

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
617-979-1900

PHILLIP J. MAYO,
Appellant

G1-23-219

v.

CITY OF SOMERVILLE,
Respondent

Appearance for Appellant:

Pro Se
Phillip J. Mayo

Appearance for Respondent:

Matthew J. Sirigu, Esq.
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the Appellant’s bypass appeal for the position of Fire Alarm Operator as, upon further review, it was determined that the Appellant was not bypassed for appointment since the one candidate appointed to the position was ranked above the Appellant.

ORDER OF DISMISSAL

On October 24, 2023, the Appellant, Phillip Mayo (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Somerville (City) to not selected him for original appointment as a Fire Alarm Operator in the City’s Fire Department (SFD).

On November 14, 2023, I held a remote pre-hearing conference which was attended by the Appellant and counsel for the City. As part of the pre-hearing conference, the parties stipulated to the following:

- A. On May 28, 2021, the Appellant took the Fire Alarm Operator examination.
- B. On August 15, 2021, the state's Human Resources Division (HRD) established the eligible list for Somerville Fire Alarm Operator.
- C. On February 22, 2023, May 4, 2023, and September 19, 2023, HRD sent Certification No. 09090 to the City.
- D. The City appointed one candidate to the position of Fire Alarm Operator from this certification.
- E. On October 23, 2023, the City notified the Appellant that he was bypassed for appointment.
- F. On October 24, 2023, the Appellant filed an appeal with the Commission.

Subsequent to the pre-hearing conference, the City provided documentation to the Commission showing that the Appellant, despite being notified otherwise by the City, was *not* bypassed for appointment. Rather, the one candidate appointed from Certification No. 09090 was ranked above the Appellant.

Summary Disposition Standard

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion to resolve an appeal before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be disposed of, however, on summary disposition only when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-

moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co. v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). See also Mangino v. HRD, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass.R.Civ.P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); Morehouse v. Weymouth Fire Dept., 26 MCSR 176 (2013) (“a party may move for summary decision when . . . that there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

Analysis

The undisputed facts now establish that no candidate ranked below the Appellant on Certification No. 09090 was appointed by the City as a Fire Alarm Operator. A non-selected candidate may appeal to the Commission only when his or her name appears “high[e]r” than one or more candidates who were appointed and, in this regard, appointment of a candidate in one tie group is not the appointment of a higher ranked candidate. See, e.g., Damas v. Boston Police Dep’t, 29 MCSR 550 (2016); Servello v. Department of Correction, 28 MCSR 252 (2015). See also PERSONNEL ADMINISTRATION RULES, PAR.02. As no candidate ranked below him on the certification was appointed, the Appellant’s appeal must be dismissed for lack of jurisdiction.

It is unfortunate that the City mistakenly represented to the Appellant that his non-selection constituted a bypass, which carries appeal rights to the Commission. As the Commission, on its own initiative, may also review a non-selection under Section 2(a) of the civil service law, which allows for investigations under limited circumstances, I did review whether such a review was warranted here and concluded it was not. As part of the pre-hearing, the City indicated that, after

six months, the Appellant will be eligible for reconsideration should his name appear on a certification ranked high enough to be considered for appointment. As such, the Appellant should continue to take all subsequent examinations for Fire Alarm Operator should he remain interested in pursuing this position with the City on a going-forward basis.

Conclusion

The Appellant's appeal under Docket No. G1-23-219 is hereby dismissed based on a lack of Jurisdiction.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on December 28, 2023.

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:

Phillip J. Mayo (Appellant)
Matthew Sirigu, Esq. (for Respondent)