

COMMONWEALTH OF MASSACHUSETTS

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:

James Heggie, Esq.
Law Offices of James J. Heggie
333 Ricciuti Drive, Suite 1721
Quincy, MA 02169

Appearance for Respondent:

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

Commissioner:

Cynthia Ittleman¹

DECISION ON REMAND

On October 8, 2020, the Civil Service Commission (Commission) issued its decision denying the bypass appeal of Joseph Santilli (Appellant). The Appellant thereafter sought judicial review of the Commission’s decision. On August 10, 2021, the Court (Gordon, J.) issued a decision² remanding the matter to the Commission “for further consideration” and,

¹ Cynthia A. Ittleman, a Commissioner at the time of the remand status conference and hearing, served as the hearing officer in this matter. She has since retired from the Commission. Prior to leaving the Commission, however, Ms. Ittleman drafted this Decision on Remand.

² The Commission did not receive a copy of the Court’s decision until the week of December 6, 2021.

specifically, for “further findings concerning: (1) the source of Santilli’s duty, if any, to monitor the tillibeach email; (2) why HRD used the Santilli.j email address to communicate with Santilli regarding the 2015 civil service exam; and (3) whether and, if so, to what extent Santilli is entitled to relief pursuant to St. 1993, c. 310 in view of the additional findings required by this Order.” Santilli v Civil Service Commission and the Boston Police Department, Suffolk Superior Court, 2084CS02594 (Gordon, J.) (August 10, 2021 Memorandum and Order).

On January 19, 2022, after due notice, the Commission conducted a remote hearing³ in this regard.⁴ The hearing was attended by counsel for the Boston Police Department (BPD); counsel for the state’s Human Resources Division (HRD) and James Barron, of the HRD Civil Service Unit; and counsel⁵ for the Appellant and the Appellant. At the hearing, the Appellant testified on his own behalf and James Barron testified on behalf of HRD. The hearing was recorded via Webex and the parties received a link to an audio-visual copy of the proceeding.⁶ Counsel for the Appellant, the Boston Police Department and HRD submitted post-hearing briefs in the form of Commission decisions, as requested. HRD’s post-hearing brief included a “Supplemental Affidavit of Gilbert Lefort, II”. Mr. Lefort is also a member of the HRD Civil Service Unit. The parties were afforded the opportunity to submit comments on each other’s

³ 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.

⁴ In view of the pandemic and the state’s related orders, the January 19, 2022 Commission hearing was held remotely by WebEx. I conducted the January 19, 2022 hearing with Commission General Counsel Rob Quinan.

⁵ This was the first time that an attorney appeared at the Commission on behalf of Mr. Santilli. While Mr. Santilli’s appeal was pending at the Commission, he was asked if he was represented by counsel and he stated he was not. There is no indication in Commission records that an attorney filed an appearance on behalf of Mr. Santilli or otherwise communicated with the Commission in support of Mr. Santilli’s then-pending appeal. Neither Mr. Santilli, Attorney Heggie, nor counsel for the Boston Police Department informed the Commission of the judicial remand order until December 2021.

⁶ 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.

post-hearing briefs and attachments, if any; only counsel for the Appellant submitted comments, which were brief.

FINDINGS OF FACT

Six (6) additional exhibits were entered into evidence. The exhibits are:

1. 2015 Civil Service Exam Poster
2. Email message to the Appellant regarding his score on the 2015 civil service exam
3. HRD's Civil Service Unit NeoGov system – Master Record
4. NeoGov – Transmittal Record
5. NeoGov – Audit Trail
6. Affidavit of Gilbert Lefort, II (with attachments)

Based on the exhibits, the testimony of the following witnesses:

Called by HRD:

- James Barron, Assistant Director of HRD Civil Service Unit

Called by the Appellant:

- Joseph Santilli, Appellant

Called by the Boston Police Department:

- none

and taking administrative notice of all matters filed in the case, including the Commission's October 8, 2020 decision and judicial review thereof; pertinent statutes, regulations, policies, stipulations and reasonable inferences from the credible evidence; a preponderance of the evidence establishes the following:

1. The Appellant took and passed the 2015 civil service exam for police officer. The Appellant has not taken a civil service exam for the position of municipal police officer since 2015. (Testimony of Appellant)

