COMMONWEALTH OF MASSACHUSETTS

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

KRISTEN McALLISTER,
Appellant

v.

CITY OF QUINCY,
Respondent

Docket Number:	E-25-118
Appearance for Appellant:	*Pro Se* Kristen McCallister
Appearance for Respondent:	Janet S. Petkun, Esq. City of Quincy Quincy City Hall 1305 Hancock Street Quincy, MA 02169
Commissioner:	Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the appeal of a non-selected candidate for Quincy firefighter as no bypass occurred and the candidate failed to show good cause why the City's tie-breaking method, which included the verification of residency preference, should be investigated by the Commission.

DECISION ON MOTION FOR SUMMARY DECISION

Procedural Background

On May 13, 2025, the Appellant, Kristen McAllister (Appellant), filed a non-bypass equity appeal with the Civil Service Commission (Commission) contesting her non-selection for the position of firefighter by the City of Quincy (City). On June 24, 2025, I held a remote pre-

hearing conference which was attended by the Appellant, counsel for the City and the City's Human Resource Director. The City subsequently filed a motion for summary decision and the Appellant filed what I deem to be an opposition and cross motion for summary decision.

Undisputed Facts

Based on the statements of the parties and the written submissions, the following is undisputed:

1. The Appellant, who is female, is currently employed as a firefighter in the Town of Sharon, a non-civil service community.
2. On October 27, 2022, the Appellant took and passed the civil service examination for firefighter administered by the state's Human Resources Division (HRD) and indicated an interest in being appointed as firefighter in the City of Quincy.
3. Based on the examination date of October 27, 2022, the Appellant must have continuously resided in the City of Quincy from October 27, 2021 to October 27, 2022 to be eligible for civil service residency preference in the City of Quincy.
4. As part of the hiring cycle in question, only candidates with a Quincy residency preference were considered for appointment.
5. In 2023, HRD established an eligible list for Quincy firefighter.
6. On September 23, 2024, HRD issued Certification No. 10127 to the City upon which the Appellant was ranked 15th among those willing to accept appointment.
7. The City appointed 36 candidates from this certification, none of whom were ranked below the Appellant.
8. The City did make appointments from those candidates tied with the Appellant for the 15th ranking on the certification.

9. As a tie-breaking method, the City relied in part on conducting background investigations, disqualifying certain candidates in the 15th tie group for various reasons, including, as in this case, a candidate's inability to verify their civil service residency preference (i.e. – show that they resided in Quincy continuously from October 27, 2021 to October 27, 2022).
10. At the time of this hiring process, 278 of the 279 firefighters in Quincy were male and one was female[1]. Another female candidate from this certification was appointed as a firefighter.
11. On April 17, 2025, the City notified the Appellant that she was not among the candidates selected for appointment.
12. On May 13, 2025, the Appellant filed a non-bypass equity appeal with the Commission.

STANDARD FOR SUMMARY DISPOSITION

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 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 decided 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 Bd*., 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

[1] The City states that, from 2008 until the current hiring cycle, only four female candidates have submitted applications for appointment.

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 Dep't*, 26 MCSR 176 (2013) ("a party may move for summary decision when . . . 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").

APPLICABLE CIVIL SERVICE LAW

Appeals Filed Under Section 2(b)

Section 2(b) of Chapter 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the Human Resources Division (HRD) or, in certain cases by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. The statute provides:

> No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

> If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

The fundamental mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31, which command, among other things, "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including

open consideration of qualified applicants for initial appointment" 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. The most important mechanism for ensuring adherence to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority of a "certification" which ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. G.L. c. 31, §§ 6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the "2n+1" formula. G.L. c. 31, § 27; PAR.09.

To deviate from the rank order of preferred hiring, and appoint a person "other than the qualified person whose name appears highest", an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L. c. 31, §§ 1, 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a "reasonably thorough review" of the background and qualifications of the candidates' fitness to perform the duties of the position and was "reasonably justified". Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688 (2012), citing Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm'n, 447 Mass. 233, 543 (2006) and cases cited; Beverly v. Civil Service Comm'n 78 Mass. App. Ct. 182 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

Section 2(b) Bypass Appeals

The Commission has consistently construed the plain meaning of the language in G.L. c. 31, § 27 to infer that selection from a group of tied candidates is not a bypass of a person whose "name appears highest", for which an appeal may be taken as of right to the Commission. See, e.g., Edson v. Town of Reading, 21 MCSR 453 (2008), *aff'd sub nom*., Edson v. Civil Service Comm'n, Middlesex Sup.Ct. No. 2008CV3418 (2009) ("When two applicants are tied on the exam and the Appointing Authority selects one, the other was not bypassed"); Bartolomei v. City of Holyoke, 21 MCSR 94 (2008) ("choosing from a group of tied candidate does not constitute a bypass"); Coughlin v. Plymouth Police Dep't, 19 MCSR 434 (2006) ("Commission . . . continues to believe that selection among a group of tied candidates is *not* a bypass under civil service law"); Kallas v. Franklin School Dep't, 11 MCSR 73 (1996) ("It is well settled civil service law that a tie score on a certification . . . is not a bypass for civil service appeals"). See also Cotter v. City of Boston, 193 F.Supp.2d 323, 354 (D.Mass.2002), *rev'd in part on other grounds*, 323 F.3d 160 (1st Cir. 2003) ("when a civil service exam results in a tie score, and the appointing authority . . . promotes some but not all of the tied candidates, no actionable 'bypass' has taken place in the parlance of the Civil Service Commission.")

