

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
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ARISKELDA INOA-RUFFEN and
AMANDA J. BURKE
Appellants

Case Nos.: G1-10-294 (Inoa-Ruffen)
G1-10-295 (Burke)

v.

CITY OF LAWRENCE and
HUMAN RESOURCES
DIVISION,
Respondents

Appellants' Attorney:

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Commissioner:

Christopher C. Bowman¹

DECISION ON MOTIONS FOR SUMMARY DECISION

The Appellants, Ariskelda Inoa-Ruffen (hereinafter "Inoa-Ruffen") and Amanda Burke (hereinafter "Burke") ("Appellants"),² pursuant to G. L. c. 31, § 2(b), filed

¹ The Commission acknowledges the assistance of legal intern Marc Rottman in drafting this decision.

individual appeals with the Civil Service Commission (hereinafter “Commission”), claiming that they were aggrieved when the state’s Human Resources Division (hereinafter “HRD”) modified their civil service seniority dates, impacting their layoff, bumping and reinstatement rights as police officers in the City of Lawrence (hereinafter “the City”). The Appellants filed their appeals on November 9, 2010, and the Commission consolidated them. A pre-hearing conference was held at the offices of the Commission on November 30, 2010. The City and HRD filed motions for summary decision. The Appellant did not file a reply.

The following appear to be undisputed:

1. Passing the Physical Abilities Test (“PAT”) is a condition precedent to appointment as a Police Officer. G.L. c. 31, § 61A.
2. On May 8, 1999, the Appellants took and passed the open Competitive Examination for Police Officer, Announcement #6411.
3. On September 1, 1999, HRD established the eligible list for Police Officer from the May 1999 examination. The 1999 eligible list was in effect from September 1, 1999 until August 31, 2001.
4. On January 3, 2001, HRD received a requisition from the City for a certification to appoint fifteen (15) permanent full-time Police Officers.
5. On January 10, 2001, HRD issued Certification Number 210010 pursuant to the City’s request.

² At the time of their appointment, Ariskelda Inoa-Ruffen’s name was Ariskelda Inoa and Amanda Burke’s name was Amanda Carey.

6. It is incumbent on the Appointing Authority to schedule post-conditional offer PATs after making conditional offers of employment (and who have passed the required medical examination).
7. Before the PAT, candidates must pass a medical examination. G.L. c. 31, § 61A
8. On May 15, 2001, Burke failed the PAT. She retook it and passed on May 22, 2001.
9. On May 15, 2001, Inoa-Ruffen passed the PAT.
10. HRD is unable to locate any record of either Appellant taking the PAT earlier than May 15, 2001.
11. The Appointing Authority provides the employment date for each selected individual on the Authorization of Employment Form, Form 14. After entering the appointment date for each individual, the selected candidates sign Form 14 accepting employment.
12. On July 11, 2001, HRD received the Form 14 from the City, which provided the name and date of employment of those selected from Certification 210010. The City appointed twelve (12) individuals.³
13. The Appointing Authority provided April 9, 2001 as the employment date for all individuals except the Appellants. The Appointing Authority provided the employment date for the Appellants as June 4, 2001
14. Burke accepted appointment by signing her name on the Form 14 next to the “Employment Date” listed as “6/4/01.”

³All candidates appointed from Certification 210010, with the exception of the Appellants, took and passed the PAT on March 23, 2001 or March 27, 2001. HRD has no information as to why Appellants failed to take the PAT on either date. (Exhibit I).

