

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Decision mailed: 12/17/10
Civil Service Commission *CB*

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

KEVIN LaPOINTE,

Appellant

v.

G1-10-276

DEPARTMENT OF CORRECTION,

Respondent

KEVIN LaPOINTE,

Appellant

v.

G1-10-267

CITY OF LOWELL (POLICE DEPARTMENT),

Respondent

KEVIN LaPOINTE,

Appellant

v.

G1-10-275

CITY OF LOWELL (FIRE DEPARTMENT),

Respondent

DECISION ON APPEALS

The Appellant, Kevin R. LaPointe, Jr., filed these three appeals with the Civil Service Commission pursuant to G.L. c.31, § 2(b) when he was not selected for the positions of:

- Permanent full-time Correction Officer at the Department of Correction (G1-10-276);
- Permanent full-time Police Officer with the City of Lowell (G1-10-267);
- Permanent full-time Firefighter with the City of Lowell (G1-10-275);

A pre-hearing conference was held regarding all three appeals at the offices of the Commission on October 26, 2010. The relevant procedural and substantive facts regarding each appeal are as follows:

G1-10-276: DOC Correction Officer

- DOC made thirty-six (36) appointments to the title of Correction Officer I from Certification No. 4090016 dated July 20, 1999.
- The Appellant's name appeared as a veteran with a score of 89.
- No veteran with a score of less than 90 was selected for appointment.
- The Appellant argues that his name should have been listed as a disabled veteran and that at least one position should have been left vacant or filled temporarily until he returned from active military duty, which occurred simultaneous to the selection process.
- Both parties agree that this appeal may become moot because, at the time of the pre-hearing conference, the Appellant was currently being considered for appointment off a subsequent Certification.

- Both parties assented to this appeal being dismissed without prejudice with the condition that the Appellant can reinstate this appeal if he is not considered, selected or bypassed off of the current Certification.

G1-10-267: Lowell Police Officer

- The City of Lowell made four (4) appointments to the position of Police Officer from Certification No. 206713 dated April 1, 2010.
- The Appellant's name appeared on the above-referenced Certification and apparently was high enough on the Certification to be within the statutory "2n+1" formula of candidates that could be considered by signing the Certification and indicating their willingness to accept employment if selected.
- The Appellant was not considered as he was on active military duty in Iraq at the time of the selection process.
- By mutual agreement of the parties, the Commission, the Appellant's name shall be placed at the top of the next Certification issued to the City of Lowell for the position of permanent full-time police officer until such time as he is appointed or bypassed.


G1-10-275: Lowell Firefighter

- The City of Lowell made thirteen (13) appointments to the position of Firefighter from Certification No. 201449 dated August 11, 2010.
- The Appellant's name appeared on the above-referenced Certification and apparently was high enough on the Certification to be within the statutory "2n+1" formula of candidates that could be considered by signing the Certification and indicating their willingness to accept employment if selected.
- The Appellant was not considered as he was on active military duty in Iraq at the time of the selection process.
- At the pre-hearing conference, the Appellant stated that he wanted to withdraw this appeal as he is currently being considered for this position from a subsequent certification;
- After review and consideration, I have concluded that the most appropriate disposition of this appeal is a dismissal without prejudice with the condition that the Appellant can reinstate this appeal if he is not considered, selected or bypassed off of the current Certification.

For all of the above reasons:

- The Appellant's appeal under Case No. G1-10-276 is hereby ***dismissed without prejudice*** with the condition that the Appellant can reinstate this appeal if he is not considered, selected or bypassed off of the current Certification.
- The Appellant's appeal under Case No. G1-10-267 is hereby ***allowed*** by mutual agreement of the parties. Pursuant to Chapter 310 of the Acts of 1993, the Commission hereby orders that the Appellant's name shall be placed at the top of the next Certification issued to the City of Lowell for the position of permanent full-time police officer until such time as he is appointed or bypassed.
- The Appellant's appeal under case No. G1-10-275 is hereby ***dismissed without prejudice*** with the condition that the Appellant can reinstate this appeal if he is not considered, selected or bypassed off of the current Certification.

Civil Service Commission


Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and McDowell, Commissioners) on December 16, 2010.

A True Record. Attest:



Commissioner

Commissioner McDowell was
absent on December 16, 2010.

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Kevin LaPointe (Appellant)
R. Eric Slagle, Esq. (for City of Lowell)
Judy A. Brenner, Esq. (for DOC)
John Marra, Esq. (HRD)