

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

GEORGE LENOTTE,
Appellant

v.

G1-15-65

CITY OF LAWRENCE,
Respondent

Appearance for Appellant:

Pro Se
George Lenotte

Appearance for Respondent:

Nicholas J. Dominello, Esq.
Deutsch / Williams
One Design Center Place
Suite 600
Boston, MA 02210

Commissioner:

Christopher C. Bowman

DECISION ON APPELLANT’S MOTION TO RE-OPEN

On April 2, 2015, the Appellant, George Lenotte (Mr. Lenotte), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Lawrence (City), to bypass him for original appointment as a police officer in the City’s police department due to his failure to show that he met the residency preference requirements.

On April 21, 2015, I held a pre-hearing conference which was attended by Mr. Lenotte and counsel for the City. Consistent with how all pre-hearing conferences are conducted, both parties were given an overview of the appeals process; the parties agreed to stipulated facts; and each party provided a preview of the evidence and witness testimony that would be presented at a full hearing. During that pre-hearing conference, I advised Mr. Lenotte of the process for

having witnesses testify on his behalf, including the process, if necessary, to issue subpoenas to ensure attendance from witnesses. Specifically, I directed Mr. Lenotte to that portion of the Commission's website which provides instructions for requesting subpoenas, a webpage that is geared toward Appellants, such as Mr. Lenotte, who are not represented by counsel. At the conclusion of the pre-hearing, the parties mutually agreed on a full hearing date of June 10, 2015 at 9:30 A.M. and a notice of hearing was forwarded to both parties.

On June 9, 2015 at 4:58 P.M., the day prior to the full hearing, Mr. Lenotte forwarded an email to the Commission, copied to the City, stating:

“Good afternoon Mr. Bowman. I spoke to your secretary the other day and I explained to her that I would be retracting my appeal because I don't feel comfortable with having 5 people miss work to attend the hearing. She advised me to fill out the form on the website but I can not find it. I hope this email is enough to retract my appeal hearing.”

At 5:14 P.M. the same day, I replied to Mr. Lenotte's email stating:

“This is sufficient. You will receive an Order of Dismissal based on your voluntary withdrawal.”

On June 11, 2015, the Commission dismissed Mr. Lenotte's appeal based on his voluntary withdrawal and forwarded the dismissal to him on June 15, 2015. The decision contained the following appeal rights included in all decisions issued by the Commission:

“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).”

Mr. Lenotte did not file a motion for reconsideration within ten days of receipt of the Commission decision nor did he initiate processing for judicial review within thirty days.

On May 5, 2017, almost two (2) years after the Commission dismissed the appeal, Mr. Lenotte filed a “Motion to Remove Default at Hearing Scheduled for April 21, 2015” which I have deemed a motion to reopen his appeal. In his motion, Mr. Lenotte stated that “witnesses on behalf of the Appellant were unable/unwilling to miss a day of work to testify at the hearing”; that he has “‘newly discovered’ evidence” (i.e. – allegedly that “several police officers whom do not reside in Lawrence were hired.”; and that “It is the Appellant’s position that said bypass was unethical and unjustified.” On May 19, 2017, the City filed an opposition.

Mr. Lenotte’s motion is denied for all of the reasons cited in the City’s opposition, including the following. Despite the lack of express authority, the Commission is vested with inherent discretionary power to reopen a closed proceeding in an appropriate case; however such power to reopen should be exercised by the Commission with due circumspection – “sparingly” as the cases say. Keller-Brittle v. Boston Police Dep’t, 23 MCSR 276 (2010), *citing* Ung. V. Lowell, 22 MCSR 471 (2009). Mr. Lenotte has not presented sufficient reasons for the Commission to take the rare step of re-opening an appeal that was dismissed approximately two (2) years ago. He was aware of the process for having witnesses appear on his own behalf, and based on his own email communication to the Commission, chose not to.

Further, Mr. Lenotte does not offer any evidence to support his allegation that several candidates for police officer who do not reside in Lawrence have been appointed since his appeal was dismissed. Even if this is the case, it does not necessarily show evidence of disparate treatment, as the civil service residency preference is based on a candidate’s residency during the

one-year period preceding the date of the civil service examination, and not whether the candidate resides in the City on the date of hire.

In regard to Mr. Lenotte's third argument, he was free to argue whether the bypass here was valid while his appeal was pending with the Commission. He cannot do that two (2) years after he voluntarily withdrew his appeal from the Commission.

For these reasons, Mr. Lenotte's motion to reopen his appeal under Docket No. G1-15-65 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 8, 2017.

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:

George Lenotte (Appellant)

Nicholas J. Dominello, Esq. (for Respondent)