

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

FABIENNE B. MYRTHIL,
Appellant

E-16-154

v.

CITY OF MALDEN,
Respondent

Appearance for Appellant:

Pro Se
Fabienne B. Myrthil

Appearance for Respondent:

Kathryn M. Fallon, Esq.
City of Malden
20 Pleasant Street
Malden, MA 02148

Appearance for Human Resources Division:

Mark Detwiler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On September 16, 2016, the Appellant, Fabienne Myrthil (Ms. Myrthil), filed an appeal with the Civil Service Commission (Commission), contesting a decision by the City of Malden (City) that she is not eligible for appointment as a Malden police officer due to her age.
2. On October 4, 2016, I held a pre-hearing conference at the offices of the Commission which was attended by Ms. Myrthil, counsel for the state's Human Resources Division (HRD), counsel for the City and a Police Captain from the City's Police Department. The facts referenced below were not disputed.
3. Ms. Myrthil's thirty-second (32nd) birthday was in 2014.
4. Ms. Myrthil, who is a member of the Army National Guard, has served on active military duty for approximately one (1) year.

5. On April 25, 2015, Ms. Myrthil took and passed the civil service examination for police officer. The filing deadline to sit for the examination was within one (1) month prior to April 25th.
6. On November 1, 2015, Ms. Myrthil's name appeared on an eligible list of police officer candidates.
7. On August 24, 2016, Ms. Myrthil's name appeared on Certification No. 04087, from which the City could appoint two (2) police officers.
8. The City did not appoint any candidates ranked below Ms. Myrthil from Certification No. 04087, thus there was no bypass and no obligation for the City to provide Ms. Myrthil with non-selection reasons..
9. The City informed Ms. Myrthil that she was ineligible for appointment as a Malden police officer due to her age.
10. The City has not accepted the provisions of G.L. c. 31, §§ 61A and 61B.
11. The City has not accepted the provisions of G.L. c. 31, § 58A.
12. This appeal followed.

Applicable civil service law

G.L. c. 31, § 58 states in relevant part:

“No person shall be eligible to have his name certified for original appointment to the position of firefighter or police officer in a city or town *which has not accepted the provisions of sections sixty-one A and sixty-one B* if such person has reached his thirty-second birthday on or before the final date for the filing of applications, as stated in the examination notice, for the examination used to establish the eligible list from which such certification is to be made.” *(emphasis added)*

G.L. c. 31, § 58A states:

“Notwithstanding the provisions of any general or special law to the contrary, in any city, town or district that accepts this section, no person shall be eligible to have his name certified for original appointment to the position of firefighter or police officer if such person has reached his thirty-second birthday on the date of the entrance examination. Any veteran shall be allowed to exceed the maximum age provision of this section by the number of years served on active military duty, but in no case shall said candidate for appointment be credited more than four years of active military duty. *(emphasis added)*

Analysis

Since the City has not accepted the provisions of G.L. c. 31, § 58A or G.L. c. 31, §§ 61A and 61B, the applicable statute here is G.L. c. 31, § 58, which states that a police officer candidate is ineligible for appointment if he/she has reached his/her 32nd birthday on or before the filing date for the filing of the application for the civil service examination.

Since Ms. Myrthil's 32nd birthday occurred several months prior to the final date to apply for the police officer civil service examination, she is not eligible to have her name certified for appointment as a Malden police officer. Further, the provision allowing a veteran to exceed the maximum age by the number of years served on active military duty does not apply here as the City has not accepted the provisions of Section 58A.

Thus, absent a change in statute or a Special Act of the legislature, Ms. Myrthil is not eligible for appointment as a Malden police officer.

Conclusion

For these reasons, Ms. Myrthil's appeal under Docket No. E-16-154 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a 4-0 vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan) on October 13, 2016. [Camuso-Not Participating]

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:

Fabienne Myrthil (Appellant)

Kathryn Fallon, Esq. (for Respondent)

Mark Detwiler, Esq. (HRD)