

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617)727-1900

JOSEPH SANTILLI,
Appellant,

v.

BOSTON POLICE DEPARTMENT
Respondent

G1-17-196

Appearance for Appellant:

Joseph Santilli, *Pro se*

Appearance for Respondent:

James McGee, Esq.¹
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Cynthia Ittleman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), Mr. Joseph Santilli (“Appellant”), appealed the decision of the Boston Police Department (“BPD”) not to consider him for original appointment to the of position full-time police officer in the BPD. The Appellant filed the instant appeal September 28, 2017. A prehearing conference was held in the case on October 24, 2017 at the offices of the Civil Service Commission (“Commission”). A full hearing was scheduled to take place on January 24, 2018 at the same location. However, on

¹ At the time of the hearing in this case, the Boston Police Department was represented by Attorney Peter Geraghty, who is no longer employed there.

January 22, 2018, the parties submitted a joint request that the Commission exercise its powers inherent in Chapter 310 of the Acts of 1993 (“310 Relief”) and direct the state’s Human Resources Division (HRD) to place the Appellant’s name at the top of the next Certification for appointment to the position of fulltime police officer at the BPD. Chapter 310 specifically provides that such relief is available when the appellant’s civil service rights have been infringed through no fault of his own. *See, e.g., Geary v Salem Police Department*, G-01-634. However, the parties’ joint request specifically states, in part, that “[i]t is not disputed that Mr. Santilli did not sign the list for Certification No. 04401” and that, thereafter, there was some miscommunication among BPD personnel about the Appellant’s status such that he met with a member of the RIU and was given an application to complete. The joint request further states that the Appellant did not take the next civil service exam for police officer as further reason to request Chapter 310 Relief. In my January 23, 2018 response to the joint request, I advised the parties, “[w]ithout a clear understanding of how Mr. Santilli was able to initially proceed with the BPD’s review process without signing the certification, the record does not establish, at this time, that he is aggrieved.” I further suggested that the January 24 hearing date be converted to an informal status conference so that BPD’s Director of Human Resources, who was referenced at the pre-hearing conference, could appear to provide further clarification. Mr. Santilli and then-BPD counsel appeared on January 24 but the BPD HR Director did not appear and was not available by phone. The BPD rescinded its assent to the 310 Relief request and the Commission denied the relief at that time. As the BPD was unavailable until May, the full hearing² was rescheduled and took place on May 15, 2018. The hearing was digitally

² The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

recorded and the parties received a CD of the proceeding.³ The parties submitted post-hearing briefs on June 26, 2018. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Nineteen (19) exhibits (Respondent's Exhibits marked R.Ex. and Appellant's Exhibits marked A.Ex.) were entered into evidence, including three (3) exhibits the parties were ordered at the hearing to produce thereafter. Based on these exhibits, the testimony of the following witnesses:

Called by the Appointing Authority:

- Nancy Driscoll, then-Director of Human Resources, BPD

Called by the Appellant:

- Joseph Santilli, Appellant

and taking administrative notice of all matters filed in the case; pertinent statutes, regulations, policies, stipulations and reasonable inferences from the credible evidence; a preponderance of the evidence establishes the following:

1. The Appellant is a long-time resident of Boston and a graduate of Northeastern University. At or about the time that he applied to the BPD for employment as a Police Officer, the Appellant was involved in the real estate business and he coached youth sports teams. The Appellant's grandfather had been a member of the BPD, one of the Appellant's cousins was a member of the BPD and the Appellant has a number of friends who work at the BPD. (Testimony of Appellant)

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

2. The Appellant took and passed the 2015 civil service examination for police officer. (R.Ex. 1) His name appeared on Certification #04401 for the position of Police Officer at the BPD. (Testimony of Driscoll)

