on the eligible list of candidates for lieutenant, which was established in 2008. It appears that the list contained only three (3) names.
4. The Appellant states that four (4) lieutenants retired since the list was established.
5. It is undisputed that the first two (2) candidates on the eligible list (Giampa and McCarthy) were promoted to the position of permanent full-time lieutenant.
6. After the appointment of Giampa and McCarthy, the eligible list, with only one (1) remaining name, was considered a "short list". Thus, if the City wished to fill a vacancy for lieutenant, it could fill the position either through a permanent or temporary appointment or, as it was a short list, through a provisional promotion.
7. A July 7, 2010 memo from the Haverhill Fire Chief states that firefighters Saunders and Kimball have been designated as "Acting" lieutenants.
8. "Acting" appointments are not recognized by the civil service law or the Personnel Administration Rules and have been ruled a violation of the civil service law in a series of civil service decisions.
9. At the pre-hearing conference, the City was not sure if Saunders and Kimball had received provisional promotions or not.

¹ This appeal was originally docketed with a "G2" prefix which designates a promotional bypass appeal. It should have been docketed with an "E" prefix, which designates non-bypass appeals in which an Appellant is arguing that he/she is aggrieved and should be granted relief under Chapter 310 of the Acts of 1993.

10. In the interim, the eligible list upon which the Appellant's name appeared expired on November 1, 2010. He did not take the most recent examination for lieutenant.

As agreed to by the parties at the pre-hearing conference, I hereby order the following:

- A. Within ten (10) days, the City will notify the Commission and all parties if Saunders and Kimball have been provisionally promoted to the position of lieutenant.
- B. Thirty (30) days thereafter, the Appellant will file a More Definite Statement with the Commission, copied to all parties, stating the basis of the Appellant's appeal and what relief is being sought.
- C. The City will have thirty (30) days thereafter to file a reply.
- D. A status conference will be held on Tuesday, March 8, 2011 at 10:00 A.M. at the offices of the Commission.

This order is to be posted by the Clerk of the City of Haverhill and posted conspicuously in the headquarters of the Haverhill Fire Department for at least ten days after receipt.

Civil Service Commission



Christopher C. Bowman
Chairman

December 14, 2010

Notice to:

Timothy Belcher, Esq. (for Appellant)

William D. Cox, Jr., Esq. (for Appointing Authority)

Tsuyoshi Fukuda, Esq. (HRD)