

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

TONY RODRIGUES,
Appellant

v.

DEPARTMENT OF CORRECTION,
Respondent

Docket Number: G2-24-200

Appearance for Appellant: *Pro Se*
Tony Rodrigues

Appearance for Respondent: Eamonn Sullivan, Esq.
Department of Correction
50 Maple Street
Milford, MA 01757

Commissioner: Christopher C. Bowman

SUMMARY OF DECISION

The Commission affirmed the decision of the Department of Correction (DOC) to bypass a candidate for promotional appointment to sergeant based on the undisputed fact that the candidate was and is physically unable to perform the essential function of the position.

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On December 27, 2024, the Appellant, Tony Rodrigues (Appellant), a Correction Officer I (CO I) at the Department of Correction (DOC), filed a promotional bypass appeal with the Commission, contesting the decision of DOC to bypass him for promotional appointment to the position of Correction Officer II (CO II). On January 28, 2025, I held a remote pre-hearing

conference which was attended by the Appellant and counsel for DOC. After the pre-hearing conference, DOC filed a motion for summary decision and the Appellant filed an opposition.

UNDISPUTED FACTS

The following facts are undisputed unless otherwise noted:

1. On October 23, 2020, the Appellant took and passed the promotional examination for CO II.
2. On January 15, 2021, the Appellant's name was placed on the eligible list for CO II.
3. On August 12, 2024, Certification No. 10063 was issued to DOC from which DOC promoted 82 candidates to CO II. The Appellant was ranked 7th on this certification and 45 of the candidates promoted were ranked below him.
4. On October 29, 2024, the Appellant was notified that he was bypassed: "pending receipt of full duty clearance to return to work."
5. At the time of the promotional appointment, the Appellant was on leave, collecting section 111F disability benefits, because of a work-related injury.
6. The Appellant was still on injured leave and his return to work was not anticipated for months.
7. In addition to this appeal, the Appellant has filed a complaint with the Massachusetts Commission Against Discrimination (MCAD) and a grievance related to his non-selection for this reason, alleging that DOC is engaging in discrimination.
8. DOC has also filed an involuntary disability retirement application regarding the Appellant, which is pending.

APPLICABLE CIVIL SERVICE LAW

Section 14(3) of the Personnel Administration Rules (PAR 14(3)) states:

No permanent employee shall be regarded as promoted within the requirements of these rules unless he is actually employed in the

position to which he is promoted within thirty days from the date of receipt of notice by the administrator of promotion.

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Appointments of civil service employees, including promotional appointments, are made from a list, called a “certification”, with candidates’ names ranked in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both, but consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’” Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

The governing statute, G.L. c. 31, gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority’s action” and it is not necessary that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). This Commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*, then the occasion is appropriate for intervention by the commission.” Id. (*emphasis added*). See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

STANDARD FOR SUMMARY DISPOSITION

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be decided on summary disposition only 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 Bd.*, 18 MCSR 216 (2005). *See also Mangino v. HRD*, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); *Morehouse v. Weymouth Fire Dep’t*, 26 MCSR 176 (2013) (“a party may move for summary decision when . . . there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

ANALYSIS

The Appellant alleges that DOC violated provisions of the applicable collective bargaining agreement (CBA) when they failed to promote him to CO II based solely on the fact that he was out on injured leave—and would be for *at least* another thirty days—at the time the promotions were made. The vehicle for pursuing appeals related to alleged violations of the CBA is the grievance and arbitration process, which the Appellant has already initiated. The question before the *Commission* is whether DOC’s decision to bypass the Appellant here constitutes a violation of the *civil service law and rules*. It does not.

In [Walker v. Department of Correction, 20 MCSR 78 \(2007\)](#), when presented with an almost identical set of facts, the Commission concluded that:

It is the conclusion of this Commission that the Respondent has met its burden of proving that there was a reasonable justification for bypassing Appellant for the position of Correction Officer II. Specifically, the evidence proffered by the Respondent is sufficiently reliable to warrant a reasonable mind to find that the Appellant (who had been on Industrial Accident leave since June 27, 2001, and, as of four (4) days prior to the effective promotion date, filed a continuing disability claim form which included his

treating physician's opinion that he would be unable to return to work for at least six (6) additional months) would not be able to assume the duties attendant to the Correction Officer II position within thirty (30) days, as required by Personnel Administration Rule 14(3). See McCarthy v Haley, 4 MCSR 236, Suffolk Superior Court C.A. 90-5027, June 28, 1991 (Superior Court affirmed bypass for medical reasons justified where officer had been medically incapacitated for more than one year and treating physician had submitted a report one month before the promotion decision stating it was unknown when, if ever, officer would be able to return to his duties); Nahorniak v. City of Springfield, 5 MCSR 1025 ("Appointing Authority has no obligation to hire or promote an applicant for employment who is unable to physically perform the duties of the position he seeks."); Appeal of Robert F. McCarthy, G-1659, 6/25/90; Appeal of Paul Smachetti, A-550, 1/26/89 (appellant's knee injury rendering him incapable for an indeterminate period of performing the essential functions of the job, justifies his bypass for selection as a firefighter).

Nothing in the instant appeal is significantly distinguishable from the facts in Walker and the Appellant here has not made any argument that would result in a different conclusion by the Commission. In short, based on the undisputed facts, DOC was justified in bypassing the Appellant for promotional appointment as he was unavailable to be promoted within 30 days of the promotional appointment due to his work-related injury.

CONCLUSION

DOC's Motion for Summary Decision is allowed and the Appellant's appeal under Docket Number G2-24-200 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 and Stein [Markey – Absent]) on April 3, 2025.

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:

Tony Rodrigues (Appellant)

Eamonn Sullivan, Esq. (for Respondent)