3. The BPD had a practice with respect to receipt and posting of the Certification in connection with its review of applicants for the position of Police Officer. After Ms. Driscoll, the then-Director of Human Resources at the BPD, received a civil service certification list from HRD, she printed the Certification and wrote the date and time she received it. Ms. Driscoll then notified Deputy Superintendent Walcott that she had received the certification. Dep. Supt. Walcott oversaw the Recruit Investigation Unit (“RIU”). Ms. Driscoll also advised the Police Commissioner that she received the Certification. Finally, Ms. Driscoll advised RIU Sergeant Detective(s) (“Sgt. Dets.”) that she had received the certification and she directed the Sgt. Dets. to obtain retrieve the Certification and post it in the lobby at the BPD Headquarters for interested candidates on the Certification to sign. (Testimony of Driscoll)

4. Ms. Driscoll noted on the Certification the date and time that she provided the Certification to a member of RIU. (Testimony of Driscoll)

5. RIU Detectives retained the Certification. During business hours, applicants may sign the Certification in the lobby of the BPD Headquarters to express their interest in becoming a Boston Police Officer. (Testimony of Driscoll)

6. RIU Detectives monitored the Certification during business hours. When an applicant appeared to sign the Certification, the detective on duty asked the applicant to fill out a card with their contact information. (Testimony of Driscoll)

7. HRD determines the date that a Certification closes. The closing date appears on the Certification sent to BPD. (*See Personnel Administration Rules (PAR).08*) HRD instructs applicants via email to appear at the BPD Headquarters to indicate their interest in becoming a Boston Police Officer prior to the closing date. After the closing date, applicants are not permitted to sign the Certification. (Testimony of Driscoll)
8. Once the Certification is closed, Ms. Driscoll obtains it and keeps it under lock and key in her office. (Testimony of Driscoll)
9. In order for someone to be considered for employment by the BPD, the person must sign the Certification, with one exception. If someone on the Certification is on active military duty and cannot appear at the BPD Headquarters to sign the Certification, HRD allows the person to send a family member to sign it. If no family member is available to sign, HRD allows Ms. Driscoll to sign on the person's behalf and the candidate is placed in a military hold status in connection with the hiring process. (Testimony of Driscoll)
10. In February 2018, Ms. Driscoll received Certification #04401 from HRD. (Testimony of Driscoll; R.Ex. 1)
11. On Certification #04401, HRD indicated that the closing date for the Certificate was S March 2, 2017, the date upon which any candidate on the Certification must sign indicating their willingness to accept appointment. (Testimony of Driscoll; R.Ex. 1)
12. Ms. Driscoll gave the Certification to RIU at 9:00 a.m. on February 23, 2017. (Testimony of Driscoll; R.Ex. 1)⁴
13. On February 23, 2017, at 9:26 a.m., the Appellant received an email from HRD, at tillibeach@xxxxxx.com, his email address of record at the time in HRD's Neogov web

⁴ RIU made an additional copy of the Certification #04401 in order to expedite the signing process, due to the high volume of individuals coming in to sign it. Accordingly, both copies of the Certification have signatures.

portal (“Neogov”). The email notified the Appellant that the BPD was hiring full time police officers and directed him to report to BPD Headquarters on or before March 2, 2017 to be considered for appointment. (Testimony of Appellant, A.Ex. 5)⁵

14. The Appellant did not appear at BPD Headquarters on or before March 2, 2017 and did not sign Certification #04401. (Testimony of Driscoll; R.Exs. 1 and 2)

15. Consistent with her practice, on March 10, 2017, Ms. Driscoll noted the Appellant’s removal from the hiring process in Neogov because of his failure to sign the Certification. (Testimony of Driscoll; R.Ex. 6)

16. Sometime after the March 2, 2017 closing date for signing Certification 04401, the Appellant contacted the BPD and attempted to be processed for appointment for the position of Police Officer. (Testimony of Appellant)

17. On May 11, 2017, Sgt. Det. Besold, one of the commanders in RIU at the time, became aware that Sgt. Det. Riley, another RIU commander, had mistakenly assigned a detective to conduct a background investigation of the Appellant based on the Appellant’s representation that he had been directed to RIU by Ms. Driscoll. (R.Ex. 4)

