

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

TIMOTHY O’CONNOR,  
Appellant

v.

E-21-222

CITY OF WORCESTER AND  
HUMAN RESOURCES DIVISION,  
Respondents

Appearance for Appellant:

*Pro Se*  
Timothy O’Connor

Appearance for HRD:

Sarah E. Petrie, Esq.<sup>1</sup>  
Human Resources Division  
100 Cambridge Street: Suite 600  
Boston, MA 02104

Kimberly A. McMahon, Esq.  
City of Worcester  
455 Main Street, Room 109  
Worcester, MA 01608

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

On November 23, 2021, the Appellant, Timothy O’Connor (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the determination by the City of Worcester (City) that he is not eligible for appointment as a firefighter in the City’s Fire Department because he exceeded the statutory age limitation.

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<sup>1</sup> Since Attorney Petrie is no longer with HRD, notice of this decision is being sent to HRD Deputy General Counsel Melinda Willis.

On January 11, 2022, I held a remote pre-hearing conference which was attended by the Appellant, counsel for the City and counsel for the state's Human Resources Division (HRD).

As part of the pre-hearing conference, the parties stipulated to the following:

- A. The written portion of the 2020 firefighter examination, administered by HRD, was initially scheduled to be held on March 21, 2020.
- B. Due to COVID, this examination was postponed to November 19, 2020.
- C. Even when using the initial date, which is the date used by HRD, the Appellant had reached his 32<sup>nd</sup> birthday as of March 21, 2020.

Section 58A of G.L. c. 31 states in part:

“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.”

As part of the pre-hearing conference, the City argued that the City has indeed accepted the provisions of Section 58A and, thus, the Appellant, who had reached his 32<sup>nd</sup> birthday as of March 21, 2020, was not eligible for appointment. The City also pointed to the fact that the Appellant, based on the documents provided by HRD, incorrectly answered the exam application question which asks: “Will you be 31 years of age or younger on March 21, 2020?” The Appellant incorrectly answered: “yes”.

The Appellant reported that he: is now 33 years old; lived in Worcester for most of his life; has worked at a quasi-state agency for the past 5 ½ years; and is in superior health, participating in Cross Fit and other fitness regimens. He does not dispute that he was 32 at the time of the initial examination date; and reports that his answer to the above-referenced question was an

oversight on his part. While the Appellant states that he understands the need for a maximum age cap, he, in effect, argued that the provision, applied here, has had an illogical result, preventing his appointment as a Worcester firefighter.

On January 13, 2022, I issued a Procedural Order which joined HRD as a party to this appeal and effectively ordered the City to produce evidence that the City had accepted the provisions of G.L. c. 31, § 58A. After significant delay, the City did produce a City Council Order showing that the City Council accepted the provisions of this section of the civil service law on that date on December 4, 2001.

*Summary Decision Standard*

When a party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he or she is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense. 801 CMR 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law—i.e., "viewing the evidence in the light most favorable to the non-moving party", the substantial and credible evidence established that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case", and has not rebutted this evidence by "plausibly suggesting" the existence of "specific facts" to raise "above the speculative level" the existence of a material factual dispute requiring an evidentiary hearing. See e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). Accord Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008). See also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-636 (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406

Mass. 698 (1990) (factual issues bearing on plaintiff's standing required denial of motion to dismiss).

*Analysis / Conclusion*

It is undisputed that the Appellant had reached his 32<sup>nd</sup> birthday as of the date that the firefighter examination was scheduled to be administered on March 21, 2020 – and as of the date that that the examination was actually administered after a delay due to COVID emergency-related orders. The City has also produced evidence showing that it accepted the provisions of Section 58A which prohibits the appointment of a candidate for firefighter who has reached his 32<sup>nd</sup> birthday as of the date of the firefighter examination. While the Appellant raises the legitimate question of whether this statute has the unintended consequence of preventing well-qualified applicants from being considered for appointment, that is a question for the Legislature, not the Commission.

For these reasons, the Appellant's appeal under Docket No. E-24-222 is hereby

*dismissed.*

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein and Tivnan, Commissioners) on May 20, 2022.

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:

Timothy O'Connor (Appellant)

Kimberly McMahon, Esq. (for City of Worcester)

Sarah E. Petrie, Esq. (for HRD)