

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

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

JUAN RODRIGUES,  
*Appellant*

v.

G1-22-140

CITY OF TAUNTON,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Juan M. Rodrigues

Appearance for Respondent:

Peter F. Winters, Esq.  
City of Taunton  
Law Department  
15 Summer Street  
Taunton, MA 02780

Commissioner:

Christopher C. Bowman

**SUMMARY OF DECISION**

The Commission dismissed the Appellant's bypass appeal based on the fact that he was ineligible for appointment as a Taunton police officer as the City has accepted those provisions of the civil service law setting a maximum age restriction of 32 regarding the appointment of police officers, which the Appellant exceeded.

**DECISION ON RESPONDENT'S MOTION FOR SUMMARY DECISION**

On October 12, 2022, the Appellant, Juan M. Rodrigues (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Taunton (City) to not consider him for appointment as a police officer in the City's Police Department (Department) based on the City's determination that the Appellant exceeded the maximum age

restriction of 32, as established by G.L. c. 31, § 58A.

The Appellant failed to appear for a remote pre-hearing conference scheduled for November 15, 2022. The Appellant responded to an order to show cause why his appeal should not be dismissed for lack of prosecution with a request to re-schedule the pre-hearing. As this appeal involved a question of jurisdiction, I provided the City with the opportunity to submit a motion for summary decision and the Appellant with an opportunity to submit a reply. The Town subsequently submitted a motion for summary decision and the Appellant did not submit a reply.

*Motion for Summary Decision Standard*

A party before the Commission may file a motion for summary decision pursuant to 801 CMR 1.01(7)(h), which states:

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 or she 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.

These motions are decided under the well-recognized standard for summary disposition as a matter of law, *i.e.*, “viewing the evidence in the light most favorable to the non-moving party,” the substantial and credible evidence established that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case,” and has not rebutted this evidence by “plausibly suggesting” the existence of “specific facts” to raise “above the speculative level” the existence of a material factual dispute requiring an evidentiary hearing. *See, e.g., Lydon v. Massachusetts Parole Board*, 18 MCSR 216 (2005); *Milliken & Co., v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 249 (2008); *see also Iannacchino v. Ford Motor Company*, 451 Mass. 623, 635-36 (2008)

(discussing standard for deciding motions to dismiss); *cf.* R.J.A. v. K.A.V., 406 Mass. 698 (1990) (denying motion to dismiss due to factual issues bearing on plaintiff's standing).

*Analysis*

By vote of the Municipal Council on January 30, 2001, the Town accepted the provisions of G.L. c. 31, § 58A which states:

Notwithstanding the provisions of any general or special law to the contrary, in any city, town or district that accepts this section, no person shall be eligible to have his name certified for original appointment to the position of firefighter or police officer if such person has reached his thirty-second birthday on the date of the entrance examination. Any veteran shall be allowed to exceed the maximum age provision of this section by the number of years served on active military duty, but in no case shall said candidate for appointment be credited more than four years of active military duty.

By the Appellant's own admission, he exceeded the maximum age restriction by more than 4 years at the time of the civil service examination. Further, at my request, the City reviewed its police personnel records and confirmed that, since the acceptance of Section 58A, no candidate has been appointed who exceeded the maximum age requirement.

*Conclusion*

Based on the undisputed fact that the Appellant, based on his age, is statutorily ineligible for appointment as a Taunton Police Officer, the Town's Motion for Summary Decision is allowed and the Appellant's bypass appeal under Docket No. G1-22-140 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on February 23, 2023.

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:

Juan M. Rodrigues (Appellant)

Peter F. Winters, Esq. (for Respondent)