15. Inoa-Ruffen accepted appointment by signing her name on the Form 14 next to the “Employment Date” listed as “6/4/01.”
16. After receiving the Form 14, HRD manually entered the appointment dates of each candidate into its computer system, ELIPSYS.
17. Due to a scrivener's error, HRD entered April 9, 2001 as the appointment date for all individuals appointed from Certification 210010.
18. After discovering this error, HRD adjusted the Appellants' appointment date to June, 4, 2001.
19. The above-referenced administrative error by HRD was not discovered until several years later when layoffs began occurring in the City.
20. An individual's civil service seniority date is used to determine the order of layoffs.
21. Another individual (other than the Appellants) contacted HRD and notified them that the seniority dates of the Appellants was incorrect (and would presumably result in him incorrectly being laid off before the Appellants).
22. Upon receipt of this inquiry, HRD reviewed the applicable records and determined that the Appellants civil service seniority date had been data-entered incorrectly several years.
23. HRD corrected their records and notified the City of the corrected civil service seniority dates of the Appellants.
24. This appeal followed.

CONCLUSION

The Appellants have requested relief pursuant to Chapter 310 of the Acts of 1993. Chapter 310 authorizes the Commission to provide relief to an individual whose civil service rights have been harmed through no fault of her own. Chapter 310 provides,

If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his/her Own, the civil service commission may take such action as will restore or protect such rights, Notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

Under G.L. c. 31, § 2(b), the Commission has the power and duty to:

“Hear and decide appeals by a person aggrieved by any decision, action, or failure to act by HRD, except as limited by the provisions of section twenty-four (24) relating to the grading of Examinations; provided that no decision or action of the administrator shall be reversed or Modified nor shall any action be ordered in the case of a failure of the administrator to act, Except by an affirmative vote of at least three members of the Commission, and in each such Case the Commission shall state in the minutes of its proceedings the specific reasons for its Decisions.

No person shall be deemed to be aggrieved under the provisions of this section unless such Person has made specific allegations in writing that a decision, action, or failure to act on The part of the administrator was in violation of this chapter, the rules or basic merit Principles promulgated thereunder and said allegations shall show that such person’s rights Were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person’s Employment status.”

I find that the Appellants’ appointment dates are not the result of a violation of the civil service law or rules and their rights were not abridged, denied, or prejudiced. As such, the Appellants are not persons aggrieved.

Pursuant to M.G.L. c. 31, § 61A:

“no person appointed to a permanent, temporary or intermittent, or reserve police or firefighter position...shall perform the duties of such position until he shall have undergone initial medical and physical fitness examinations and shall have met such initial standards. The appointing board or officer shall provide initial medical and physical fitness examinations. If such person fails to pass an initial medical or physical fitness examination, he shall be eligible to undergo a reexamination within 16 weeks of the date of the failure of the initial examination. If he fails to pass the reexamination, his appointment shall be rescinded. No such person shall commence service or receive his regular compensation until such person passes the health examination or reexamination.”

After passing the medical examination, Burke passed the PAT on May 22, 2001. Inoa-Ruffen, after passing the medical examination, passed the PAT on May 15, 2001. The Appellants were each provided with an appointment date on Form 14 after passing the PAT. Each subsequently accepted appointment by signing her name on the Form 14 next to the "Employment Date" listed as "6/4/01." Due to a scrivener's error, HRD entered the date of appointment as April 9, 2001, the same as all others selected from Certification 210010. When HRD discovered this data entry error, it corrected its records to reflect the date of appointment provided by the Appointing Authority for the Appellants, i.e. June 4, 2001.

A condition precedent to 310 relief is a failure by the Administrator or Appointing Authority to adhere to civil service laws and/or rules. In this case, the rights of the Appellants were not prejudiced by either the actions of the City or HRD. The Appellants knew, or reasonably should have known, that the date next to their names was different date from that of all the other member of the certification class that signed that Form 14. The Appellants also knew that they did not pass their Physical Abilities Test until May, months after the other members from their certification class. Whether or not there was an error in data entry, the Appellants should have known that their correct date of employment was June 4, 2001. The Appellants did not suffer an infringement of their rights because the error was corrected. Thus the appellants were not aggrieved.

The appeals filed under G1-10-294 and G1-10-295 are hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein Commissioners) on July 14, 2011.

A true record. Attest:

Commissioner

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.

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