18. Also on May 11, 2017, Sgt. Det. Besold spoke with Ms. Driscoll. Ms. Driscoll denied that she had directed the Appellant to contact the RIU. Ms. Driscoll reviewed documentation and informed Sgt. Det. Besold that the Appellant had not signed Certification 04401 and, for that reason, the Appellant’s name had been removed from the

⁵ The Appellant alleges that he did not provide this email address to HRD and that he was not monitoring this email account in February 2017. The BPD did not address arguments concerning the accuracy of Neogov or HRD’s recordkeeping in general because, it asserts, such arguments do not pertain to any actions taken by the BPD. However, the BPD adds that according to HRD’s records produced in this case, the Appellant did not change his email address at HRD until June 21, 2017, at 3:39 p.m., shortly after the phone call in which he contends that Ms. Driscoll told him he would not complete the hiring process. (Post-hearing documents produced by BPD pursuant to an order issued at the hearing were obtained by BPD from HRD Labor Counsel Mark Detwiler on May 25, 2018).

HRD master list. Sgt. Det. Besold left a message for the Appellant in this regard on May 11, 2017. (R.Ex. 4)

19. The Appellant called RIU on May 12, 2017 and spoke to Sgt. Det. Riley. During the call, the Appellant confirmed to Sgt. Det. Riley that he had not signed Certification 04401 because, according to the Appellant, he did not receive the email from HRD informing him to do so to indicate his interest in the position. (R.Exs. 4 and 5)⁶

20. Both Sgt. Dets. Besold and Riley submitted reports to Dep. Supt. Walcott about their communications with the Appellant. (Id.)

21. After Dep. Supt. Walcott and Ms. Driscoll became aware of the miscommunication between the Appellant and Sgt. Det. Riley, the Appellant was not considered for appointment.

22. The Appellant filed the instant appeal. (Administrative Notice)

Applicable Law

Pursuant to G.L. c. 31, § 27, a bypass occurs,

“... [i]f an appointing authority makes an original or promotional appointment from a certification of any qualified person other than the qualified person whose name appears

⁶ Appellant’s Exhibit 1 is a list of calls made on his cell phone in the spring of 2017 which he asserted were phone numbers he had called (or received calls from) at the BPD to inquire about his status in the hiring cycle involving Certification 04401. The Appellant’s first call to the BPD in this regard was on March 5, 2017 (three (3) days after the March 2 deadline to sign the Certification) to his cousin who works there. The same exhibit also indicated that the Appellant called the BPD (or received a call from the BPD) at various phone numbers on March 7 and 22, twice in May and fifteen times in June, 2017 regarding his status. At the hearing, I asked counsel for BPD to share the phone numbers with Ms. Driscoll outside the Commission hearing room and to report whose phone numbers they were at the BPD. Ms. Driscoll did not recognize some of the phone numbers at all, she recognized certain central phone numbers of various BPD divisions (e.g. Human Resources, RIU and Internal Affairs) and Ms. Driscoll acknowledged Appellant’s Ex. 1 indicated that three (3) calls had been made to her by the Appellant, from her to the Appellant June 20 and 21, 2017, or a combination thereof. However, as the Director of BPD Human Resources, Ms. Driscoll received numerous phone calls from interested parties during the hiring process and she did not recall having phone conversations with the Appellant. At the hearing, I ordered the BPD to conduct a search of Ms. Driscoll’s email for the hiring process period to determine if she had any email communications concerning the Appellant. Post-hearing, the BPD submitted the sole email it found in this regard from RIU inquiring about the Appellant’s status. There is no indication that Ms. Driscoll responded via email. I note for the record that Appellant’s Ex. 1 covers the Appellant’s cell phone calling record for the month of March, although the parties referenced calls in May and June.

highest, and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator a written statement of his reasons for appointing the person whose name was not highest. Such an appointment of a person whose name was not highest shall be effective only when such statement of reasons has been received by the administrator. The administrator shall make such statement available for public inspection at the office of the department.
(Id.)⁷

Personnel Administrator Rule (“PAR”) .02 defines a bypass as “the selection of a person or persons whose name or names, by reason of score, merit preference status, court decree, decision on appeal from a court or administrative agency, or legislative mandate, appear lower on a certification than a person or persons who are not appointed and whose names appear higher on said certification.” Id.