Here, the undisputed facts establish that the City did not appoint any candidate ranked below the Appellant, but, rather, appointed candidates tied with the Appellant in the 15th tie group. Thus, for the reasons explained above, as a matter of law, the Appellant's non-selection is not a bypass and the City is not required to provide written reasons for her non-selection over others in the tie group and she does not have a statutory right of appeal to the Commission for a de novo review of the "reasonable justification" sustaining the reasons for selecting candidates in the tie group other than the Appellant.

Section 2(b) Non-Bypass Equity Appeals

As the Appellant filed this appeal as a non-bypass equity appeal, I reviewed whether the Appellant could be deemed an aggrieved person by considering whether the tie-breaking criteria used to decide whom within the tie group would be appointed were tainted by nepotism, favoritism, or gender bias and/or was arbitrary and capricious, in violation of "basic merit principles".

The Commission has acknowledged that, in theory, tie-breaking methods are properly subject to scrutiny under "basic merit principles". In the matter of Araica v. Human Resources Division, 22 MCSR 183 (2009), the Commission declined to pursue an investigation into whether the proposed adoption of "banding" test scores on eligible lists (which has since been abandoned) violated merit principles; but Araica did note the importance of having a fair and unbiased tie-breaking system in place:

> [W]ith banding, cities and towns are likely going to be presented with much larger and more diverse certification lists of candidates and will probably need to employ tie-breaking or other selection methods much more frequently and, perhaps even adopt new methods that were not necessary in the past, to choose whom to [appoint]. . . HRD should be actively encouraging adoption of best practices to ensure that such tie-breaking methods are consistent with, and applied in accordance with, basic merit principles and all other applicable laws. We are confident that HRD will appreciate the importance of ensuring that this is done and that failure to do so would be . . . a disservice to all parties. We will not stand idly by if presented with competent evidence that unlawful favoritism was the driving force behind a particular . . . appointment.

Id., 22 MCSR at 186. See generally De Simone v. City of Cambridge, 24 MCSR 297 (2010) (interviews used as tie-breaking criteria); St. Pierre v. Fall River School Dep't, 22 MCSR 445 (2009) (supervisor's rating used in layoffs to break tie in seniority); Bartolomei v. City of Holyoke, 21 MCSR 94 (2008) (noting, without deciding, possible question of using alphabetical

order as a tie-breaker); Johnson v. City of Everett, 20 MCSR 295 (2007), citing Cotter v. City of Boston, 193 F.Supp.2d 323, 354 (D.Mass. 2002), *rev'd in part on other grounds*, 323 F.3d 160 (1st Cir. 2003) (noting problematic lack of standard tie-breaking procedures); Coughlin v. Plymouth Police Dep't, 19 MCSR 434 (2006) (same); Dalrymple v. Town of Winthrop, 19 MCSR 379 (interview panel used as tie-breaking criteria vs. alphabetical order or seniority); Sullivan v. North Andover Fire Dep't, 7 MCSR 175 (1990) (seniority used as tie-breaker).

The Commission has not, however, in any previous appeal, rejected the validity of the tie-breaking methodology for making civil service appointments. Clearly, any claim that the City used some form of patently arbitrary and capricious or unlawful gender discriminatory criteria to select among otherwise equally qualified candidates must be taken seriously. Similarly, nepotism, whether overt or concealed, has no place under basic merit principles in filling civil service positions. Thus, the Commission's door must be open to hearing and remediating all such violations of the basic merit principles of civil service law in some appropriate manner. That is particularly true when, as here, the non-selection of the Appellant prevents the City from addressing an eye-popping disparity between demographic groups (here, representation among incumbents of male and female firefighters).

On the other hand, non-selection of tied candidates is still not a bypass and scrutiny of a tie-breaking process cannot be converted into a bypass matter. Unlike a bypass, nothing in the civil service law mandates that an appointing authority provide the reasons for picking one tied candidate over another.

After taking all these factual and legal nuances into consideration, absent a legislative change or judicial construction of the statute that would require it, I conclude that Section 2(b) is not the intended or appropriate mechanism to address such challenges. Rather, as appropriate, the

Commission may scrutinize questionable tie-breaking procedures when evidence of such is brought to its attention—through its broad independent statutory authority to conduct an investigation into any form of a violation of civil service law, on its own initiative or at the written request of "the governor, the executive council, the general court or either of its branches, the administrator [HRD], an aggrieved person, or by ten persons registered to vote in the commonwealth." G.L. c. 31, § 2(a).

