



NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

STEPHEN O'NEILL vs. CIVIL SERVICE COMMISSION

10-P-384

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

Stephen O'Neill, a police sergeant from Lowell, appeals from a Superior Court judge's decision, denying his request for review of the Civil Service Commission's (commission) decision dismissing his appeals challenging the administration and scoring of an October 27, 2008, promotional examination. We affirm, essentially for the reasons stated in the trial judge's thoughtful memorandum.

*Fair test review request.* We agree that O'Neill did not timely file his request for a 'fair test' review by the administrator. See G. L. c. 31, § 22. The statute requires that the request be made no later than seven days after the examination. The judge ruled that, as a matter of due process, the time did not begin to run until the applicant received his test result. However, even so, O'Neill's request was not timely. [FN1] Nor did he file his appeal of the administrator's decision to the commission within the seventeen days required by G. L. c. 31, § 24.

*Training and experience score appeal.* O'Neill also argues that the time limit established in G. L. c. 31, § 24, for a fair test review does not apply to his appeal of his training and experience score. The commission held that a fair reading of the entire statute 'indicated an intent by the Legislature that training and experience scores may be appealed under § 24, and applied the seventeen day time limit to O'Neill's training and experience appeal.' In the trial judge's view, that reading of the statute was a reasonable one. We agree.

*Ten registered voters § 2(a) request for investigation.* Here, we agree with, and adopt, the analysis of the Superior Court judge. In reviewing a decision of the commission, we give 'due weight to the experience, technical competence, and specialized knowledge of the agency.' G. L. c. 30A, § 14(7), as amended by St. 1973, c. 1114, § 3. Deference is owed to the reasonable interpretation of a statute by the agency charged with its administration. See *Leopoldstadt, Inc. v. Commissioner of the Div. of Health Care Fin. & Policy*, 436 Mass. 80, 91 (2002).

Under this standard of review, we see no error in either the commission's or the judge's interpretation and analysis of O'Neill's statutory claims under G. L. c. 31, §§ 2(a), 2(b), and 24. Even where statutory language may be read in two ways, '[w]here the Commissioner's statutory interpretation is reasonable . . . [we do] not supplant his judgment.' *Eastern Cas. Ins. Co. v. Commissioner of Ins.*, 67 Mass. App. Ct. 678, 683 (2006), quoting from *Massachusetts Med. Soc. v. Commissioner of Ins.*, 402 Mass. 44, 62 (1988). See *Attorney Gen. v. Commissioner of Ins.*, 450 Mass. 311, 319 (2008).

Finally, O'Neill argues that he was deprived of equal protection, substantive due process, and procedural due process rights under both the State and Federal constitutions. We are not persuaded. See *Burns v. Sullivan*, 619 F.2d 99, 104 (1st Cir. 1980) (no property interest in promotion to sergeant); *O'Malley v. Sheriff of Worcester County*, 415 Mass. 132, 135 (1993) (no procedural due process rights without an existing property interest at stake); *Prudential Ins. Co. of America v. Commissioner of Rev.*, 429 Mass. 560, 568 (1999) (statute upheld if rationally related to a legitimate government interest where it does not burden a suspect class); *Brackett v. Civil Service Commn.*, 447 Mass. 233, 252-253 (2006) (commission has broad discretion to establish eligibility for promotion); *R.V.H., Third, Inc. v. State Lottery Commn.*, 47 Mass. App. Ct. 712, 716 (1999) (no substantive due process rights without protected property interest).

*Judgment affirmed.*

By the Court (Cohen, Mills, & Hanlon, JJ.),

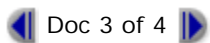
Entered: February 15, 2011.

[FN1](#). He received the test scores on December 29, 2007, and filed his appeal on January 12, 2008.

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