

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

JEFFREY ORTIZ,

Appellant

v.

CITY OF HOLYOKE,

Respondent

Docket Number:

E-25-019

Appearance for Appellant:

Pro Se
Jeffrey Ortiz

Appearance for Respondent:

Kathleen E. Degnan, Esq.
Assistant City Solicitor
City of Holyoke
20 Korean Veterans Plaza
Holyoke, MA 01040

Commissioner:

Christopher C. Bowman

SUMMARY OF ORDER

The Commission dismissed the non-bypass equity appeal of a Holyoke police sergeant as his appeal was not timely filed with the Commission and because the alleged harm involved (being deprived of a permanent promotion while on military leave) was too speculative.

ORDER OF DISMISSAL

Procedural Background

On January 17, 2025, the Appellant, Jeffrey Ortiz (Appellant), a police sergeant in the City of Holyoke (City)'s Police Department (HPD), filed a non-bypass equity appeal with the Civil Service Commission (Commission), alleging that he was harmed when the City failed to fill a vacancy for police lieutenant starting in October 2023 when he was first on the eligible list for promotion and on active military duty.

On February 11, 2025, I held a remote pre-hearing conference which was attended by the Appellant, the president of the local police union and counsel for the City. On March 11, 2025, I held a remote status conference which was attended by the Appellant, counsel for the City and the City's Mayor, who is the Appointing Authority for HPD. The remote status conference was recorded via Webex and both parties were provided with a link to the recording.

Undisputed Facts

Based on the statements of the parties and the written submissions, the following, unless otherwise noted, does not appear to be in dispute:

1. The Appellant is a resident of East Longmeadow and has been a member of the Army National Guard since 2002. He served a tour of duty in Iraq in 2007-2008 and a tour of duty in Qatar in 2012-2013.
2. As a member of the Army National Guard, the Appellant serves a minimum of one weekend per month in addition to two weeks per year. He is occasionally activated outside of these time periods for service within the United States.
3. In 2010, the Appellant was appointed as a full-time Holyoke police officer.
4. On February 18, 2021, the Appellant was promoted to Holyoke police sergeant.
5. On September 8, 2021, the Appellant took and passed the examination for Holyoke police lieutenant.
6. On December 15, 2021, the state's Human Resources Division (HRD) established the eligible list for Holyoke police lieutenant. The Appellant was ranked fifth on this eligible list.

7. Between December 15, 2021 and September 7, 2023, the four candidates ranked above the Appellant on the eligible list were promoted to Holyoke police lieutenant, leaving the Appellant ranked first on the eligible list for police lieutenant as of September 7, 2023.
8. On September 23, 2023, the Appellant and others took a subsequent promotional examination for police lieutenant that would ultimately be used to create a new eligible list for Holyoke police lieutenant on February 20, 2024.
9. On October 22, 2023, the Appellant began serving on active military duty, stationed in Springfield, MA, on a tour that would last until November 2024.
10. Also on October 22, 2023, a vacancy occurred in the position of Holyoke police captain due to the retirement of a police captain.¹
11. Since there was no eligible list in place for police captain at the time, the City provisionally promoted a police lieutenant to the position of provisional police captain.
12. Although there was in place an eligible list for police lieutenant, upon which the Appellant was ranked first, at that time, the City did not fill the police lieutenant vacancy, either on a permanent or temporary basis, while that eligible list was still active through February 19, 2024.
13. On October 30, 2023, the Appellant sent an email to HRD's civil service unit stating:

Good morning:

Currently I am number 1 on the Lieutenant List for the Holyoke Police Department. Recently a Cpt. retired and a Lieutenant was made Provisional Captain. This leaves an available LT position. My union [is] seeking clarification from the Chief as to why other promotions weren't made a[nd] being told that the Mayor doesn't

¹ The parties stipulated that the fact that the Appellant's activation and the police captain vacancy occurred on the same day was a coincidence.

plan to fund the Lieutenant position. The Chief has yet to respond to future inquiries [sic] as to what the Mayor meant by this.

Currently, I am on military deployment and feel that because they are allowing the current list to expire so that they can promote off of the next list. A Union representative also expressed to me that in his Union meetings my exact feelings have been discussed. He wouldn't commit to who stated it but the question was asked by someone in power "Why would we promote him if he's not here?" Any guidance would be [] greatly appreciated.

14. On November 7, 2023, HRD's civil service unit responded to the Appellant's email, writing:

Thank you for your inquiry. The Civil Service Unit of the Human Resources Division does not govern staffing patterns for municipal departments. When a municipal department is filling a vacancy, they must use the eligible list for the rank of the vacancy. If there is no eligible list in place, they can proceed to provisionally promote from the next lower title.

