

COMMONWEALTH OF MASSACHUSETTS

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

GEORGE LEGRICE,
Appellant

v.

G1-23-183

CITY OF BROCKTON,
Respondent

Appearance for Appellant:

Pro Se
George Legrice

Appearance for Respondent:

Karen A. Fisher, Esq.
City of Brockton
45 School Street – City Hall
Brockton, MA 02301

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the bypass appeal of the Appellant for lack of jurisdiction as it was not filed within 60 days of receiving the reasons for bypass from the City of Brockton. Further, only candidates with Brockton residency preference were considered and the Appellant acknowledges that he did not qualify for the residency preference.

ORDER OF DISMISSAL

On September 21, 2023, the Appellant, George Legrice (Appellant), filed a bypass appeal with the Civil Service Commission (Commission), contesting the decision of the City of Brockton to bypass him for original appointment to the position of permanent, full-time firefighter in the City of Brockton (City)'s Fire Department.

On October 24, 2023, I held a remote pre-hearing conference which was attended by the Appellant, counsel for the City and the City's Fire Chief. The following is undisputed:

1. On October 30, 2021, the Appellant took the civil service examination for Brockton firefighter.
2. On March 15, 2022, the state's Human Resources Division (HRD) established the eligible list for Brockton firefighter.
3. On December 14, 2022, HRD issued Certification No. 08989 to the City to appoint candidates to the position of Brockton firefighter.
4. The Appellant's name appeared on the certification as a candidate who claimed residency preference in Brockton, ahead of those candidates who did not claim residency preference.
5. On February 14, 2023, the City notified the Appellant that he was being bypassed for appointment. The bypass letter notified the Appellant of his right to file a bypass appeal with the Commission.
6. On March 12, 2023, the Appellant sent email correspondence to the Commission referencing the City's decision to bypass him.
7. On March 14, 2023, the Commission provided the Appellant with instructions on how to file a bypass appeal with the Commission should he wish to do so. The Appellant replied the same day, writing in part that "... [I] will head to the website to file another¹ appeal."
8. On September 21, 2023, the Appellant filed a bypass appeal with the Commission.
9. The Appellant confirmed at the pre-hearing conference that he did not reside in Brockton continuously for the 12 months preceding the date of the civil service examination.

¹ The Appellant had previously filed a bypass appeal with the Commission; it was dismissed after it was determined that his non-selection did not constitute a bypass, but, rather, non-selection from a group of tied candidates.

Rule Regarding Dismissal for Lack of Jurisdiction

The Presiding Officer may at any time, on his or her own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided. 801 CMR 1.01 (7)(g)(3).

Analysis

The Commonwealth's Standard Adjudicatory Rules of Practice and Procedure, specifically the provision codified at 801 CMR 1.01 (6)(b), states that:

“Any Person with the right to initiate an Adjudicatory Proceeding may file a notice of claim for an Adjudicatory Proceeding with the Agency within the time prescribed by statute or Agency rule. In the absence of a prescribed time, the notice of claim must be filed within 30 days from the date that the Agency notice of action is sent to a Party.” (emphasis added)

More than two decades ago, the Commission adopted by rule a Bypass Appeal Statute of Limitations that allows bypassed candidates to file an appeal with the Commission up to 60 days “from receipt of ... notice” of the bypass reasons. The Appellant received the reasons for bypass from the Respondent on February 14, 2023. Given the above-referenced statute of limitations, and given that April 15, 2023 fell on a Saturday [before a Monday holiday], the Appellant had until Tuesday, April 18, 2023, to file a timely bypass appeal with the Commission.

More than four months after the April 18, 2023 filing deadline, the Appellant, on September 21, 2023, filed an appeal online with the Commission. As such, his bypass appeal is not timely and the Commission lacks jurisdiction to hear his appeal. Even if the appeal were timely filed, which it was not, the Appellant was not eligible for appointment from this certification. The Appellant confirmed at the pre-hearing conference that he did not reside in Brockton continuously for the 12 months preceding the date of the civil service examination. As only candidates with

residence preference were reached for consideration on this certification, the Appellant was not among those eligible for consideration.

Conclusion

The Appellant's appeal under Docket No. G1-23-183 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, Stein and Tivnan, Commissioners [McConney – Absent]) on November 2, 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 to:
George Legrice (Appellant)
Karen Fisher, Esq. (for Respondent)