

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**
One Ashburton Place – Room 503
Boston, MA 02108
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MICHAEL J. MARINO,
Appellant

CASE NO. G2-21-038

v.

CITY OF SOMERVILLE,
Respondent

Appearance for Appellant:

Joseph G. Donnellan, Esq.
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Norwood, MA 02062

Appearance for Respondent:

Jason Piques, Esq,
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City of Somerville
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Commissioner:

Paul M. Stein

Summary of Decision

Under unique circumstances presented by the facts of this appeal, the Commission granted limited relief to a highly qualified candidate bypassed for appointment as a Fire Captain based on pending criminal charges for which he was acquitted a few weeks later after a much-delayed trial due to the closure of the courts during the COVID-19 emergency.

DECISION

On February 17, 2020, the Appellant, Michael J. Marino, currently a Fire Lieutenant in the Somerville Fire Department (SFD), appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2 (b), from his bypass by the Mayor of the City of Somerville (Somerville) for appointment to the position of SFD Fire Captain.¹ The Commission held a pre-hearing

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

conference on March 30, 2021 via remote videoconference (Webex). A full hearing was held, also by remote videoconference (Webex), on May 21, 2021 and July 19, 2021, which was recorded via Webex.² Fifteen (15) exhibits (*JExh.1 through JExh.12, JExh.16 & JExh.17; App.Exh.14*) were received in evidence and two (2) exhibits were marked for identification (*App.Exh.13ID & App.Exh.15ID*). Each party filed a Proposed Decision on December 4, 2020. For the reasons stated below, Lt. Marino's appeal is allowed in part.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by Somerville:

- Charles J. Breen, Jr., SFD Fire Chief
- Christopher Major, SFD Deputy Fire Chief
- Cortni Desire, Acting Director of SomerStat Department, City of Somerville

Called by the Appellant:

- Michael J. Marino, SFD Fire Lieutenant, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Michael J. Marino, is a tenured member of the SFD, appointed as a Firefighter in 2005 and promoted to Fire Lieutenant in 2013. He served in the rescue unit, responding to structure collapses and other major incidents. Chief Breen called him the “most commended SFD member in active service”, which included a Firefighter of the Year award for rescuing a citizen trapped in her vehicle in a flooded underpass while on his way to report for duty during a heavy rainstorm. (*Jt.Exhs 4 & 12; Testimony of Appellant & Chief Breen*)

² A link to the recording of the full hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

2. Lt. Marino is a member of the Firefighter Association of Somerville (the Union) which has entered into a Collective Bargaining Agreement (CBA) with Somerville. (*Jt.Exhs.11 & 17*)

3. Lt. Marino is a military veteran who served honorably with the U.S. Navy from 2003 to 2007. He holds a bachelor's degree in Nursing and has worked as a registered nurse at a local hospital since 2014, most recently in the Emergency Room. He is studying for a master's degree in Fire Science and a master's degree in Business Administration with an emphasis in health care. (*Jt.Exhs 4 &12; Testimony of Appellant*)

4. As Lieutenant, he was assigned to Homeland Security and Special Operations. The SFD took advantage of Lt. Marino's medical training, using his nursing credentials to implement the Department's NARCAN and EpiPen programs. With the onset of COVID-19, Lt. Marino became the lead person on COVID-19 and serves as the SFD's Infectious Disease Officer. (*Jt.Exhs 4 & 12; Testimony of Appellant & Chief Breen*)

5. Lt. Marino took and passed the promotional examination for Fire Captain administered by the Massachusetts Human Resources Division (HRD) in November 2018 and his name appeared tied for second on the Eligible List established by HRD on March 1, 2019. (*HRD Letter dated 3/18/2021*)

6. In January 2020, Lt. Marino was appointed as a temporary Captain of Ladder 2. As of February 15, 2020, he had served in that capacity for approximately 40 days. (*Jt.Exh.17; Testimony of Appellant & Chief Breen*)³

³ Lt. Marino's name then stood at the top of the Captain's Eligible List. As mandated by the CBA, he was appointed from the list as a temporary Captain on Ladder 2 after a vacancy in the position for more than eight (8) tours. The duties of a temporary Captain and a permanent Captain are substantially identical, save that only a permanent Captain can serve as acting District Chief, managing up to five companies as opposed to a single company. (*Jt.Exh.17; Testimony of Appellant, Chief Breen & Dep. Chief Major*)

