

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

PATRICK ROCHA,
Appellant

v.

G1-21-140

BOSTON FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Patrick Rocha

Appearance for Respondent:

Robert J. Boyle, Jr. Esq.
City of Boston
Office of Labor Relations
Boston City Hall, Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

On August 10, 2021, the Appellant, Patrick Rocha (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection as a firefighter by the Boston Fire Department (BFD). On October 19, 2021, I held a remote pre-hearing conference which was attended by the Appellant, co-counsel for the BFD and the BFD’s Human Resources Director. As part of the pre-hearing, the parties stipulated to the following:

- A. On March 24, 2018, the Appellant took the written portion of the firefighter examination administered by the state’s Human Resources Division (HRD).
- B. The Appellant, after subsequently taking the entry level physical abilities test (ELPAT) portion of the examination, received a total score of 94.

- C. On December 1, 2018, HRD established an eligible list for Boston firefighter.
- D. On October 26, 2020, at the request of the BFD, HRD issued Special Language Certification (Cape Verdean) No. 07412 to the BFD.
- E. According to the BFD, the Appellant was ranked 11th among those willing to accept appointment on that special certification and 4 candidates from Certification No. 07412 were appointed as firefighters by the BFD.

At the pre-hearing, the BFD argued that the Commission has no jurisdiction to hear this appeal as: a) the Appellant was not eligible for appointment because he was not within the “2N+1” formula of candidates that could be considered; and all candidates appointed from the special certification were ranked above him.

The Appellant argued that his non-selection was related to what he believes was an erroneous determination by a private vendor that determined that he was not proficient in the Cape Verdean language, where the Appellant resided for the first 17 years of his life. According to the BFD, if the Appellant’s name appears on a special language certification in the future, *and he is within the 2N+1 formula*, he will have another opportunity to show that he is proficient in the Cape Verdean language.

Based on the above, I informed the Appellant that he will be unable to show that he is an aggrieved person under the civil service law as he was not eligible for appointment, regardless of the language proficiency determination. The Appellant chose not to withdraw his appeal. I provided the opportunity for the BFD to file a motion to dismiss the Appellant’s appeal and the Appellant to file a reply. Submissions were received by both parties in which they reiterated their arguments from the pre-hearing conference.

Legal Standard for Summary Disposition

An appeal may be disposed of on summary disposition when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

Analysis / Conclusion

The Appellant is not an aggrieved person under the civil service law. Regardless of the results of his language proficiency examination, he was not eligible for appointment under the 2N+1 formula. Thus, there has been no actual harm to his employment status. Further, if and when the Appellant is ranked high enough to be considered for appointment on a Cape Verdean special certification in the future, he will have an additional opportunity to show that he is proficient in the Cape Verdean language.

While I am not unsympathetic to the Appellant’s argument that a private vendor may, according to him, have made an erroneous determination regarding his language proficiency, that determination had no impact on his eligibility for his (current or future) appointment to the Boston Fire Department.

For all of the above reasons, the BFD’s Motion to Dismiss is allowed and the Appellant’s appeal under Docket No. G1-21-140 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein and Tivnan, Commissioners [Ittleman – Absent]) on December 2, 2021.

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:

Patrick Rocha (Appellant)

Robert J. Boyle, Jr., Esq. (for Respondent)