

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

GREGORY MELTON,
Appellant

v.

**DEPARTMENT OF PUBLIC
HEALTH,**
Respondent

Case No.: G1-15-232

ORDER OF DISMISSAL EFFECTIVE APRIL 21, 2016

On December 11, 2015, the Appellant, Gregory Melton (Mr. Melton), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection for provisional appointment to the position of Pharmacist II by the Department of Public Health (DPH).

On January 5, 2016, I held a pre-hearing conference which was attended by Mr. Melton, counsel for DPH and counsel for the state's Human Resources Division (HRD). The basis of Mr. Melton's appeal is that, according to him, DPH failed to provide him with the statutory preference for veterans when making provisional appointments.

G.L. c. 31, § 26 states in relevant part:

"An appointing authority shall appoint a veteran in making a provisional appointment under section twelve, unless such appointing authority shall have obtained from the administrator [HRD] a list of all veterans who, within the twelve months next preceding, have filed applications for the kind of work called for by such provisional appointment, shall have mailed a notice of the position of vacancy to each of such veterans and shall have determined that none of such veterans is qualified for or is willing to accept the appointment."

It is undisputed that DPH, in making two (2) recent Pharmacist II provisional appointments, did not request and/or receive a list of veterans who had expressed an interest in a Pharmacist II position from HRD.

At the pre-hearing conference, DPH indicated that Mr. Melton is currently under consideration for a subsequent vacancy which could make his appeal here moot. For this reason, the parties mutually agreed for this appeal to be dismissed nisi, to become effective April 21, 2016. In the event that Mr. Melton is not provisionally appointed on or before April 21, 2016, the Commission will consider a Motion to Revoke this Order of Dismissal seeking to reinstate Mr. Melton's appeal for further consideration. In the absence of a Motion to Revoke, the dismissal of this appeal shall become final for purposes of G.L. c. 31, 44 on April 21, 2016.

While this appeal is likely to become moot regarding Mr. Melton's appointment, the broader issue regarding the preference afforded to veterans when making provisional appointments remains.

Based on the information gleaned at the pre-hearing conference, it is clear, to me, that there is not a seamless, user-friendly process to ensure that: 1) all veterans are aware of this preference when applying for a provisional appointment; and 2) state agencies can easily identify which candidates are veterans entitled to this statutory preference. HRD should take all necessary steps to ensure that current hiring practices of state agencies incorporate the statutory preference for veterans provided for in Section 26.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Camuso, Ittleman, Stein and Tivnan, Commissioners [Bowman, Chairman – Absent] on January 21, 2016.

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 as stated below.

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 from the effective date specified in 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 to:

Gregory Melton (Appellant)
James Horgan, Esq. (for DPH)
Mark Detwiler, Esq. (for HRD)