

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

THOMAS MARTIN,  
Appellant

v.

G1-12-61

WOBURN FIRE DEPARTMENT,  
Respondent

Appellant's Attorney:

Richard W. Kendall, Esq.  
348 Park Street: Suite 203  
North Reading, MA 01864

Respondent's Attorney:

Ellen Callahan Doucette, Esq.  
City Solicitor  
City of Woburn  
10 Common Street  
Woburn, MA 01801

Commissioner:

Christopher C. Bowman

**DECISION ON APPELLANT'S REQUEST FOR RELIEF**

On April 11, 2012, the Appellant, Thomas Martin, a firefighter in the Woburn Fire Department (City or Fire Department), filed an appeal with the Civil Service Commission (Commission), seeking to modify his civil service seniority date *from* June 22, 2010 *to* July 1, 2007.<sup>1</sup> A pre-hearing conference and status conference were held and briefs were filed. Based on a review of those documents, the statements of the parties and the applicable civil service law and rules, Mr. Martin's request is allowed.

*Background*

In 2003 or 2004, Mr. Martin took and passed a civil service examination for the position of firefighter. On August 19, 2004, based on the results of this examination, his name was placed on an eligible list of candidates. He was ranked 5<sup>th</sup>. On November 24, 2004, Mr. Martin and twelve (12) other candidates were appointed as reserve firefighters and placed on a reserve roster. The City considered all thirteen (13) candidates on the reserve roster to be tied. Effective July 1, 2007, the City appointed Christopher Duffey and Brian Fee as permanent full-time

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<sup>1</sup> The Appellant did not request a finite date in his initial filing, but his subsequent filing and statements established that he was seeking a retroactive date of July 1, 2007.

firefighters. Mr. Duffy and Mr. Fee were ranked below Mr. Martin on the August 19, 2004 eligible list, but were considered by the City as tied on the subsequent reserve roster created on November 29, 2004. At the time of these permanent, full-time appointments, Mr. Martin was on active military duty and he was not considered for appointment. Effective June 22, 2010, Mr. Martin was appointed as a permanent full-time firefighter.

Mr. Martin proffers three (3) arguments in support of modifying his civil service seniority date from June 22, 2010 to July 1, 2007.

First, citing the Commission's 2008 decision in Ragucci v. Saugus, 21 MCSR 667 (2008), Mr. Martin argues that the City erred by considering all of the candidates on the reserve roster as tied. Consistent with Ragucci, Mr. Martin argues that the reserves should have been listed in rank order consistent with their rank on the eligible list. If this had occurred, the selection of Mr. Duffey and Mr. Fee, who were ranked below him on the eligible list, would have triggered a bypass that Mr. Martin could have appealed to the Commission.

Second, Mr. Martin argues that the City erred by failing to consider him for appointment as a permanent full-time firefighter on July 1, 2007 because he was on active military duty at the time.

Third, the Appellant argues that the reason for his non-selection in July 2007 was related to impermissible reasons stemming from his refusal to withdraw a prior appeal that he had filed with the Commission in 2004.

The City argues that Mr. Martin's instant appeal is untimely, that he was not bypassed and that the Commission's 2008 rulings in Ragucci cannot be applied retroactively to a non-selection that occurred in 2007.

### *Discussion*

While Mr. Martin accurately summarizes the Commission's rulings related to Ragucci, it does not follow that Ragucci should be applied, retroactively, to the instant appeal. In 2011, in Stacy v. Methuen, 24 MCSR (2011), the Commission decided not to retroactively apply Ragucci as it related to candidates being considered tied on a reserve roster. For the same reasons cited in Stacy, the rulings in Ragucci should not be applied retroactively here.

Mr. Martin's second argument is more compelling. Based on the documentary evidence and the statements of Mr. Martin and the Fire Chief, Mr. Martin was on active military duty on July 1, 2007 when two permanent full-time firefighter appointments were made from the reserve roster. Mr. Martin was not considered for permanent appointment at that time because of his active military duty status.

"Persons whose names appear on an open competitive or promotional list and who are called to active military duty should be considered as if they were presently available to be appointed or promoted." (emphasis added) See Human Resources Division Military Leave Guidelines (February 2003).

“Although there is no requirement pursuant to federal and state law that requires a community to select a military candidate, this same candidate cannot be dismissed without consideration because they have been called to active military duty.” (emphasis added) (HRD memorandum to all appointing authorities dated March 7, 2003) See also Chapter 708 of the Acts of 1941 and McLain v. Somerville, 424 F. Supp. 2d 329 (D. Mass. 2006), citing the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C.S. § 4311, et seq.), a case involving an active duty applicant for the position of Somerville police officer. In McLain, the federal court found that the plain meaning of the federal statute bars discrimination against an applicant for employment who is in the uniformed services.

Here, Mr. Martin was not considered for appointment as a permanent full-time firefighter on July 1, 2007 because of his active military duty status. This is inconsistent with federal and state law, HRD rules and prior Commission decisions. For this reason, Mr. Martin’s civil service seniority date should be adjusted from June 22, 2010 to July 1, 2007.

Since Mr. Martin prevails based on the issues related to his active military duty status, there is no need to address the alleged improper motives related to Mr. Martin’s non-selection.

#### *Conclusion / Orders*

Mr. Martin’s appeal under Docket No. G1-12-66 is hereby **allowed**. Pursuant to Chapter 310 of the Acts of 1993, the state’s Human Resources Division or the City of Woburn’s Fire Department, in its delegated capacity, shall adjust Thomas H. Martin’s civil service seniority date as a permanent full-time firefighter in Woburn from June 22, 2010 to July 1, 2007. This retroactive seniority date is for civil service purposes only and is not meant to provide Mr. Martin with any additional pay or benefits or additional creditable service toward retirement.

Civil Service Commission

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Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners [Marquis – Absent]) on July 26, 2012.

A true record. Attest:

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Commissioner

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:

Richard W. Kendall, Esq. (for Appellant)

Ellen Callahan Doucette, Esq. (for Respondent)

John Marra, Esq. (HRD)