

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

GIUSEPPE PLACENTI,  
Appellant

v.

E-18-066

DEPARTMENT OF CORRECTION,  
Respondent

Appearance for Appellant:

*Pro Se*  
Giuseppe Placenti

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

1. On April 13, 2018, the Appellant, Giuseppe Placeti (Mr. Placenti), a provisional Industrial Instructor II / Plumber at the Massachusetts Department of Correction (DOC), filed an appeal with the Civil Service Commission (Commission) stating that he was “requesting permanency as an Industrial Instructor II from equitable relief, as the Department of Correction will not have a civil service test as required ... “
2. On May 15, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Placenti, counsel for the state’s Human Resources Division (HRD) and a representative from DOC.
3. As part of the pre-hearing conference, it was agreed that:
  - A. Mr. Placenti has never taken and/or passed a civil service examination for Industrial Instructor II / Plumber.
  - B. He was provisionally appointed to the position of Industrial Instructor II / Plumber by DOC in November 2011.
  - C. The last examination for this position was administered in 2007.
  - D. The eligible list for this position was revoked in 2010.
  - E. HRD and/or DOC have no plans to administer an examination for this position.

- F. Mr. Placenti is a member of a local union and has certain rights (i.e. –ability to grieve discipline, etc.) under the collective bargaining agreement.
4. At the pre-hearing, Mr. Placenti argued that, during the past seven years at DOC, he has “proven himself” and, thus, believes he should be granted civil service permanency in his current position.
  5. Mr. Placenti, as part of his written appeal, cited Shadd v. Department of Correction, CSC Case No. E-17-157 as a precedent for the Commission granting permanency to DOC employees.
  6. In Shadd, all of the DOC employees in question had taken and passed a civil service examination.
  7. Mr. Placenti has not pointed to any precedent for the Commission granting permanency, in these circumstances, to an official service employee who has not taken and passed a civil service examination and/or appeared on an eligible list and certification.
  8. More broadly, Mr. Placenti’s appeal regards the overall use of provisional appointments to fill positions.
  9. The original expectation in Massachusetts civil service law was that Previous provisional appointments or promotions were "supposed to be exceptional circumstances", intended to allow an appointing authority to fill a vacancy temporarily, pending the establishment of a suitable eligible list of candidates who had qualified for the position by passing the requisite civil service competitive examination. City of Somerville v. Somerville Municipal Employee's Ass'n, 20 Mass.App.Ct. 594, 598, rev.den., 396 Mass. 1102 (1985), citing McLaughlin v. Commissioner of Pub. Works, 204 Mass. 27, 29 (1939) After decades without HRD holding competitive examinations for most non-public safety civil service positions, however, and the professed lack of appropriations to permit examinations in the near future, the vast majority of current and future non-public safety civil service employees have not taken or passed, and never will take, a qualifying examination for the position they occupy or aspire to achieve. As a result, appointments and promotions to nearly all non-public safety civil service positions in the official service in Massachusetts now can be lawfully accomplished only provisionally. Thus, the exception has now swallowed the rule. An appointment or promotion "which is provisional in form" is, essentially, "permanent in fact." Kelleher v. Personnel Administrator, 421 Mass. 382, 399 (1995).
  10. However, the Commission has taken the position that it must continue to apply the civil service law as written. Bulger v. Contributory Retirement Appeal Bd., 447 651, 661 (2006), quoting Commissioner of Revenue v. Cargill, Inc., 429 Mass. 79, 86 (1999). If there is a flaw in the statutory procedure, it is a flaw for the General Court to address, whether on a systemic basis or through special legislation. Kelleher at 389.

11. As part of the pre-hearing conference, after discussing all of the above issues, I advised the Appellant, after considering all of the above, to consider whether he wished to pursue his appeal further.
12. A few days later, the Appellant informed the Commission that he did indeed wish to pursue his appeal.
13. There does not appear to be any genuine issue of fact regarding the instant appeal.
14. 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 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/
15. For all of the above reasons, DOC was given thirty (30) days to file a Motion for Summary Decision and the Appellant had thirty (30) days to file a reply.
16. DOC filed a Motion for Summary Decision. The Appellant did not file an opposition.

For all of the above reasons, and those stated in DOC's Motion for Summary Decision, the motion is allowed and the Appellant's appeal under Docket No. E-18-066 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Stein and Tivnan, Commissioners [Ittleman – Absent]) on October 25, 2018.

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:

Giuseppe Placenti (Appellant)  
Joseph Santoro (for Respondent)  
Melinda Willis, Esq. (HRD)