The NeoGov System

2. The Commonwealth of Massachusetts' HRD uses the NeoGov system, an electronic computer program, to transmit all correspondence to candidates for civil service examinations. (Testimony of Barron; Lefort Affidavit).
3. Candidates use the NeoGov system to create their own profiles, inputting an email address of their choosing. (Testimony of Barron)
4. On March 12, 2015, at 8:34 pm, the Appellant created his NeoGov profile, using an email address with the prefix "tillibeach" (the "tillibeach" email). (Lefort Affidavit)
5. Accordingly, until the Appellant updated his profile again on June 21, 2017, all notifications were sent to the "tillibeach" email address. (NeoGov—Transmittal Record; NeoGov—Audit Trail; Barron Testimony)
6. The Exam Poster states, in relevant part:
 - a. **NOTICE TO APPEAR:** Notices to Appear including time and location of exam will be emailed to applicants after the close of the application period, and prior to the examination date.
 - b. **UPDATING INFORMATION:** Candidates are responsible for maintaining accurate contact information. **Failure to keep your records up to date may jeopardize opportunities for employment.** For information on how to update your information, click on Update my Information.

(Ex. 1)(emphasis added)

7. The Score Notice states, in relevant part:

If and when your name is reached for consideration for a vacancy, you will receive a vacancy notice by email. **Please note that these notices will only be sent by email, and it is your responsibility to keep your**

contact information up to date with HRD. For instructions on how to update your information, please visit www.mass.gov/civilservice, and click "How to Update Your Applicant Information." Please be sure to check your inbox, spam folder, and junk folder regularly for emailed notices from our office.

(Ex. 2)(emphasis added)⁷

8. NeoGov has no functionality/capability to integrate with other electronic systems or software. (Testimony of Barron)
9. The NeoGov system tracks the date and time when correspondence is opened by the user. (Lefort Affidavit)
10. **On May 4, 2016**, at 5:02 pm, the Appellant was sent a notice of a police officer vacancy by the NeoGov system to the "tillibeach" email address, directing him to appear at the Boston Police Department to sign a certification on or before **May 11, 2016** to indicate that he was willing to accept employment. (Lefort Affidavit)
11. **On May 13, 2016**, two days *after* the date when he was directed to appear and sign the certification, the Appellant opened the **May 4, 2016** email. (Lefort Affidavit)
12. The Appellant's email address in NeoGov (the operative email for notices and correspondence) was the "tillibeach" email until he updated it on June 21, 2017 at 3:39 PM to an email address with the prefix "jos2772". (Ex. 5)

Civil Service Unit Email Box

13. The Civil Service Unit email box is an email box that takes incoming inquiries *from the public generally* related to civil service matters. (Testimony of Barron)

⁷ The update link to which applicants are directed is a link to NeoGov, where all contact information updates must be made. The link does not indicate, however, that the name of the software used for this purpose is NeoGov. (Administrative Notice)

14. The email box is monitored by members of the Civil Service Unit team. (Testimony of Barron)
15. When members of the Civil Service Unit team receive an incoming email from the Civil Service Unit email box, it is the policy and practice of the team to hit “reply” to the email address used to send the incoming email from the public. (Testimony of Barron; Lefort Affidavit)
16. The Civil Service Unit mailbox is not integrated with NeoGov. (Testimony of Barron)
17. On **May 14, 2016**, the Civil Service Unit received an incoming email from the Appellant to the Civil Service Unit mailbox (not to NeoGov) from “tillibeach” stating, in relevant part:

I received this message yesterday [sic] in the late afternoon. I set this email up specifically for the Police exam so the notice would not get lost, or sent to my junk mail folder. **I check this email at the beginning and middle of every month.** I just received this email yesterday around 4:30 pm ... **Thank you for your time and my apologies on receiving this email outside the dates to appear.** My primary email is Santilli.j@gmail.com if you would like to use that instead. **I will also be checking this account everyday now** that I know you are currently in the highering [sic] process.”

(Lefort Affidavit – attachment)

18. The Civil Service Unit, following its practice and policy in responding to general inquiries at the Civil Service Unit email, replied to the May 14 “tillibeach” email and directed the Appellant to the Boston Police Department since he had missed the deadline to sign the certification. (Lefort Affidavit - attachment)

Payment System

19. HRD uses a third-party vendor system to process payments for people who want to take a civil service exam. (Lefort Affidavit)

20. On March 12, 2015, the Appellant made a payment using the third-party vendor payment system and he received an automated receipt from the vendor, not from NeoGov or HRD. (Lefort Affidavit)

21. The vendor payment system information is not integrated into NeoGov and does not have any ability to alter or update the email address that the potential candidate provided when he or she created his or her NeoGov profile. (Lefort Affidavit)

Legal Standard

G.L. c. 31, § 2(b) addresses appeals made to the Civil Service Commission. The Commission is authorized to grant relief to persons “*aggrieved* by ... any decision, action or failure to act by the administrator” (emphasis added). To be “aggrieved” a person must have been harmed “through no fault of his own.” Holske v. Human Resources Division, 33 MCSR 282 (2020); *see* St. 1993, c. 310. The harm that allegedly resulted here (the Appellant’s failure to timely sign the certification to be considered for appointment to the Boston Police Department) resulted through the inactions of Appellant alone. Thus, the Appellant cannot show that he was an aggrieved person within the meaning of the law (*i.e.*, that he was harmed through no fault of his own).

