

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

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

**SAMUEL A. MARLAR,**

*Appellant*

v.

**CITY OF AMESBURY,**

*Respondent*

Docket Number:

E-25-022

Appearance for Appellant:

*Pro Se*

Samuel A. Marlar

Appearance for Respondent:

David C. Jenkins, Esq.

KP Law

101 Arch Street, 12<sup>th</sup> Floor

Boston, MA 02110

Commissioner:

Christopher C. Bowman

**SUMMARY OF ORDER**

The Commission dismissed the non-bypass equity appeal of an Amesbury police officer as his appeal was not timely filed with the Commission and because the same issues are currently pending before the Massachusetts Commission Against Discrimination (MCAD).

**ORDER OF DISMISSAL**

***Procedural Background***

On January 22, 2025, the Appellant, Samuel A. Marlar (Appellant), a police officer in the City of Amesbury (City)'s Police Department (APD), filed a non-bypass equity appeal with the Civil Service Commission (Commission), alleging that he was aggrieved by the City's decision to not fill a promotional vacancy for police sergeant prior to the expiration of an eligible list upon which he was ranked first.

On February 25, 2025, I held a remote pre-hearing conference which was attended by the Appellant, counsel for the City and the City's Police Chief. On March 9, 2025, I issued a Procedural Order requesting that both parties, and the state's Human Resources Division (HRD), submit certain information to the Commission for review.

### ***Undisputed Facts***

Based on the parties' submissions and the statements made at the pre-hearing, it appears that the following is not in dispute:

1. On April 17, 2020, the Appellant began serving as a permanent, full-time police officer for the City.
2. On September 18, 2021, candidates sat for the written portion of the police sergeant examination.
3. On February 1, 2022, the state's Human Resources Division (HRD) established the eligible list for Amesbury Police Sergeant. The Appellant was ranked 5<sup>th</sup>.
4. The February 1, 2022 eligible list would traditionally expire in two years (i.e. – February 1, 2024), but longstanding HRD policy automatically extends the eligible list until three years from the first day of the month in which the underlying examination was administered if no new eligible list is in place after the two-year period. Here, that would result in the eligible list being extended until September 1, 2024 (three years after September 1, 2021).
5. Due to matters related to the [Tatum decision](#), HRD was allowing eligible lists to be extended until a new eligible list was established, even if the time period exceeded the above-referenced three-year period.

6. Between February 1, 2022, the date the eligible list was established, and July 15, 2023, the City made four promotional appointments to police sergeant, leaving the Appellant as the first ranked candidate on the eligible list.
7. On July 7, 2023, the Appellant filed a complaint with the Massachusetts Commission Against Discrimination (MCAD), alleging that the City, and the Police Chief in particular, was discriminating against him by failing to pay him for time served on military training.
8. On December 12, 2023, the City sent a request to HRD, asking that neither of the above-referenced extensions be implemented regarding the Amesbury Police Sergeant eligible list; rather, it asked that the eligible list be revoked as of February 1, 2024. The only reason stated in the letter to HRD was that the City had decided not to promote any of the candidates remaining on the eligible list. HRD never provided a substantive response to the City's request, and the eligible list stayed in place through January 14, 2025.
9. On or around January 19, 2024, the Appellant and others on the eligible list were verbally informed in separate meetings that the City would not be filling any further sergeant vacancies from the eligible list in place at the time.
10. On or around July 12, 2024, a long-planned retirement took place regarding an APD Police Sergeant. There does not appear to be any dispute that the City was aware of the planned retirement well before making its December 12, 2023 request to HRD to not extend the list beyond February 1, 2024 (to September 1, 2024 or beyond).
11. In response to the above-referenced retirement, the APD Police Chief re-assigned a police officer from the detective bureau to patrol and kept the police officer position in the detective bureau vacant.

12. On December 18, 2024, the Appellant filed a request with MCAD to amend his complaint, seeking to include a violation of the Federal Uniformed Services Employment and Reemployment Act (USERRA) and to add allegations of retaliation in violation of Chapter 151B.
13. On January 15, 2025, HRD established a new eligible list for Amesbury Police Sergeant. The Appellant is ranked 6<sup>th</sup>. (The examination related to this eligible list was administered on September 21, 2024). As of the date of the February 25<sup>th</sup> pre-hearing, the City had still not filled the vacancy (from the new eligible list).
14. On January 22, 2025, the Appellant filed the instant appeal with the Commission alleging that he was aggrieved by the failure of the City to make promotions from the now-expired eligible list, upon which he was ranked first.
15. On April 7, 2025, MCAD denied the Appellant's request to add a violation of USERRA based on lack of jurisdiction over USERRA claims but approved the Appellant's request to add retaliation to his MCAD complaint.