7. On Saturday, February 15, 2020, Lt. Marino was returning from a retirement party when he was stopped by the Tewksbury Police for speeding and negligent operation of a motor vehicle. He attributed his behavior to being on unfamiliar roads and was distracted by his GPS. After a roadside breathalyzer test, he was arrested for Operating Under the Influence (OUI) and, when he refused to take a second breathalyzer test at the police station, his motor vehicle operator's license was suspended. (*Jt.Exhs 4, 8 & 9; Testimony of Appellant & Chief Breen*)

8. On Tuesday, February 18, 2020, Lt. Marino took a half-personal day (he was required to be in court that morning) and then attempted to report for duty knowing that his license had been suspended. Chief Breen (who was off duty that day) and Dep. Chief Major had already been informed of Lt. Marino's arrest by the Tewksbury Police Chief. (*Jt. Exhs.4, 8 & 9; Testimony of Appellant, Chief Breen & Dep. Chief Major*).

9. When he arrived at work on February 18, 2020, Dep. Chief Major delivered a letter to Lt. Marino informing him that, due to his failure to advise Chief Breen or Dep. Chief Major of his arrest and loss of license, he had been placed on paid administrative leave effective immediately until further notice. (*Jt.Exhs.4 & 8; Testimony of Dep. Chief Major*)

10. On March 6, 2020, Chief Breen issued Lt. Marino a written warning for his failure to report his arrest in a timely manner as required by the SFD's Rules and Regulations and the CBA. The letter also converted Lt. Marino's administrative leave from paid to unpaid leave, based on his inability to perform his essential duties without a valid driver's license. (*Jt.Exhs. 4 & 9*)

11. Chief Breen's March 6, 2020 letter also stated:

“As we discussed on March 2, 2020 when we met, you are a valued member of the Somerville Fire Department. . . . Despite this incident, I remain convinced of your bright future in this Department. However, as you well know, public safety officials are held to a high standard, and the community must have confidence in the good judgment and lawful conduct of its public safety employees, especially those holding a superior rank. . . . I am deeply disappointed in your off-duty conduct that resulted in your arrest . . . the discredit you have brought upon the Department . . .

and your failure to abide by your union contract and the Rules and Regulations of the Somerville Fire Department to provide appropriate notification of your arrest and loss of your required license to me.”

(Jt.Exh. 9)

12. On March 24, 2020, Somerville and the Union entered into a Settlement Agreement (the Agreement), providing that Lt. Marino would be returned to limited administrative duty as the SFD’s Infections Disease Officer, reporting directly to Chief Breen, and returned to his “usual tour of duty and usual pay” once his driver’s license was restored. The Union, through the Union President, and Lt. Marino agreed that neither would file any grievance or other charges based on Lt. Marino’s March 6, 2020 written warning or unpaid leave status prior to the date of the Agreement and that the March 6, 2020 warning will remain a part of Lt. Marino’s personnel file in the usual course. *(Jt.Exh.16; Testimony of Appellant & Chief Breen)*

13. The Agreement recited that the parties made the agreement solely because of the “unprecedented and urgent public health and public safety crisis in light of COVID-19 . . . so that Lt. Marino can resume his duties as the SFD’s Infectious Disease Officer”, that the Agreement “constitutes the entire agreement between the parties with respect to the resolution of Lt. Marino’s February 15, 2020 traffic stop and subsequent arrest” and “[n]othing in this Agreement modifies the rights of the parties under the collective bargaining agreement.” *(Jt.Exh.16)*

14. Pursuant to the Agreement, Lt. Marino was returned to limited duty as a Lieutenant in an administrative role for 30 hours per week. He resumed his regular duties as the Infectious Disease Officer, aka Infection Control Officer, and was placed in charge of the SFD’s efforts to deal with the COVID-19 pandemic. *(Jt.Exh.16; Testimony of Appellant & Chief Breen)*

15. In August 2020, Lt. Marino’s driver’s license was restored. Pursuant to the Agreement and as mandated by the CBA, based on his position on the eligible list, he was assigned as temporary Captain to fill a vacancy on Engine 3. *(Testimony of Appellant & Dep. Chief Major)*

16. When he signed the Agreement, Lt. Marino thought that that it would be “the final word” on “how his arrest would impact him” in the SFD. (*Testimony of Appellant*)

17. The Agreement is silent as to the use of the underlying events surrounding Lt. Marino’s arrest and license suspension in any future consideration of Lt. Marino for promotion. (*Jt.Exh.16*)