Analysis

The Appellant failed to monitor the e-mail address he entered in NeoGov

It is undisputed that the Appellant’s NeoGov profile contained the “tillibeach” e-mail address. (Testimony of Barron; Ex. 4) Because the NeoGov system transmits notices to the email address in the user’s profile, the “tillibeach” email that the Appellant provided was the operative email for notifications and candidacy-related correspondence from HRD. In his May 2016 email to the HRD Civil Service Unit mailbox, the Appellant admitted both (1) that he created the “tillibeach” email specifically for correspondence related to the police officer exam; and (2) that

he had failed to monitor it more than twice per month. Specifically, as noted above, the Appellant wrote in his May 14, 2016 email that he “check[s] this email at the beginning and middle of every month ... my apologies on receiving this email outside the dates to appear ... I will also be checking this account everyday now” Ex. 4. But, in fact, the Appellant continued to neglect promptly checking this email account he had established in NeoGov and, in March of 2017, he failed to promptly open the emailed notice of vacancy at the BPD, thereby once again missing out on a job opportunity. In view of the Appellant’s admissions, it cannot be said that he is an aggrieved person entitled to relief—because he was not injured through *no* fault of his own.

The Appellant had notice that his NeoGov user information, if not updated, could result in missed employment opportunities

The Appellant had notice that his NeoGov user information, if not updated, could jeopardize his employment opportunities. The Commission has found that a potential candidate had adequate notice of a duty to take some action where, as here, the instructions were contained in the email sent to the candidates. *See, e.g., Whetherbee v. Human Resources Division*, 34 MCSR 173 (2021)(finding instructions adequately notified the potential candidate that the employment and education component was incomplete until she received an email receipt/confirmation from HRD); *Pavone v. Human Resources Division*, 28 MCSR 611 (2015)(finding in light of the “sufficient notice of the importance of the confirmation email [from the instructions in the electronic notice], it is reasonable to expect that the potential candidates will open and read the email ...”). Email is a sufficient means of notification of candidates. *See, e.g., Fortunatti v. Human Resources Division*, 28 MCSR 292 (2015)(finding HRD established by a preponderance of the evidence that it did indeed notify the Appellant of his obligation to sign the Certification in question; HRD documentation sufficiently shows that such notification was

sent). The Appellant in the instant appeal had notice that his NeoGov user information, if not updated, could jeopardize employment opportunities. Specifically, the Exam Poster stated that “candidates are responsible for maintaining accurate contact information” and that the “failure to keep your records up to date may jeopardize opportunities for employment”. Ex. 1.

Likewise, the Score Notice sent to Mr. Santilli stated *explicitly* that notice of a vacancy (here, at the Boston Police Department) would be sent “only ... by email and it is your responsibility to keep your contact information up to date with HRD.” Ex. 2. Therefore, the Appellant was responsible for keeping his contact information updated and he had notice that a failure to do so could jeopardize opportunities for employment.⁸ Having admitted to his failure to timely monitor the email address he provided to HRD specifically in order to receive notice of employment opportunities and having failed to timely update his email address to receive the notice of employment at another email address for this purpose, the Appellant is not an “aggrieved” person entitled to relief.

Conclusion

A preponderance of the evidence establishes that (1) the HRD notices to the Appellant required him to monitor the tillibeach email, (2) HRD used the santilli.j email address to respond to an inquiry that Mr. Santilli sent to the HRD Civil Service Unit email for public inquiries instead of the email address that he provided in NeoGov, and (3) the Appellant is not entitled to relief pursuant to St. 1993, c. 310 because he admits that he failed to regularly monitor the email he received at the email address he provided to NeoGov and he did not notify HRD through Neo Gov, as required, that he was using a different email address. Thus, the Appellant cannot validly claim that he was harmed through no fault of his own.

⁸ The email sent to the “santilli.j” email address, was a third-party-issued receipt for payment for the 2015 exam and had no bearing on the notices sent through NeoGov.

For all of the foregoing reasons, 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, Stein and Tivnan, Commissioners) on March 24, 2022.

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:

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