If an employee on an eligible list is on active duty and selected for the position, the hiring department would proceed to appoint the next employee as a military substitute. The military substitute would perform the job until the active-duty employee returns and can begin employment in the position.

15. On January 8, 2024, the Appellant sent an email to the City's Mayor asking for a personal meeting with the Mayor, citing the Mayor's open door policy. The Appellant, at the time, and currently, is in a dating relationship with the cousin of the Mayor's wife. Other than hearing third hand that he and the Mayor may not agree politically, the Appellant did not cite to any evidence, nor did the Appellant allege, that the Mayor had or has any personal animus against him.
16. The same day, the City's Mayor replied to the Appellant stating that, while he does have an open-door policy, Police Department rules require police officers to first go through the proper chain of command. The Mayor copied the City's Personnel Director and asked her to

follow-up with the Appellant to ensure that the matter did not involve a complaint against the Chief, which would justify going outside the chain of command.

17. On January 15, 2024, the City's then Police Chief, who has since retired, met with the Appellant. According to the Appellant, the Police Chief referenced the need to follow the chain of command and cited funding reasons for not filling the lieutenant position at that time.

Relevant laws and rules related to candidates on active military duty

In McLain v. City of Somerville, the United States District Court of Massachusetts applied the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-4333, to a case involving an active-duty applicant for the position of police officer. McLain v. City of Somerville, 424 F.Supp.2d 329 (2006). The issue there was whether USERRA prevents discrimination in initial hiring on the basis of unavailability due to active service in the military. Id. at 333. The relevant provision of USERRA states:

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, **promotion**, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

38 U.S.C. § 4311(a). "Uniformed service" is defined broadly to include active duty, training, and National Guard duty. See 38 U.S.C. § 4303(13) & (16). In McLain, the court held that Somerville's failure to hire McLain to be a police officer because his military service prevented him from being available on the day Somerville wanted him to start work constituted a violation of the plain terms of USERRA. Id. at 333.

The fact that the Commission lacks jurisdiction under USERRA does not preclude, and has not precluded, the Commission from inquiry aimed at assuring that the civil service rights provided by Massachusetts law are construed consistently with the protections veterans have been granted under USERRA. Indeed, assuring fair treatment of veterans is also deeply embedded in the basic rights and "merit principles" of Massachusetts civil service law, which includes a variety of preferential treatment protocols for veterans to level the playing field with non-veterans in hiring, promotions and retention.

Further, Chapter 708 of the Acts of 1941 provides specific protections for civil service candidates and employees on active military duty. HRD's civil service unit has issued guidance on ensuring compliance with those provisions stating in relevant part that: "Persons whose names appear on an open competitive or promotional list and who are called to active military duty should be considered as if they were presently available to be appointed or promoted." Human Resources Division Military Leave Guidelines (February 2003). Those guidelines go on to state that: "Although there is no requirement pursuant to federal and state law that requires a community to select a military candidate, this same candidate cannot be dismissed without consideration because they have been called to active military duty."

The Commission has also issued a series of decisions reinforcing that active military duty candidates must be afforded the same consideration as all other candidates. In King v. Medford Fire Dep't, the bypass of a candidate for the position of firefighter was "fatally flawed" because King was never appropriately considered by the Medford Fire Department "solely because he was on active duty in the military." King v. Medford Fire Dep't, 19 MCSR 317, 321 (2006). While the Appointing Authority claimed that King was bypassed for a poor driving record, the evidence demonstrated that King's application was "treated in contravention of the law because

of his military status." Id. at 320. In Re: 2010/2011 Review and Selection of Firefighters in the Cit of Springfield, CSC Tracking Number I-11-208 (2013), the Commission, after determining that three firefighter candidates were not considered due to their active military duty status, granted the three candidates relief, placing their names atop the next certification to ensure their prompt consideration. See also Dupuis v. Town of Bourne, 28 MCSR 603 (2015 (discussing veterans' preferences in hiring and promotions)).

Standard Rules Regarding Jurisdiction

The Presiding Officer may at any time, on his or her 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. 801 CMR 1.01(7)(g).