18. In or about October 2020, in a prior promotional hiring cycle, Somerville appointed three permanent Fire Captains to fill vacancies in that position, bypassing Lt. Marino based on the pending OUI criminal case against him which had not been resolved. Lt. Marino did not appeal that bypass. (*Testimony of Appellant, Chief Breen & Dep. Chief Major*)⁴

19. In January 2021, the SFD issued Certification 05525-3 which led to the present appeal, to fill two additional vacancies in the position of permanent Fire Captain. Lt. Marino’s name appeared first of the five candidates who signed the Certification willing to accept a promotion at that time. (*Jt.Exh.7*)

20. The candidates were interviewed over a three-day period by a three-member panel consisting of Chief Breen, Dep. Chief Major, and Cortni Desir, who served as the Mayor’s designee. (*Jt.Exhs. 1 through 6 & 12; Testimony of Chief Breen, Dep. Chief Major & Desir*)

21. The candidates were asked a standard set of questions and the interviews were audio recorded. The interview panel members took extensive notes and were provided with any commendations and discipline in each candidate’s personnel file. Candidates were asked to address “leading by example”. (*Jt.Exhs.1 through 6 & 12; Testimony of Chief Breen & Dep. Chief Major*)

22. Lt. Marino was interviewed on January 26, 2021. He came “very well prepared” and

⁴ Lt. Marino’s trial was originally scheduled for July 2020, but the trial was continued four times, due to COVID-19 restrictions, and ultimately held on March 4, 2021. (*Testimony of Appellant & Dep. Chief Major*)

performed well. During his interview with the panel, on January 26, 2021, Lt. Marino was asked about the OUI charges pending against him. He explained that the case remained unresolved but that he was confident in an ultimately favorable outcome, although he could not “guarantee” it. He emphasized that he had a strong performance record and no other disciplinary or criminal infractions. He took responsibility for his failure to report the incident for which he received the March 2020 written warning, stating that he was not aware of the requirement at the time.

(Jt.Exhs.1 &.4: Testimony of Appellant & Dep, Chief Major & Desir)

23. The interview panel members were aware that Lt. Marino was scheduled to appear in court on his criminal case on February 4, 2021. The panel agreed to wait “as long as possible” to see the outcome of the criminal trial before making a decision on the Appellant’s application. The panel members were unanimous that promoting Lt. Marino would not be appropriate so long as he had an open OUI case pending. *(Testimony of Chief Breen, Dep. Chief Major & Desir)*

24. In particular, Chief Breen believed that promoting someone with an open OUI case would send the wrong message to members of the SFD that such matters were not taken seriously. Ms. Desir believed that promoting someone who had been arrested after failing a roadside breathalyzer, and with an unresolved criminal case, could be seen as condoning or turning a blind eye to the behavior. *(Testimony of Chief Breen, Dep. Chief Major & Desir)*

25. When Lt. Marino’s criminal trial was postponed again (for one month, to March 4, 2021) due to COVID-19, the panel decided to recommend to the Mayor that Lt. Marino be bypassed.⁵ The Mayor adopted the recommendation and promoted two other candidates ranked immediately

⁵ Ms. Desir testified that the panel did not know of the actual new trial date. Lt. Marino testified that he did keep Chief Breen and Dep. Chief Major apprised of all trial dates and continuances. I credit this testimony and infer that Chief Breen and Dep. Chief Major came to learn that the trial had been rescheduled before the bypass decision was made but Ms. Desir did not. *(Testimony of Appellant & Desir)*

below Lt. Marino on the certification, neither of whom had any pending criminal charges on their record. (*Testimony of Chief Breen & Desir*)

26. By letter dated February 11, 2021, Somerville Mayor Curtatone informed Lt. Marino that he had been bypassed based on the February 21, 2020 incident. The Mayor's letter stated, in part:

“. . . Driving under the influence is not the leadership example that the City of Somerville desires to set for others within the Department; a promotion while this recent criminal complaint for OUI is pending would send a message to the community that the City condones or is not concerned with this type of behavior in the senior leadership of the Somerville Fire Department.”

“The Somerville Fire Department works every day to protect the safety of others. Driving under the influence is a public display of disregard of that work. Operating under the influence is a dangerous activity that exposes undue risk to others. A Fire Captain must exercise sound judgment in decision making to protect the safety of members of their team and the public. A decision to get in the driver's seat under the influence demonstrates irresponsible behavior and a lack of sound judgement.”