Upon an appeal of a bypass by a candidate for employment, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. Brackett v. Civil Serv. Comm’n, 447 Mass. 233, 241 (2006). Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Comm’rs of Civil Serv. v. Mun. Ct., 359 Mass. 211, 214 (1971)(quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

Analysis

There is no dispute that the Appellant did not sign Certification #04401 on or before March 2, 2017, the deadline imposed by HRD.⁸ Furthermore, the fault for the Appellant’s

⁷ In 2009, the state’s Human Resources Division (HRD) delegated to certain municipalities, including Boston, a number of hiring functions that it previously performed. As a result, the delegated municipalities are required to maintain appropriate records of their bypasses.

⁸ The Appellant’s argument that the BPD should have allowed him to enter the hiring process without timely signing the Certification is misdirected. As Ms. Driscoll testified, HRD sets the deadline for signing a Certification. The Appellant further argues that he should have been allotted additional time to sign Certification #04401 because other candidates were granted that opportunity. As indicated at the hearing, the

failure to sign the Certification prior to the deadline lies solely with the Appellant. Specifically, the Appellant admitted at the hearing that he was not monitoring the email account on file with HRD and, therefore, he did not read the email notice in this regard until sometime after March 2, 2017. The Appellant avers that the BPD should have allowed him to sign Certification #04401 when he contacted them after the March 2, 2017 deadline but his argument lacks merit.

Notwithstanding the Appellant's failure to timely sign Certification #04401, he asserts that the Commission should grant his appeal because of communications he had with BPD employees after the March 2, 2017 deadline. However, having led the RIU to believe that it was appropriate for him to be processed for consideration when it was not, the Appellant cannot rely on Sgt. Det. Riley's mistaken assignment of a detective to conduct a background investigation weeks after Certification #04401 closed to successfully argue that he was actually considered and bypassed for appointment and it is not a valid reason for overturning the BPD's decision.⁹ Under the circumstances here, the BPD was not required to extend the Certification deadline for the Appellant. Moreover, under the circumstances, extending the deadline for the Appellant to sign the Certification in this case would result in

handful of candidates who were granted limited extra time to sign this Certification were either candidates who were on active military duty, their names were added to the list by HRD pursuant to BPD's request for additional names, a Commission decision granted a candidate's bypass appeal or the candidate had been previously hired but did not complete their probationary period (*see* Personnel Administration Rule 7.02).

⁹ There is substantial evidence that contradicts the Appellant's contention that Ms. Driscoll permitted him to enter the process weeks after the Certification closed and sent him to RIU to be processed. First, Ms. Driscoll removed the Appellant from the hiring process on March 10, 2017 in Neogov based on his failure to sign the certification. Second, Ms. Driscoll testified that her practice, when contacted by prospective candidates inquiring about their status, is to check the Certification to make sure the individual signed the list. If the individual has not signed the Certification by the deadline, Ms. Driscoll advises the candidate that they will not be processed for appointment. Third, as indicated in the reports of Sgt. Dets. Riley and Besold, the miscommunication and subsequent action by Sgt. Det. Riley was caused by the Appellant's representation to Riley that he had been directed to RIU to be processed by Ms. Driscoll, who testified that she did not so direct the Appellant. Testimony of Driscoll; R.Exs. 4, 5 and 6.

disparate treatment of other individuals who may have missed the deadline but did not contact the RIU and provide ambiguous or misleading information.

Conclusion

Based on the foregoing, Mr. Santilli's appeal, docketed as G1-17-196, is hereby ***denied.***

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on October 8, 2020.

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:

Joseph Santinelli (Appellant)
James McGee, Esq. (for Respondent)
Jennifer Samson, Legal Assistant (for Respondent)
Melinda Willis, Esq. (for HRD)