

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

LENCOL MONTEIRO,
Appellant

v.

G1-07-398

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Pro Se
Lencol Monteiro

Respondent's Attorney:

Sheila B. Gallagher, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

DECISION ON APPOINTING AUTHORITY'S MOTION TO DISMISS

Background

Pursuant to G.L. c. 31 § 2(b), the Appellant Lencol Monteiro (hereinafter "Appellant"), filed the instant appeal with the Civil Service Commission (hereinafter "Commission") on November 20, 2007, claiming that the Respondent, Boston Police Department (hereinafter "BPD") as Appointing Authority, did not have reasonable justification for bypassing him for original appointment as a permanent, full-time police

officer. The Appellant was notified of his bypass for appointment by the Human Resources Division (hereinafter “HRD”) by letter dated September 17, 2007. The appeal was timely filed. A pre-hearing conference was held on March 12, 2008.

After the pre-hearing conference, the BPD filed a Motion to Dismiss the Appellant’s instant appeal on the basis of collateral estoppel. The Appellant was given two weeks to file an answer to the BPD’s Motion to Dismiss, but chose not to do so.

The Appellant was previously bypassed by the BPD for original appointment to the position of police officer on June 6, 2006 *for the same reasons listed in the instant appeal*. See Monteiro v. Boston Police Dep’t, 20 MCSR 230 (2007) (Full hearing held on March 21, 2007, decision issued on March 29, 2007.) In that matter, the Commission found that the BPD had reasonable justification for bypassing the Appellant and dismissed his appeal. The same issues before the Commission then are before the Commission in the instant appeal.

Conclusion

Pursuant to 801 CMR 1.01 (7) (g) (3), the presiding officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided.

The bypass reasons proffered by the BPD in the instant appeal filed under Docket No. G1-07-398 are the same reasons that were the subject of the Appellant’s previous appeal, which was decided on March 29, 2007. The instant matter is a bypass appeal from *within* the same hiring cycle as the previous appeal: based on the *same* 2005 civil service examination.

For these reasons, the Commission dismisses the appeal filed under Docket No. G1-07-398.

Civil Service Commission

Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman –Yes; Henderson, Commissioner –No; Marquis, Commissioner – Yes; Stein, Commissioner – Yes; and Taylor, Commissioner -Yes) on August 21, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Lencol Monteiro (Appellant)
Sheila Gallagher, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)