Section 2(a) Investigations

Section 2(a) of Chapter 31 grants the Commission broad discretion to decide to what extent an investigation is appropriate and what response, if at all, should issue. See, e.g., Dennehy v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00540 (2014) ("The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.") See also Erickson v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00639 (2014); Boston Police Patrolmen's Association et al v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2006-4617 (2007). The Commission's exercise of its power to investigate is not subject to the general rules for judicial review of administrative agency decisions under G.L. c. 30A but can be challenged solely for an "abuse of discretion". See Erickson v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00639 (2014), citing Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321-22 (1991).

The Commission exercises its discretion to conduct an investigation only "sparingly" and, typically, when there is clear and convincing evidence of an entrenched political or personal bias or systemic violations of the civil service law that can be rectified only by the Commission's affirmative remedial intervention into the hiring process. See, e.g., Richards v. Department of

Transitional Assistance, 24 MCSR 315 (2011) (declining to investigate alleged age discrimination and favoritism in provisional promotions, but admonishing agency that "certain actions . . . should not be repeated on a going forward basis"). For example, after learning that an appointing authority had hired candidates and began placing them into the Police Academy without having informed numerous bypassed candidates of the right to challenge their non-selection by appeal to the Commission, the Commission initiated a thorough review of the appointing authority's hiring cycle, which resulted in the entry of numerous orders to implement changes, both retrospective and prospective, to rectify the violations found by the Commission. See Investigation re: Boston Police Dep't and Due Process of Non-Selected Candidates, 29 MCSR 367, supplemental decision, 29 MCSR 297 (2016). See also In Re: 2010/2011 Review and Selection of Firefighters in the City of Springfield, 24 MCSR 627 (2011) (investigation into hiring spearheaded by Deputy Fire Chief which resulted in his son's appointment and required reconsideration of numerous candidates through a new hiring cycle conducted by outsiders not connected with the Springfield Fire Department); In Re: 2011 Review and Selection of Permanent Intermittent Police Officers By the Town of Oxford, CSC No. 1-11-280 (2011) (investigation of alleged nepotism in hiring Selectmen's relatives required reconsideration of all 19 candidates through an new independent process); Dumont v. City of Methuen, 22 MCSR 391 (2009), findings and orders after investigation, CSC No. I-09-290 (2011) (rescinding hiring process and reconsideration of all candidates after Police Chief had participated in selection of her niece).

Although the Appellant did not specifically request an investigation, I have reviewed whether such an investigation would be warranted, particularly considering that the Appellant has alluded to gender discrimination as a possible factor in her non-selection. Here, unlike other cases the

Commission has investigated, this record lacks the kind of credible evidence to imply that the selection of certain candidates over others was tainted by clearly unlawful bias or favoritism by the appointing authority. Generally, the dearth of female firefighters in the City is, similar to the case with other appointing authorities, in large part due to the lack of female candidates that have appeared on civil service certifications sent to the City over the years. Spurred by recent reforms to the civil service law this past November, the City is in the process of taking advantage of a new "hybrid" recruitment option, which will enable up to 50% of all new candidates to be appointed through an alternative pathway that is not dependent on their rank on a civil service eligible list. Further, here, the City did select one female candidate for appointment. More broadly, however, the Appellant has not presented any actual or contemplated evidence to show that her non-appointment here was tied to her gender.

Rather, the Appellant's non-selection from others in a tie group, as tacitly acknowledged by the Appellant, was the result of *bona fide* questions the City had regarding whether the Appellant qualified for the civil service residency preference in Quincy, without which she was not eligible for consideration in this hiring cycle. The unrefuted documents provided by the City show that, during the required residency preference window, the Appellant's automobile was registered and insured in a community outside of Quincy. There were other documents that also reflected indicia of residency *outside* of Quincy during the required residency period window. While the Appellant argues that other documents, including a lease agreement with her then fiancé at a Quincy address should be given more weight, that type of analysis by the Commission would only be warranted if a bypass had occurred and/or there was some evidence that the City's action was a pretense to non-select the Appellant for other impermissible reasons. On all the facts in

this record, I conclude it is not warranted for the Commission to open an investigation into the Appellant's residency or non-residency in Quincy.

Finally, counsel for the City indicated that the issues related to verifying the Appellant's residency preference eligibility in this hiring cycle will not serve to disqualify the Appellant from consideration in future hiring cycles, including those likely to include the above-referenced alternate pathways permitted under the recently enacted civil service reform law. Given the Appellant's bona fides and undisputed record of accomplishment in the fire and rescue field, such an outcome would appear to be in the best interests of both the Appellant and citizens of Quincy.

Conclusion

In summary, the Commission lacks jurisdiction to hear this matter as an appeal under Section 2(b) of the civil service law and Appellant has not shown good cause why the Commission should initiate an investigation, either at her request, or its own initiative. For these reasons, the City's Motion for Summary Decision is allowed and the Appellant's appeal under Docket No. E-25-118 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 August 21, 2025.

Either party may file a motion for reconsideration within ten days of 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:
Kristen McAllister (Appellant)
Janet Petkun, Esq. (for Respondent)