Although your professional record otherwise demonstrates excellent qualities, skills, and abilities for the position of Captain, this recent, serious pending criminal matter calls into question your ability to fulfill the role of Captain at this time.”

“Aside from having demonstrated the qualities, skills and abilities for the position of Captain, the selected candidate[s] does not have any criminal matter pending before the courts as you do with the above described OUI charge.”

“While the City certainly hopes it was the case that you were not driving under the influence, this matter is outside of our jurisdiction to determine. Given the gravity of this recent and open criminal complaint, the City is not able to select you for promotion at this time.”

“We anticipate there will be future promotional opportunities at this rank. Should you apply, we will evaluate your candidacy at that time with full consideration of updates to and developments in your professional and criminal records.”

(*Jt.Exh.10*)

27. On February 17, 2021, Lt. Marino duly filed this appeal. (*Claim of Appeal*)⁶

28. The SFD Captain's Eligible List established by HRD on March 1, 2019, expired after two years on February 28, 2021. (*Jt.Exh.10; HRD Letter dated 3/18/2021; Testimony of Chief Breen*)

⁶ Lt. Marino unsuccessfully sought to meet with Mayor Curtatone. At the Commission hearing, Lt. Marino stated that he had nothing he wanted to tell the Mayor that he had not already told the interview panel. (*Testimony of Appellant*)

29. Lt. Marino did not take the 2020 Captain’s promotional exam and his name did not appear on the new eligible list established on March 1, 2021. (*Testimony of Appellant*)

30. The Somerville personnel department inquired of HRD as to whether the 2019 eligible list could be extended for a month beyond February 28, 2021 when there was a new eligible list in place to become effective March 1, 2021, Somerville was informed that “it was not a option”. (*Testimony of Dep. Chief Major; Administrative Notice* [<https://www.mass.gov/doc/revocation-establishment-and-merging-of-fire-promotional-eligible-lists-4/download/>])

31. Upon expiration of the 2019 Captain’s eligible list and the establishment of the new list on March 1, 2021, Lt. Marino was removed from his assignment as a temporary Captain and returned to his title of Fire Lieutenant. (*Testimony of Appellant & Chief Breen*)

32. On March 4, 2021, Lt. Marino was found not guilty of OUI after a bench trial in Lowell District Court. (*Testimony of Appellant*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Promotional appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles –

for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission's role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has "reasonable justification" for the bypass after an "impartial and reasonably thorough review" of the relevant background and qualifications bearing on the candidate's present fitness to perform the duties of the position. Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 461, 474-78 (2019); Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

"Reasonable justification . . . means 'done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law'". Brackett v. Civil Service Comm'n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons "more probably than not sound and sufficient").

The governing statute, G.L. c. 31, gives the Commission's de novo review "broad scope to evaluate the legal basis of the appointing authority's action" and it is not necessary that the Commission find that the appointing authority acted "arbitrarily and capriciously." City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). The commission ". . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority" but, when there are "*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*," then the occasion is appropriate for intervention by the commission." Id. (*emphasis added*). See

also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

ANALYSIS

This appeal presents a unique scenario that requires balancing two core principles of civil service law – the right of a tenured civil servant in line for promotion to be denied that promotion only for sound and sufficient reasons – with the right of an appointing authority to hold its public safety personnel, especially those in senior command positions, to a high standard of conduct. Here, Lt. Marino stood at the top of the eligible list for promotion to permanent Fire Captain, he had been duly serving as an Acting (Temporary) Captain for six months, and he brought an unusually strong record of performance to his application for permanent promotion to the position in February 2021. On the other hand, Lt. Marino had been involved in an incident a year earlier which resulted in criminal charges against him for OUI for which he was not acquitted until March 4, 2021, due to delays attributable to the COVI-19 State of Emergency. The charges were still pending at the time the promotional appointment needed to be made prior to expiration of the current eligible list. Moreover, to complicate the situation, Lt. Marino had not taken the most recent promotional examination for Fire Captain and his eligibility for promotion would “die on the vine” once the current eligible list expired and was replaced by a new list on March 1, 2021.

The evidence presented to me at the Commission hearing demonstrated that Somerville was strongly leaning toward promoting Lt. Marino, but was constrained by concern that to do so when his criminal case was still pending would improperly diminish the seriousness of the charges against him. Somerville initially deferred its promotional decision, expecting that Lt. Marino’s criminal case, which had been repeatedly continued, finally would be disposed of on February 4, 2021, well before the promotional list expired. Only after the trial was postponed, again, from

February 4, 2021 to March 4, 2021, did Somerville conclude that it must proceed to promote other lower-ranked, qualified candidates and bypass Lt. Marino.

