

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

MARCOS JOSEPH,
Appellant

v.

BOSTON POLICE DEPARTMENT,
Respondent

Docket Number: G1-25-034

Appearance for Appellant: *Pro Se*
Marcos Joseph

Appearance for Respondent: Omar Bennani, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner: Christopher C. Bowman

SUMMARY OF ORDER

The Commission dismissed the bypass appeal of a candidate for Boston police officer as the candidate was bypassed for the same reasons in prior hiring cycles and the Commission recently issued a decision affirming those bypasses.

ORDER OF DISMISSAL

Procedural Background

On January 27, 2025, the Appellant, Marcos Joseph (Appellant), filed a bypass appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Police Department (BPD) to bypass him for original appointment as a police officer. On March 11, 2025, I held a recorded pre-hearing conference which was attended by the Appellant and co-counsel for the BPD. Both parties were provided with a link to access the recording.

Undisputed Facts

Based on the statements of the parties and the written submissions, the following, unless otherwise noted, does not appear to be in dispute:

1. The Appellant filed three *prior* bypass appeals with the Commission, contesting the decision of the BPD to bypass him for appointment. Most relevant to this appeal are the two most recent prior appeals docketed under G1-23-145 and G1-24-099. As the reasons for bypass were the same in both of these prior hiring cycles, and because a hearing had already been held under Docket Number G1-23-145 when the subsequent appeal was filed, G1-24-099 was consolidated with G1-23-145.
2. Although the BPD put forth multiple reasons for bypassing the Appellant in the prior hiring cycles, the Commission, in a [decision dated October 17, 2024](#), opted to rule on only one of those reasons, concluding that the Boston Police Department was justified in bypassing the Appellant “ ... because of his untruthfulness in connection with an immigration petition.”
3. Regarding the above-referenced appeal docketed as G1-24-099, the Appellant was considered for appointment based on his name appearing on a certification generated from an eligible list for Boston police officer that was established on June 22, 2023.
4. When the Commission issued its decision on October 17, 2024, the Appellant was again under consideration by the BPD based on a subsequent hiring cycle. Importantly, the Appellant was considered for appointment in this new hiring cycle based on a certification generated from the same June 22, 2023 eligible list referenced above related to the prior G1-24-099 appeal.

5. On January 13, 2025, the BPD notified the Appellant that he was again being bypassed for appointment for the same reasons, including his untruthfulness in connection with an immigration petition.
6. On January 27, 2025, the Appellant filed the instant appeal, under Docket Number G-125-034.

STANDARD FOR SUMMARY DISPOSITION

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be decided on summary disposition only when, “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 Bd.*, 18 MCSR 216 (2005). See also *Mangino v. HRD*, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); *Morehouse v. Weymouth Fire Dep’t*, 26 MCSR 176 (2013) (“a party may move for summary decision when . . . there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

ANALYSIS

Here, the parties agree that the bypass reasons for this most recent hiring cycle currently before the Commission are essentially the same as those contained in the prior bypasses referenced above. Given that the Commission has already affirmed the Appellant's prior bypasses based on one of the same reasons relied upon in a prior hiring cycle and given that the current certification was drawn from the same eligible list, there are no factual disputes which would warrant a new evidentiary hearing. Put another way, there is no additional information that could be presented that would change the Commission's decision regarding the validity of the bypass reason, reached by the Commission only weeks ago. *See Lima v. City of New Bedford*, 33 MCSR 285 (2020) and *Reynolds v. City of Brockton*, 37 MCSR 37 (2024) (Commission dismissed subsequent bypass appeal as it had upheld same reasons in prior bypass decided by Commission months earlier).

Further, Section 25 of Chapter 31, as most recently amended by Section 131 of the Chapter 238 of the Acts of 2024, provides that: "the administrator or an appointing authority delegated by the administrator shall not include the name of any person who has been so bypassed or rejected on any future certification from the same original appointment eligible list unless directed to do so by the Commission." This recent amendment to the law was intended to prevent an appointing authority from being forced to reconsider a candidate who was recently bypassed for the same reasons, so long as the candidate, as the Appellant was here, was informed of their right to file an appeal with the Commission regarding their initial bypass.

CONCLUSION

For the above reasons, the Appellant's appeal under Docket Number G1-25-034 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on March 20, 2025.

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 to:

Marcos Joseph (Appellant)

Omar Bennani, Esq. (for Respondent)