

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KENNETH MILLER,
Appellant

G1-17-026

v.

MARLBOROUGH FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Kenneth Miller

Appearance for Respondent:

Donald V. Rider, Jr., Esq.
City Solicitor
City Hall, 4th Floor
140 Main Street
Marlborough, MA 01752

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On April 26, 2014 and May 9, 2014, the Appellant, Kenneth Miller (Mr. Miller) took the two-part civil service examination for firefighter, administered by the state's Human Resources Division (HRD). He received a score of 95.
2. As a result of passing the firefighter examination, Mr. Miller's name appeared on an eligible list of candidates for firefighter, established by HRD on November 1, 2014.
3. On May 27, 2016, HRD issued Certification No. 03858 to the City of Marlborough (City)'s Fire Department (MFD) from which the MFD could appoint four (4) permanent, full-time firefighters. Mr. Miller, who is a disabled veteran, was ranked third among those willing to accept appointment on Certification No. 03858.
4. On December 5, 2016, the MFD notified Mr. Miller that he had not been selected for appointment as a firefighter and that he had been bypassed by four (4) candidates who were ranked lower than him on Certification No. 03858.
5. On February 4, 2017, Mr. Miller filed an appeal with the Civil Service Commission (Commission), contesting the MFD's decision to bypass him for appointment.

6. On February 28, 2017, I held a pre-hearing conference, which was attended by Mr. Miller, the Town's Fire Chief and counsel for the Town.
7. On April 28, 2017, I held a full hearing to determine if the MFD had reasonable justification to bypass Mr. Miller for appointment.
8. On July 6, 2017, prior to the issuance of a decision by the Commission, the Legislature enacted and laid before the Governor H.2782: An Act Exempting Certain Uniformed Positions in the Fire Department of the City of Marlborough from the Civil Service Law.
9. H. 2782 states:

"SECTION 1. Notwithstanding any general or special law to the contrary, all uniformed positions in the fire department of the City of Marlborough below the rank of Fire Chief, including assistant fire chiefs, deputy fire chiefs, fire captains, fire lieutenants, and fire fighters shall be exempt from the provisions of chapter 31 of the General Laws.

SECTION 2. This act shall not impair the civil service status of a person holding a position described in Section 1 on the effective date of this act.

SECTION 3. This act shall take effect upon its passage.
10. H..2782 was signed into law by the Governor on July 14, 2017.

Analysis / Conclusion

Enactment of H.2782 has made Mr. Miller's appeal to the Commission moot.

Even if Mr. Miller's appeal were to be allowed, the relief to be granted would be to place Mr. Miller's name at the top of the next (civil service) Certification issued to the Marlborough Fire Department for the position of full-time firefighter with his name remaining there until he was appointed or bypassed.

Effective upon the passage of H.2782, appointments to the position of firefighter in the City of Marlborough are no longer covered by the civil service law. The City will not make future appointments from a (civil service) Certification; and non-selected candidates no longer have appeal rights to the Commission. In short, there is no relief that the Commission could grant to Mr. Miller, even if his appeal were to be allowed.

For this reason, Mr. Miller's appeal under Docket No. G1-17-026 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan) on July 20, 2017.

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:

Kenneth Miller (Appellant)

Donald Rider, Jr., Esq. (for Respondent)