As a general rule, the Commission defers to an appointing authority who decides to bypass a candidate who has engaged in criminal misconduct. The charge of OUI, if proven, has a direct nexus to the duties of a fire service officer and Somerville is well within its discretion to require that any SFD officer who commits such an offense (whether they are actually required to operate apparatus) be held to account. Here, although Somerville did not claim that Lt. Marino was guilty of OUI, it did present evidence sufficient to establish that Lt. Marino's behavior fell below the high standard expected of him as a senior fire service officer. In particular, I note his failure of a roadside breathalyzer test, the loss of his driver's license after being offered the opportunity to take a second breathalyzer test, his problematic excuse given at the scene that he was lost and got distracted trying to follow his GPS, and Somerville's finding that he improperly delayed reporting of the incident. While those facts may not be sufficient to produce a guilty verdict, they are more than sufficient to raise red flags, and even an adverse inference, as a matter of civil service law, that warranted Somerville deciding to require closure to Lt. Marino's criminal case before promoting him.

On the other hand, after conducting its own investigation of Lt. Marino's conduct, Somerville did not reach an independent conclusion that there was a likelihood that he was guilty of OUI; indeed, Somerville gave him the benefit of the doubt and disciplined him only for his failure to timely report the incident. Thus, it was not Lt. Marino's perceived criminal behavior that troubled Somerville, but the purported unseemly appearance of promoting an officer who, while unlikely, potentially could be found guilty of a criminal offense immediately after such a promotion, combined with his failure to timely report the incident to superior officers, as required.

Moreover, Lt. Marino had served as a company Captain for six months prior to his bypass. Somerville's point that it was obliged to place him in such a position because of the terms of the applicable collective bargaining agreement (CBA) is not entirely correct. The CBA required that vacancies in officer positions be filled from the civil service list, but that requirement did not, and cannot, override the power of the appointing authority to bypass any candidate on the list, for either permanent or temporary appointments, when reasonably justified. Thus, I find it hard to reconcile fully Somerville's rationale for bypassing Lt. Marino after promoting him temporarily with full knowledge of the same facts that it asserted as grounds to bypass him for a permanent promotion.⁷

In view of the unique facts presented in this appeal – the undisputed agreement that, but for the pending OUI matter, Lt. Marino was a highly respected SFD officer who had been called the “most commended” member of the department and the evidence that his bypass likely was prompted principally by an unusual delay in getting a trial due to the COVID-19 emergency – I conclude that the Commission should exercise its discretion to provide some equitable relief to Lt. Marino, so as to mitigate the consequences of the COVID-19 State of Emergency that uniquely derailed his career and promote the advancement of qualified candidates, as intended by basic merit principles, without prejudicing other qualified candidates whose name(s) appear or may appear on the current or any future eligible list for SFD Fire Captain. This relief shall be limited to the specific facts of this case and shall not be considered as precedent for any future appeals.

⁷ I do not overlook Somerville's contention that the role of a temporary Captain differs from that of a permanent Captain. The only difference seems to be that a permanent Captain can fill in for a vacant District Chief, whereas a temporary Captain could not. I am not persuaded that this distinction is sufficient to change the calculus that, from the perception of the public or other fire service staff, the duties of Captain in either status are substantially identical.

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Michael J. Marino, CSC Docket No. G2-21-038 is allowed in part. Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission orders that the Massachusetts Human Resources Division (HRD) and/or the City of Somerville (Somerville), in its delegated capacity, take the following action:

- A. In any future consideration of Lt. Marino for promotion to the position of SFD Fire Captain, Somerville may not give negative weight to the reason for bypass in this appeal (i.e., the pendency of a criminal proceeding for which he was acquitted), or to events addressed herein, in any future decision to appoint or bypass him.
- B. Once the Appellant has been promoted or bypassed, Somerville shall notify the Commission, with a copy to Lt. Marino, that said relief has been honored. After verifying that the relief has been provided, and/or adjudicating any future bypass appeal that might be forthcoming, the Commission will take appropriate action, including, as necessary, further notification to HRD.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on August 25, 2022.

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. 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:

Joseph G. Donnellan, Esq. (for Appellant)

Jason Piques, Esq. (for Respondent)