

COMMONWEALTH OF MASSACHUSETTS

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

MALIK JENKINS,
Appellant

CASE NO. G1-23-054

v.

CITY OF WORCESTER,
Respondent

Appearance for Appellant:

Malik Jenkins, Pro Se

Appearance for Respondent:

Theresa Reichert, Esq.
Coordinator of Labor Relations
City of Worcester
455 Main Street, Room 109
Worcester, MA 01608

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT’S MOTION TO DISMISS

On April 14, 2023, the Appellant, Malik Jenkins, appealed to the Civil Service Commission (Commission), purporting to act pursuant to G.L. c. 31, § 2(b), to contest his non-selection by the Respondent, City of Worcester (Worcester) for original appointment to the position of Firefighter with the Worcester Fire Department (WFD). A remote pre-hearing conference was held on May 22, 2020 (held via Webex Video Conference), at which time the number of appointments made and the number of candidates, if any, ranked below the Appellant was not available. At the request of the Commission, at a remote status conference on June 20, 2023, Worcester subsequently provided the relevant documentation, including Certification #08926 from which appointments were made and the final Certification filed with the Worcester Human Resources Department which showed the candidates who were appointed and also showed their respective ranks on the certification.

Based on these submissions, the relevant undisputed facts show that:

1. Worcester made a total of 29 appointments from Certification #08926;
2. The lowest ranked candidate appointed appeared in a tie group in the 64th position on the Certification and Certification;
3. The Appellant appeared in a tie group in the 70th position on the Certification.

On July 10, 2023, Worcester filed a Motion to Dismiss on the grounds that the Appellant had not been bypassed because no one in his tie group or below had been hired. The Appellant has not opposed this motion

APPLICABLE LEGAL STANDARD

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

ANALYSIS

The undisputed facts, viewed in a light most favorable to the Appellant, establish that his place on Certification #08926 put him below any of the candidates who were selected for appointment. In particular, the lowest ranked candidate appointed was in a tie group in the 64th position and the Appellant was in a lower ranked tie group in the 70th position, ranked below that candidate. A non-selected candidate may file a bypass appeal to the Commission only when his or her name appears “high[e]r” than one or more candidates who were appointed and, in this regard, appointment of a

candidate in one tie group is not the appointment of a higher ranked candidate. See, e.g., Damas v. Boston Police Dep't, 29 MCSR 550 (2016); Servello v. Department of Correction, 28 MCSR 252 (2015). See also PERSONNEL ADMINISTRATION RULES, PAR.02. As no candidates ranked below him on the certification were selected, the Appellant's bypass appeal must be dismissed for lack of jurisdiction.

CONCLUSION

In sum, for the reasons stated herein, Worcester's Motion to Dismiss is hereby *granted* and the appeal of the Appellant, Malik Jenkins, CSC No. G1-23-054, is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Stein and Tivnan, Commissioners [McConney – Absent]) on July 27, 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 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:

Malik Jenkins (Appellant)

Theresa M. Reichert, Esq. (for Respondent)