### ***Standard Rules Regarding 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).

### ***Rules Related to Timeliness of Appeals to the Commission***

The Commission's rules require that appeals brought under G.L. c. 31, § 2(b), challenging the bypass of a candidate for appointment or promotion to a permanent civil service position must be filed within 60 days of the receipt of notice of the reasons for the bypass. See also G.L.

c. 31, § 27. Other forms of Section 2(b) appeals, such as the appeal filed here by the Appellant, are required to be brought within 30 days “from the date that the Agency notice of action was sent to the party.” 801 C.M.R. 1.00 (6). See Garfunkel v. Department of Revenue, 22 MCSR 291 (2009). In prior decisions, the Commission has construed these provisions, as a general rule, to imply a written notice of action would be essential to establish the trigger date for the limitations period, or the violation could be considered a continuing one. See O’Toole v. Human Resources Division, 21 MCSR 561 (2008) (suggesting, but not deciding, that written notice may be necessary to trigger the time for a section 2(b) appeal in all cases). The Commission also embraces the principle that a party coming before the Commission to seek equitable relief, as the Appellant does here, must exercise reasonable diligence in pursuit of that relief. Accordingly, where a person has had actual notice – whether in writing or not – of an action or inaction by HRD or an appointing authority that the person reasonably knew or should have known was a violation of civil service law or rules, that person cannot sit on those rights indefinitely. Thus, it is a fair requirement that once such a person discovers that he or she has been harmed by an action or inaction of HRD, they have an obligation to promptly file a claim of appeal, or lose the right to press it. Pugsley v. City of Boston, 24 MCSR 544 (2011), citing White v. Peabody Constr. Co., Inc., 286 Mass 121 (1980); Day v. Kerkorian, 72 Mass. App. Ct. 1 (2008).

### ***Analysis***

As a preliminary matter, this is not a bypass appeal. The Appellant was not bypassed for promotional appointment as no candidate ranked below him on the prior eligible list was promoted to police sergeant. Rather, this is a non-bypass equity appeal in which the Appellant argues that he was aggrieved by the City’s decision not to fill a vacancy for police sergeant while the prior eligible list, upon which he was ranked first, was in place.

The Commission lacks jurisdiction to hear this appeal as it was filed *after* the 30-day filing deadline required of non-bypass equity appeals. Specifically, on or around January 19, 2024, the Appellant and others on the prior sergeant eligible list were verbally informed in separate meetings that the City would not be filling any sergeant vacancies from that eligible list. If the Appellant believed that he was aggrieved by the City's action – or inaction – he could have filed an appeal with the Commission at that time.

Then, on July 19, 2024, as anticipated, a police sergeant vacancy developed and, consistent with the January 19, 2024 communication, the City chose not to fill the vacancy at that time. Again, had the Appellant believed that he was aggrieved by the City's decision not to fill the vacancy, he could have filed an appeal with the Commission at that time.

The Appellant argues that he did not know that he was aggrieved until the prior eligible list expired on January 14, 2025, effectively arguing that, if it was technically possible that a promotional appointment could have been made from that eligible list, the filing deadline for filing an appeal with the Commission should be tolled until January 14, 2025. However, on December 18, 2024, the Appellant sought to amend a pre-existing complaint with MCAD, stating that the City's decision not to fill the sergeant vacancy was the result of retaliation. Put another way, the Appellant, as of December 18, 2024, was notifying another state appellate tribunal that he was aggrieved by the City's decision not to fill the sergeant vacancy. Even if the Commission were to use December 18, 2024 to assess timeliness, the Appellant's January 22, 2025 was still filed outside the 30-day filing deadline for non-bypass equity appeals. The Commission's assessment here is consistent with prior rulings that a candidate cannot sit on their hands, wait to see where their name appears on a new eligible list, and then decide whether to

file an appeal with the Commission. Rather, candidates are required to file a non-bypass equity appeal within 30 days of becoming aware of the alleged harm.

In an appropriate case, the Commission would take care to ensure that, to the extent the rights of veterans under civil service law intersect with USERRA, those rights are fully protected. See King v. Medford Fire Dep't, 19 MCSR 317 (2006) (the bypass of a candidate for the position of firefighter was “fatally flawed” because King was never appropriately considered by the Medford Fire Department “solely because he was on active duty in the military.”); Re: 2010/2011 Review and Selection of Firefighters in the Cit of Springfield, CSC Tracking Number I-11-208 (2013) (the Commission, after determining that three firefighter candidates were not considered due to their active military duty status, granted the three candidates relief, placing their names atop the next certification to ensure their prompt consideration); Dupuis v. Town of Bourne, 28 MCSR 603 (2015) (discussing veterans’ preferences in hiring and promotions). That issue is not properly before the Commission, however, in this untimely appeal.

While the Commission lacks jurisdiction to hear this untimely appeal, the Appellant’s MCAD appeal is still pending and includes the same underlying issue of the City’s failure to fill the sergeant vacancy. Further, nothing in this decision bars the Appellant from filing a USERRA complaint with the United States Department of Labor.

### ***Conclusion***

The Appellant’s appeal under Docket Number E-25-022 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on May 15, 2025.

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:

Samuel A. Marlar (Appellant)

David C. Jenkins, Esq. (for Respondent)

Erik Hammarlund, Esq. (HRD)