

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

LARISSA PAOLANTONIO,
Appellant

v.

G1-19-089

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Larissa Paolantonio

Appearance for Respondent:

Joseph Santoro
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On April 14, 2018, the Appellant, Larissa Paolantonio, took the civil service examination for Correctional Program Officer A/B (CPO A/B) and received a score of 71.
2. On May 15, 2018, the state's Human Resources Division (HRD) established an eligible list for CPO A/B which included the name of the Appellant.
3. On October 24, 2018, Certification No. 08878 was sent to the Department of Correction (DOC) from which DOC ultimately appointed 22 candidates for appointment as CPO A/B.
4. The Appellant was ranked 25th on Certification No. 08878.
5. In January or February 2019, the Appellant received a conditional offer of employment from DOC for CPO A/B.
6. At the time of the conditional offer of employment, DOC, according to the Appellant, had not conducted her background investigation.

7. On March 13, 2019, DOC notified the Appellant that she was being bypassed for appointment for non-medical issues related to her background investigation. The specific reasons for bypass were listed on the bypass letter.
8. On April 16, 2019, the Appellant filed a bypass appeal with the Civil Service Commission (Commission)
9. Prior to the pre-hearing, DOC submitted a Motion to Dismiss the Appellant's appeal, stating that nobody ranked below the Appellant was appointed (i.e. – DOC sent the bypass letter and reasons in error).
10. On May 7, 2019, I held a pre-hearing conference which was attended by the Appellant and a DOC representative.
11. In order to verify that no candidate ranked below the Appellant was appointed, I reviewed the signed certification submitted by DOC. That Certification was in alphabetical order by last name.
12. I cross-checked the signed Certification with the Certification sent to DOC by HRD which was in rank order. That Certification appears to contain the same names, in rank order, and appears to show that no candidate ranked below the Appellant was appointed. If true, no bypass occurred.
13. The Appellant, having received a letter with specific bypass reasons, all of which she contests, effectively sought a “name clearing” hearing before the Commission.
14. DOC agreed to inquire as to whether the bypass letter, which was apparently sent in error, could be rescinded, removed and replaced with a non-selection letter.
15. On May 15, 2019, DOC reported that the March 6, 2019 letter would be rescinded, removed from her personnel file and replaced with a non-selection letter stating simply that she was among a group of tied candidates not selected.
16. That same day, May 15, 2019, I inquired with the Appellant as to whether she wished to withdraw her appeal and that, absent a withdrawal, the Commission would issue / publish an Order of Dismissal, stating the reasons why the Commission lacks jurisdiction to hear the appeal.
17. The Appellant did not reply to my inquiry.

Analysis

The Commission has long held that the appointment of a candidate among those with the same rank on a Certification is not a bypass. See Edson v. Reading, 21 MCSR 453 (2008) (upheld by Superior Court; Edson v. Civil Service Comm'n, Middlesex Sup. Ct. No. 08-CV3418 (2009); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1998); Servello v. Dep't of Correction, 28 MCSR 252 (2015); See also Thompson v. Civil Service Comm'n, Suffolk Superior Ct. No. MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass); Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 261 (2001) ("In deciding bypass appeals, the commission must determine whether the appointing authority has complied with the requirements of Massachusetts civil service law for selecting lower scoring candidates over higher scoring candidates); Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002) (citing HRD's guide), *rev'd in part on other grounds*, 323 F.3d 160 (1St Cir. 2003) ("when a civil service exam results in a tie -score, and the appointing authority ... promotes some but not all of the candidates, no actionable ` bypass ' has taken place in the parlance of... civil service")

Conclusion

Since no candidate ranked below the Appellant was appointed, there was no bypass. For this reason, the Appellant's appeal under Docket No. G1-19-089 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 20, 2019.

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:

Larissa Paolantonio (Appellant)

Joseph Santoro (for Respondent)