

The Commonwealth of Massachusetts

Decision mailed: 10/23/09
Civil Service Commission
03

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

PAUL J. RAMETTE,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

Case No.: G2-09-57

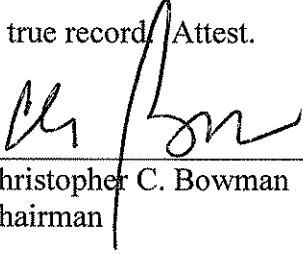
DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on October 22, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 28, 2009. No comments were received from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

A copy of the Magistrate's report is enclosed herewith. The Appointing Authority's Motion to Dismiss is allowed, thus the Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on October 22, 2009.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Paul J. Ramette (*pro se*)
Jeffrey S. Bolger (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
98 NORTH WASHINGTON STREET, 4TH FLOOR
Boston, MA 02114

Tel: 617-727-7060
Fax: 617-727-7248

RECEIVED
2009 AUG 31 A 10:01
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

August 28, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Paul J. Ramette v. Department of Correction
DALA Docket No. CS-09-351

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c), they have thirty (30) days to file written objections to the Recommended Decision with the Civil Service Commission, which may be accompanied by briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections.

Sincerely,

Richard C. Heidlage (das)
Richard C. Heidlage
Acting Chief Administrative Magistrate

RCH/das

Enclosure

cc: Paul J. Ramette
Jeffrey S. Bolger

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Paul J. Ramette,
Appellant

v.

Docket Nos. G2-09-57; CS-09-351

Department of Correction,
Appointing Authority

Appearance for Appellant:

Pro Se


Appearance for Appointing Authority:

Jeffrey S. Bolger
Director of Employee Relations
Department of Correction
Division of Human Resources
Route 1A, Industries Drive
P.O. Box 946
Norfolk, MA 02056

Administrative Magistrate:

Judithann Burke

CASE SUMMARY

Correction Officer who, on his Site Selection Form, designated on six out of sixteen sites for promotion and was not promoted failed to establish a case for which the Civil Service Commission may provide a remedy. It is recommended that the Appointing Authority's Motion to Dismiss be allowed.

RECOMMENDED DECISION ON MOTION TO DISMISS

Paul J. Ramette is seeking review of the action by the Department of Correction (DOC) which he claims bypassed him for appointment to the position of Correction Officer Sergeant in the DOC. (Exhibit 9). The Human Resources Division has delegated Civil Service functions to the DOC, and therefore, is not a party to this case. (Exhibit 5).

On March 4, 2009, the Appointing Authority filed a Motion to Dismiss, arguing therein that the Appellant has not established a case for which the Civil Service Commission may provide a remedy. (Exhibit 6). The Appellant answered the Motion to Dismiss on March 24, 2009. (Exhibit 8). A hearing on the Motion to Dismiss was held on July 1, 2009 at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA.

At the hearing, nine (9) exhibits were marked. The Appellant testified and argued in his own behalf. The Appointing Authority presented its argument for the record. One (1) tape was made of the proceedings.

FINDINGS OF FACT

Based upon the testimony and documents submitted at the hearing on the Motion to Dismiss, I hereby render the following findings of fact:

1. The Appellant, Paul J. Ramette, is a Correction Office II (CO II) in the DOC with a seniority date of January 3, 1988. He is assigned to the MIC Norfolk facility. (Exhibit 6 and Testimony).

2. The current Site Selection Form utilized by the DOC when employees request a promotion or a transfer has been used by the DOC for several years on dozens of certifications where there are appointments to be made from multiple work locations.

The instructions on the form provide as follows:

In order to fill vacant Correction Officer II positions, the Department of Correction and the Massachusetts Correction Officers Federated Union have agreed to use one Civil Service Certification (list).

Selections for these positions will be based on Civil Service score and employment history in the Department of Correction.

Please indicate your preference of locations by indicating #1 as your first choice, #2 as your second choice, up to #16. **If you do not indicate multiple institutions as a preference, you will not be considered for a promotion at sites not selected.** (Emphasis added).

The sixteen DOC facilities are then listed below the instructions. (Exhibit 1).

3. The Appellant listed only six locations on his Site Selection Form. His selections, in the order of preference, were:

1. MCI Norfolk
2. Boston Pre-Release Center
3. Shattuck Hospital Correctional Unit
4. Bay State Correctional Center
5. MCI Plymouth
6. Northeast Correctional Center

(Exhibit 6).

4. The Appellant scored an 81 on the promotional examination. His score tied with several other candidates. No applicant with a score of 81 or below was promoted to any of the six institutions that were selected by the Appellant. (*Id.*).

CONCLUSION AND RECOMMENDED DECISION

The facts in this case are not in dispute. No applicant for promotion to CO Sergeant with a score lower or identical to that of the Appellant was promoted to any of the six facilities designated by the Appellant on the Site Selection Form. Accordingly, the Appointing Authority did not by-pass the Appellant for promotion.

As noted by the Appointing Authority, G.L. c. 31 §§ 3(d) and 5 define "bypass":

...the selection of a person or persons whose name or names
...appear lower on a certification than a person or persons
who are not appointed and whose names appear higher on
said certification.

While there were persons with scores lower than that of the Appellant who were appointed to the position of CO Sergeant, these people were appointed to facilities that were not designated by the Appellant. Ergo, he was not bypassed for promotion to any of the facilities that he designated.

The Appellant's contention that the Appointing Authority should have contacted him and provided him with other options for promotion locations, this contention is without merit. The Site Selection Form has been used for several years on dozens of certifications where appointments have been made to multiple work locations. It is clear and unambiguous. The Appellant was not considered for promotion to any facility that he did not designate. The failure of the Appointing Authority to consider him for promotion to any other facility or to contact him was neither arbitrary nor capricious. The responsibility for the completion of the Site Selection Form was the Appellant's alone.

In conclusion, the Appellant, who has not established a by-pass, has failed to establish a case for which the Civil Service Commission can provide a remedy. I recommend that the Appointing Authority's Motion to Dismiss be ALLOWED.

Division of Administrative Law Appeals:
BY,

A handwritten signature in cursive script, appearing to read "Judithann Burke".

Judithann Burke
Administrative Magistrate

DATED: **AUG 28 2009**