Rules Related to Timeliness of Appeals to the Commission

The Commission's rules require that appeals brought under G.L. c. 31, § 2(b), challenging the bypass of a candidate for appointment or promotion to a permanent civil service position must be filed within 60 days of the receipt of notice of the reasons for the bypass. See also G.L. c. 31, § 27. Other forms of Section 2(b) appeals, such as the appeal filed here by the Appellant, are required to be brought within 30 days "from the date that the Agency notice of action was sent to the party." 801 C.M.R. 1.00 (6). See Garfunkel v. Department of Revenue, 22 MCSR 291 (2009). In prior decisions, the Commission has construed these provisions, as a general rule, to imply a written notice of action would be essential to establish the trigger date for the limitations period, or the violation could be considered a continuing one. See O'Toole v. Human Resources Division, 21 MCSR 561 (2008) (suggesting, but not deciding, that written notice may be necessary to trigger the time for a section 2(b) appeal in all cases). The Commission also

embraces the principle that a party coming before the Commission to seek equitable relief, as the Appellant does here, must exercise reasonable diligence in pursuit of that relief. Accordingly, where a person has had actual notice – whether in writing or not – of an action or inaction by HRD or an appointing authority that the person reasonably knew or should have known was a violation of civil service law or rules, that person cannot sit on those rights indefinitely. Thus, it is a fair requirement that once such a person discovers that he or she has been harmed by an action or inaction of HRD, they have an obligation to promptly file a claim of appeal, or lose the right to press it. Pugsley v. City of Boston, 24 MCSR 544 (2011), citing White v. Peabody Constr. Co., Inc., 286 Mass 121 (1980); Day v. Kerkorian, 72 Mass. App. Ct. 1 (2008).

Parties' Arguments

As part of these proceedings, the Appellant clarified that the sole focus of his appeal is to contest the City's failure to make a promotion to the position of Holyoke police lieutenant when the vacancy arose and he was first on the existing eligible list, as opposed to waiting until months after the new eligible list was established, upon which he was tied for second with two other candidates.

The Appellant argues not only that the vacancy for lieutenant in October 2023 should have been filled at the time, but also argues that the City should have filled the vacancy through a permanent, as opposed to a temporary, appointment, stating that the provisional nature of the triggering captain promotion would ultimately have no impact on the need to fill the lieutenant position permanently.

Finally, the Appellant argues that the Police Chief in office at the time failed to fill the vacancy during the timeframe the Appellant preferred, because the Appellant, the first ranked

candidate, was on active military duty. In support of this assertion, the local union president submitted a letter to the Commission stating in part:

During the time that the promotional list from Massachusetts Civil Service was active I was in meetings with [the former Chief] where he stated during those meetings that he was apprehensive to see Sgt. Jeffrey Ortiz promoted to Lieutenant because Sgt Ortiz was away on active military duty. This statement was said during at least two meetings that I attended in the Chief's office. Both meetings were held during the time that the civil service list was active, and Sgt. Ortiz could have been promoted.

When I asked the Appellant if and when the police union president conveyed the above-information to him contemporaneously, the Appellant stated that the union president conveyed this to him once, at or around the time that the lieutenant vacancy arose.

The City focuses on the fact that the Appellant was never bypassed and, thus, according to the City, the Commission has no jurisdiction over this appeal.

Analysis

As stated above, the Commission has consistently held that candidates on active military duty must receive the same consideration as all other candidates, whether for original appointment or promotion. Here, however, the Appellant waited approximately 15 months after first learning that the City would not make any promotion to police lieutenant from an eligible list upon which he was ranked first, to file an appeal with the Commission alleging that the City's action (or inaction) was due to the Appellant's active military duty status at the time. During that 15-month period, the eligible list in question expired (in February 2024); the City has made two subsequent promotions to lieutenant from a new eligible list; and the former Police Chief referenced in this appeal has retired. Even if I were to accept the Appellant's assertion that he was advised to wait until his active duty was over to file an appeal, his appeal to the Commission was filed more than 30 days after that time. Adherence to the filing deadline is

particularly important here when the Appellant's basis for appeal depends, in part, on speculation, including the speculation that, if the City had filled the lieutenant position in October 2023, it would (or should) have done so on a permanent basis. Appellant's assertion is not only speculative, it likely is not consistent with the civil service law. Regardless, had the Appellant's appeal been filed within 30 days of October 2023, those issues may have been less complicated to untangle.

Conclusion

In summary, the Appellant's appeal, based on the undisputed facts presented here, was filed months after the 30-day filing deadline. For that reason, the Commission lacks jurisdiction to hear this appeal and his appeal under Docket Number E-25-019 is hereby ***dismissed***. Nothing in this decision is meant to preclude the Appellant from pursuing this matter in another forum, should the applicable laws permit such an appeal.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on March 20, 2025.

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 to:

Jeffrey Ortiz (Appellant)

Kathleen Degnan, Esq. (for Respondent)