

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

Tracking Number: I-25-125

Re: Request for Investigation by Nicholas Jamieson related to the use of provisional appointments by the Department of Correction

SUMMARY OF RESPONSE TO REQUEST FOR INVESTIGATION

The Commission denied a CO I / Head Cook's request for investigation as he could not show that he has been aggrieved by the Department of Correction (DOC)'s permissible use of provisional appointments to fill certain positions after exhausting the eligible list of candidates for those positions.

RESPONSE TO REQUEST FOR INVESTIGATION

Background

On May 21, 2025, the Petitioner, Nicholas Jamieson (Petitioner), a Correction Officer I / Head Cook (CO I / Head Cook) at the Department of Correction (DOC), filed a request for investigation with the Civil Service Commission (Commission), asking the Commission to investigate whether DOC is violating the civil service law by continuing the employment of certain provisional employees.

Section 14 of Chapter 31 of the General Laws states in part that: "Except as otherwise provided by section fifteen, no provisional employment in a position shall be authorized, approved, or continued for more than thirty days following a certification from an eligible list if such list contains the names of three persons eligible for and willing to accept appointment to such position."

On June 17, 2025, I held a remote show cause conference, which was attended by the Petitioner and counsel for DOC, for the Petitioner to show cause why the Commission should initiate an investigation. That same day, I issued a Procedural Order requesting additional information from DOC.

Current Use of Provisional Employees

The information received by the Commission establishes the following:

1. The state's Human Resources Division (HRD) is responsible for administering examinations and establishing "eligible lists" for various DOC titles including CO I and CO I / Head Cook.

2. After the establishment of an eligible list, DOC may request and/or create a “certification” of names from which DOC makes permanent appointments to the respective positions. These certifications are generated in anticipation of upcoming DOC academies which new recruits are required to complete.
3. At least as early as October 2024, if not before, DOC notified HRD that it was having difficulty filling CO I and CO I / Head Cook positions from the existing civil service eligible lists. Specifically, even after exhausting the eligible lists, DOC had many unfilled vacancies for critical positions.
4. After exhausting the respective eligible lists, DOC, pursuant to Section 12 of Chapter 31, made 13 provisional appointments to the position of CO I and 8 provisional appointments to the position of CO I / Head Cook.
5. Also, HRD, in early 2025, began administering examinations for entry-level positions at DOC more frequently, and both HRD and DOC initiated public outreach campaigns, encouraging more candidates to take the examinations and consider a career at DOC.
6. As a result of the increased frequency of examinations, DOC created a new or merged eligible list three times in 2025 (March, June and August) for CO I in addition to a new eligible list for CO I / Head Cook in April 2025. Another merged list will be created shortly for CO I based on an August 2025 examination and another CO I / Head Cook examination will be held in February 2026.
7. On August 18, 2025, HRD issued certifications for CO I and CO I / Head Cook in anticipation of filling seats in an academy set to begin in December 2025 or January 2026. The CO I certification permits filling 150 vacancies, but only 307 names are on the eligible list, making it highly likely that DOC may, once again, exhaust the eligible list.
8. All 13 of the individuals serving as provisional CO Is have now passed a CO I examination; 12 of them appear on the certification issued in August and 1 can be added on or after October 1, 2025, after passing the most recent examination. Put another way, all the existing provisional CO Is, regardless of their rank on the eligible list, will be eligible for permanent appointment once the certification is created.
9. Seven of the 8 provisional CO I / Head Cooks have now passed a CO I / Head Cook examination and their names appear on the certification issued in August. The name of one provisional CO I / Head Cook does not appear on the August certification. As referenced above, the next examination for CO I / Head Cook will be held in February 2026.
10. The Petitioner, who currently serves as a permanent CO I / Head Cook, is not among the candidates on the CO I eligible list and thus is not eligible for appointment to a CO I position at this time.

Commission's Authority to Conduct Investigations

The Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an alleged violation of the civil service law's provisions to decide whether and to what extent an investigation might be appropriate. Specifically, Section 2(a) states that the Commission may: "conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, **an aggrieved person**, or by ten persons registered to vote in the commonwealth."

Further, Section 72 of Chapter 31 provides for the Commission to "investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services." The Commission exercises its discretion to investigate only "sparingly," typically only when there is clear and convincing evidence of systemic violations of Chapter 31 or an entrenched political or personal bias that can be rectified through the Commission's affirmative remedial intervention.

