

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503
Boston, MA 02108

JOHN P. MANNING,
Appellant

v.

G2-12-337

CITY OF PEABODY,
Respondent

Appearance for Appellant:

Mary-Ellen Manning, Esq.
P.O. Box 4444
Salem, MA 01970

Appearance for Respondent:

Donald J. Conn, Jr.
Assistant City Solicitor
City of Peabody
34 Main Street
Peabody, MA 01960

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

On December 7, 2012, the Appellant, John P. Manning (Mr. Manning), a lieutenant with the City of Peabody (City)'s Fire Department, filed an appeal with the Civil Service Commission (Commission), alleging that Daniel Dean was not eligible for promotion to the position of Fire Captain. A pre-hearing conference was held on January 8, 2013. The City filed a motion to dismiss Mr. Manning's appeal and Mr. Manning filed an opposition.

Underlying Mr. Manning's entire appeal is his argument that the City's Fire Department promotions must be made pursuant to G.L. c. 31, § 8. He is mistaken.

G.L. c. § 7 states in relevant part:

“Each promotional appointment within the official service shall be made pursuant to section eight *or* after certification from an eligible list established as a result of one of the following types of examinations: ... (c) a competitive promotional examination pursuant to section eleven, provided that promotional appointments in such police and fire forces of cities and towns as are within the official service shall be made pursuant to *section fifty-nine* or *section sixty-five*.” (*Emphasis added*)

G.L. c. 31, § 59 states in relevant part:

“ ... original and promotional appointments in police and fire forces of cities and of such towns where such forces are within the official service, including appointments to the position of chief or similar position where the civil service law and rules are applicable to such position, shall be made only after competitive examination except as otherwise provided by section sixty and by sections thirty-six and thirty-six A of chapter forty-eight.” (*emphasis added*)

When read together, it is clear that the legislature intended for police and fire appointments and promotions to be governed by Section 7 after a civil service examination was administered, an eligible list created and Certification(s) issued to the Appointing Authority. That is precisely what the City did here and the promotion in question met the requirements of the applicable statutes as Mr. Dean: 1) was in the next lower title of lieutenant at the time of promotional examination for Fire Captain; and 2) had served in the force (Fire Department) for at least one (1) year after being certified for the lower title of lieutenant at the time of the promotional examination for Fire Captain.

For these reasons, Mr. Manning’s appeal under Docket No. G2-12-337 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on May 2, 2013.

A true Copy. Attest:

Commissioner
Civil Service 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)(1), 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.

Notice to:
Mary-Ellen Manning, Esq. (for Appellant)
Donald L. Conn, Jr., Esq. (for Respondent)
John Marra, Esq. (HRD)