

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

CIVIL SERVICE COMMISSION  
One Ashburton Place  
Boston, MA 02108

Michael Lopes,  
Appellant

v.

Docket Number G1-08-316

City of Marlborough,  
Appointing Authority

**DECISION**

The Appellant, Michael Lopes, filed this appeal with the Civil Service Commission pursuant to G.L. c.31 §2(b). The Appellant seeks review of the Personnel Administrator's acceptance of the reasons offered by the Appointing Authority in bypassing the Appellant for appointment to the position of permanent fulltime firefighter

On April 16, 2009 a full hearing was held at the Civil Service Commission. After that hearing the parties negotiated and conferenced this matter. The parties acknowledge the appointments to the position of firefighter of other persons whose names appeared lower than him, on the certification, (#280554). This bypass was through no fault of the Appellant. The Town acknowledges that there was more information it could have had, upon which to make its decision, at the time of the bypass. Thereupon the parties' made a joint request for relief.

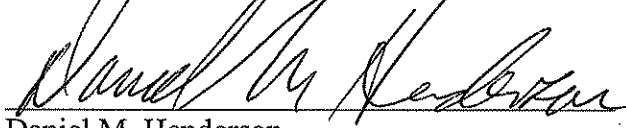
The Commission, after hearing, accepts the parties' agreement and pursuant to the powers of relief inherent in Chapter 534 of the acts of 1976, as amended by Chapter 310 of the Acts of 1993 and orders the Human Resources Division to take the following action:

The Civil Service Commission directs that the Human Resources Division (HRD) and the City of Malborough to place Michael Lopes' name at the top of the eligibility list for appointment to the position of permanent fulltime firefighter, so that his name appears at the top of the existing certification and/or the next certification that the City of Malborough requests from HRD, so that the Appellant shall receive the next opportunity and at least one opportunity for consideration. In any future consideration for appointment, the City shall not use the same reasons for bypass, as stated on or about November 9, 2008, namely civil motor vehicle infractions and allegedly providing false employment information during his interview on July 17, 2008; provided however, that the City is free to consider and rely upon any reasons other than those cited in the City's

November 9, 2008 bypass letter, including but not limited to any civil motor vehicle infractions committed by Lopes on or after that date.

If and when the Appellant is selected for appointment to the position of permanent fulltime firefighter, he shall receive the additional relief of a retroactive seniority date, for civil service purposes only, back to the date of this bypass, the starting date of others appointed from certification # 280554, December 8, 2008.

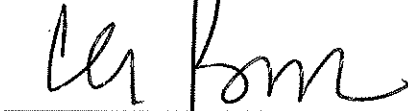
Civil Service Commission



Daniel M. Henderson,  
Commissioner

By a 2-2 vote of the Civil Service Commission (Bowman, Chairman voted No, Henderson voted Yes, Taylor voted Yes and Marquis voted No Commissioners), [Stein absent] on September 3, 2009.

A true record. Attest:



Commissioner  
CIVIL SERVICE COMMISSION

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Brian E. Simoneau, Atty.  
Donald V. Rider, Jr. City Solicitor  
John Marra, Atty. HRD

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

MICHAEL LOPES,  
Appellant

v.

G1-08-316

CITY OF MARLBOROUGH,  
Respondent

**OPINION OF CHRISTOPHER BOWMAN**

This appeal was filed under G.L. c. 31, § 2(b). As a result of a 2-2 vote of the Commission, the parties' joint request for relief under Chapter 310 of the Acts of 2003 failed to garner the three (3) votes necessary to overturn the decision of the Administrator (HRD).

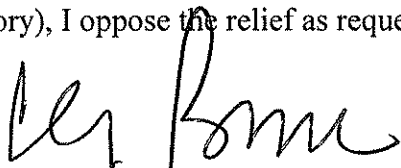
I opposed this motion based on the proposed provision that would prohibit the City from considering any civil motor vehicle infractions incurred by the Appellant when he is considered again for appointment as a firefighter.

According to the case record, the Appellant's license was suspended seven (7) times between 1994 and 2008, including a 2008 suspension that occurred while the Appellant was going through the current interview process. There are also multiple surchargeable accidents listed on the Appellant's driving history and numerous violations including a speeding violation in the Town of Northborough within a month of his interview in addition to speeding and failure to stop violations in the Town of Boylston within one month of his interview.

The City has an obligation to ensure that candidates chosen for the position of firefighter have the ability to safely operate large emergency vehicles and part of that determination must include a review of the candidate's driving history. Further, it would be inconsistent with basic merit

principles to not consider the Appellant's driving history while the driving records of other candidates will presumably be considered.

Absent sufficient reasons to the contrary (i.e. – erroneous entries on the candidate's driving history), I oppose the relief as requested.

A handwritten signature in black ink, appearing to read "C. Bowman", written over a horizontal line.

Christopher C. Bowman  
Chairman  
September 3, 2009