Definition of an Aggrieved Person

Section 2(b) of Chapter 31 provides that:

No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] 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.

Commission Response

As a preliminary matter, the Petitioner has not shown that he is an aggrieved person as there has been no actual harm to his employment status as a permanent CO I / Head Cook. Further, the Petitioner's name does not appear on the current CO I eligible list and, thus, he is not eligible for permanent appointment to that position. For this reason, the Petitioner has no standing to request an investigation.

However, since the Commission has the authority to initiate investigations on its own initiative, and because clarification regarding the use of provisional appointments may be beneficial to the civil service system, a more detailed response is warranted.

For most **non**-public safety civil service positions in Massachusetts, provisional appointments have become the rule rather than the exception as there have been no examinations administered for these positions in decades, making the establishment of eligible lists and certifications impossible.

HRD has, however, continued to administer civil service examinations for various *public safety* civil service positions, including CO I and CO I / Head Cook. Thus, the expectation is that provisional appointments should be the exception, and used only when there are no, or at least fewer than 3 for each vacancy, candidates willing to accept appointment for the public safety position in question. Based on the information provided by DOC, that is precisely what happened here. In short, DOC has struggled to attract candidates willing to accept appointment to the positions of CO I and CO I / Head Cook. Given the inherently dangerous nature of these physically and mentally challenging jobs, it is not a surprise that DOC is facing this challenge.

To meet this challenge, HRD has worked cooperatively with DOC to administer exams more frequently, including four for CO I in 2025 alone, and has used proactive social media and other outreach efforts to bolster recruitment.

In the interim, however, filling critical vacancies through provisional appointments is permissible and warranted. Section 12 of the civil service law explicitly permits the use of provisional appointments when an appointing authority, as here, has exhausted the active eligible list of candidates.

Although he lacks standing to request an investigation here, the Petitioner's request focuses on the *continued use* of these provisional appointments even though an eligible list has now been established – and updated. The Petitioner appears to misread the statute to require the termination of provisionally appointed employees within 30 days of the *establishment of the eligible list*. Section 14, however, states in relevant part that:

... no provisional employment in a position shall be authorized, approved, or continued for more than thirty days following a **certification** from an eligible list if such list contains the names of three persons eligible for and willing to accept appointment to such position.

While a “certification” is generated from an “eligible list”, they are two separate documents, with the certification(s) created after the establishment of the eligible list. Those “certifications” were not issued to DOC until August 18, 2025 – to facilitate the review of all candidates for possible entry into the Academy in December 2025 or January 2026.

The process of vetting candidates to fill over 100 vacancies cannot be accomplished in 30 days and requiring DOC to do so would prevent them from completing the statutorily required due diligence required, including medical and physical evaluations in addition to background investigations.

More broadly, there is no evidence that DOC is using provisional appointments to circumvent the merit-based process required by the civil service law; of note, all but one of the current provisional employees will be eligible for permanent appointment after completing the academy to begin in December 2025 or January 2026. Under these circumstances, even though

the provisional appointments have gone beyond the statutory time limit laid out in Section 14, remedial orders of forthwith terminations are not warranted.

To ensure clarity, to the extent that DOC's due diligence processes require them to employ provisional employees beyond 30 days after the issuance of the certifications in August 2025, the Commission, pursuant to its authority under Chapter 310 of the Acts of 1993, hereby grants DOC the authority to do so.

Regarding the one provisional CO I / Head Cook who has not qualified for placement on the current CO I / Head Cook eligible list, the required outcome may be different if they fail to pass the examination to be administered in February 2026.

Conclusion

For all the above reasons, I recommend that the Commission deny the Petitioner's request to initiate an investigation.

Civil Service Commission

Christopher C. Bowman
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Chair

On October 2, 2025, the Commission (Bowman, Chair; Dooley and McConney, Commissioners (Stein, Markey – Absent]) voted to accept the recommendation of the Chair to deny the Petitioner's request for investigation and grant the relief referenced in the Response.

Notice:

Nicholas Jamieson (Petitioner)
Eamonn Sullivan, Esq. (DOC)
Michele Heffernan, Esq. (HRD)
Regina Caggiano (HRD)