

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293

CRAIG LANE,
Appellant

v.

G1-15-184

NEWBURYPORT POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Craig Lane

Appearance for Respondent:

Mark Murray
Police Chief
Newburyport Police Department
4 Green Street
Newburyport, MA 01950

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On October 9, 2015, the Appellant, Craig Lane (Mr. Lane), filed an appeal with the Civil Service Commission (Commission), contesting the decision of City of Newburyport (City) to bypass him for appointment as a reserve police officer in the City's Police Department.

On October 20, 2015, I held a pre-hearing conference which was attended by Mr. Lane, the City's Police Chief and counsel for the state's Human Resources Division (HRD).

As part of that pre-hearing conference, it was stipulated that:

1. In 2011, Mr. Lane took the civil service examination for police officer and received a score of 92.

2. As a result of receiving a passing score on the civil service examination on November 1, 2011, Mr. Lane's name was placed on an eligible list of candidates for police officer in Newburyport, where Mr. Lane resides.
3. On January 6, 2012 and January 20, 2012, HRD forwarded Certification No. 202641 to the City from which the City could appoint up to seven (7) reserve police officers.
4. Mr. Lane was ranked 6th among those candidates willing to accept appointment on Certification No. 202641.
5. The City ultimately appointed two (2) candidates as reserve police officers from Certification No. 202641, both of whom were immediately or shortly thereafter appointed as permanent, full-time police officers.
6. In a letter dated May 11, 2012 from the City's now-Chief (who was then the Administrative Lieutenant who oversaw the hiring process), Mr. Lane was informed in relevant part that: "I regret to inform you that we are not moving forward on your application for employment. I appreciate you taking the time to interview with us and wish you the best of luck in future endeavors." This letter did not state that Mr. Lane could file an appeal of the City's decision with the Civil Service Commission.

The following additional findings are based solely on the statements made by Mr. Lane at the pre-hearing conference which, for the purposes of this decision, I accept as true:

7. Mr. Lane is fifty-two (52) years old and has resided in Newburyport for eight (8) years. He has a bachelor's degree in business administration.
8. He has worked for the Essex County Sheriff's Office for the past fourteen (14) years.
9. While employed at the Essex County Sheriff's Office, Mr. Lane has been disciplined multiple times, including warnings, suspensions and probation, for being late to roll call.

10. Mr. Lane was late for roll call a total of one hundred twelve (112) minutes during sixty (60) occasions.
11. After receiving the May 11, 2012 non-selection letter from the City, Mr. Lane spoke with the City's now-Police Chief and asked him for the specific reasons for his non-selection. In response, he was told words to the effect that "everyone has baggage."
12. At that time, Mr. Lane did not know that two (2) individuals had been appointed as reserve police officers, including one (1) candidate who was ranked below him.
13. Mr. Lane first became aware of the existence of the Civil Service Commission when he read a 2014 Commission decision regarding the 2014 reserve police officer appointment process in Newburyport. (That decision, [Investigation Re: City of Newburyport's 2014 Reserve Police Officer Appointments](#), Tracking No. I-14-189, provides specific details about a candidate who was bypassed for appointment and the bypass appeal that she filed with the Commission.)
14. Mr. Lane did not learn that two (2) candidates had been appointed in 2012 until April 2015, when he learned of the appointment of two (2) other candidates in a subsequent hiring cycle, prompting him to do further research about the civil service law and rules.
15. On October 9, 2015, Mr. Lane filed an appeal with the Commission.
16. At the pre-hearing conference on October 20, 2015, the City's Police Chief stated that the reason for bypassing Mr. Lane in 2012 was his disciplinary record at the Essex County Sheriff's Office. The Police Chief provided Mr. Lane with a copy of the background investigation report that was completed back in 2012.

Analysis

The [Commission's rules](#) require that bypass appeals brought under G.L. c. 31, § 2(b), challenging the bypass of a candidate for appointment to a civil service position, must be filed within sixty (60) days of receipt of the notice of the reasons for bypass. Other forms of Section 2(b) appeals are required to be brought within thirty (30) days "from the date the Agency notice of action was sent to the party." 801 CMR 1.00 (6). See also Pugsley v. City of Boston and HRD, 24 MCSR 544 (2011) citing Garfunkel v. Department of Revenue, 22 MCSR 291 (2009).

In Pugsley, the Commission stated:

"In prior decisions, the Commission has construed these provisions, as a general rule, to imply a written notice ... would be essential to establish the trigger date for the limitations period, or the violation could be considered a continuing one. See O'Toole v. Human Resources Division, 21 MCSR 561 (2008) (suggesting, but not deciding that written notice may be necessary to trigger the time for a section 2(b) appeal in all cases) The Commission also embraces the principle that a party coming before the Commission to seek equitable relief, as Mr. Pugsley does here, must exercise reasonable diligence in pursuit of that relief. Accordingly, where a person has had actual notice – whether in writing or not – of an action or inaction by HRD or an appointing authority that the person reasonably knew or should have known was a violation of civil service law or rules, that person cannot sit on those rights indefinitely. Thus, it is a fair requirement that once such a person discovers that he or she has been harmed by an action or inaction of HRD, he had an obligation to promptly file a claim of appeal, or lose the right to press it. See, e.g., White v. Peabody Constr. Co., Inc., 286 Mass 121 (1980); Day v. Kerkorian, 72 Mass.App.Ct. 1 (2008)"

Based on Mr. Lane's own statements and the uncontested facts, Mr. Lane was aware of his non-selection approximately three (3) years ago, when he received a written notification that he was not being selected. He confirmed his non-selection shortly after receiving the letter and was, at a minimum, told that the non-selection was the result of negative reasons about him.

In regard to whether Mr. Lane was aware that his non-selection constituted a bypass, and whether he was aware of his appeal rights (which were not contained in the non-selection letter), Mr. Lane acknowledges that he was at least aware of the existence of the Civil Service

Commission as of 2014, when he read about a Commission investigation that specifically related to a candidate who was not selected as a Newburyport reserve police officer and filed an appeal with the Commission. Further, Mr. Lane acknowledges that, as early as April 2015, six (6) months before he filed his bypass appeal with the Commission, he was aware that two (2) candidates from the 2012 Certification (which he signed) were appointed.

Based on these undisputed facts and/or representations from Mr. Lane which I have accepted as true for the purpose of this decision, Mr. Lane's bypass appeal is not timely. Therefore, the appeal is *dismissed*.

Civil Service Commission

Christopher C. Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 12, 2015.

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:
Craig Lane (Appellant)
Chief Mark Murray (for Respondent)
Michael Downey, Esq. (HRD)