

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

WILLIAM SHUGRUE,
Appellant

G1-14-199

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Stephen C. Pfaff, Esq.
Louison, Costello, Condon & Pfaff
101 Summer Street
Boston, MA 02110

Appearance for Respondent:

Earl Wilson, Esq.
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT'S MOTION TO DISMISS &
RESPONSE TO APPELLANT'S REQUEST FOR INVESTIGATION**

On August 18, 2014, the Appellant, William Shugrue (Mr. Shugrue), filed a promotional bypass appeal with the Civil Service Commission (Commission), contesting his non-selection by the Department of Correction (DOC) to the position of Captain.

On September 9, 2014, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Shugrue, his counsel and a representative for DOC. At the pre-hearing, the parties did not dispute that there is no active eligible list for the position of Captain at DOC or that the individual who received the provisional promotion was a permanent civil service employee in the next lower title of Lieutenant.

As such, DOC met the requirements of G.L. c. 31, § 15, which allows for the provisional promotion "of a civil service employee in one title to the next higher title in the same departmental unit ... if there is no suitable eligible list ...".

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Further, since there is no eligible list in place for Captain, and the promotion cannot be made as a permanent promotion after certification without an active eligible list, there is no “bypass” for Mr. Shugrue to appeal under G.L. c. 31, § 2(b) and/or the applicable provisions of the Personnel Administration Rules (PARs).

Notwithstanding the above, I reminded the parties that, under rare circumstances, the Commission can exercise its authority to initiate an investigation under G.L. c. 31, § 2(a). Although he had not requested such an investigation, I gave Mr. Shugrue the opportunity to submit a brief explaining why the Commission should initiate such an investigation. Mr. Shugrue submitted his brief to the Commission on November 17, 2014.

In his brief, Mr. Shugrue argued that the promotional process here was “flawed, political and a violation of basic merit principles” likening it to a “dog and pony show.” In support of this assertion, Mr. Shugrue points to the following:

- He has an exemplary performance record at DOC;
- He has never been disciplined during his 25-year career at DOC while some of those promoted purportedly do have a record of discipline;
- Portions of the selection process did not conform with DOC regulations.

Finally, Mr. Shugrue, as part of a sworn affidavit, states that, upon being notified of his non-selection, he contacted a member of the interview panel to inquire why he was not promoted. According to Mr. Shugrue, the interview panelist alluded to two (2) prior incidents in which Mr. Shugrue refused to shake the hand of two (2) different DOC Commissioners.

The Commission regularly addresses such allegations as part of “bypass” appeals, when an Appointing Authority appoints an individual whose name appears lower on a Certification and the non-selected candidate files an appeal with the Commission (See G.L. c. 31, § 2(b) and PAR.01 & PAR.07-09). In those cases where a candidate is “bypassed”, the Appointing Authority is required to provide sound and sufficient reasons for the bypass and, upon receiving an appeal, the Commission determines whether the Appointing Authority had reasonable justification for the bypass.

Here, as referenced above, there was no bypass and, as such, there is no requirement under the civil service law or rules for an Appointing Authority to provide non-selected candidates with non-selection reasons when making a provisional promotion that involves the promotion of a civil service employee from the next lower title. Non-selected candidates for provisional promotions usually, however, may appeal their non-selection through the grievance process outlined in the applicable collective bargaining agreement.

The Commission, however, maintains the discretion to initiate investigations under G.L. c. 31, § 2(a). This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Superior Court

(2007). (See also Dennehy v. Civ. Serv. Comm'n, No. 2013-00540, Suffolk Superior Court (2014) (“The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.”) & Erickson v. Civ. Serv. Comm'n & others, No. 2013-00639-D, Suffolk Superior Court (2014).

I have carefully considered all of the reasons proffered by Mr. Shugrue in support of initiating an investigation, including his purported conversation with one of the interview panelists. According to Mr. Shugrue’s affidavit, he was told by an interview panelist that “you can’t go around and refuse to shake the Commissioners’ hands and expect to be promoted.” In this same affidavit, Mr. Shugrue acknowledges that he “refused to shake hands with DOC Commissioners James Bender and Ronald Duvall when they visited MCI-Cedar Junction.”

While potentially eyebrow-raising, for reasons that may not actually have been beneficial to Mr. Shugrue if this had been a bypass appeal, this allegation, along with the others which I carefully considered, are not sufficient for the Commission to initiate an investigation under Section 2(a), a step that we have sparingly taken upon receiving allegations of nepotism and other egregious violations of the civil service law.

Here, it appears that Mr. Shugrue is asking the Commission, via Section 2(a), to provide him with the appeal rights which he is not entitled to under Section 2(b), as he was not bypassed.

That leads to the final issue that neither party addressed in their written submissions: why there is no eligible list for the position of Captain at DOC. While there has been no civil service examinations administered for the vast majority of non-public safety positions in decades, this public safety position of Captain (at DOC) appears to stand out as one of the few public safety positions for which there has been no civil service examinations administered.

Since that issue has not been raised by the parties in their written submissions, I do not address it as part of this decision. That does not preclude the Commission, however, from addressing that issue as part of future appeals related to the appointment and promotion of individuals to the position of Captain at DOC.

For all of the above reasons, including that DOC provisionally promoted a permanent civil service employee serving in the next lower title, consistent with G.L. c. 31, § 15 and prior Commission decisions, Mr. Shugrue’s appeal under Docket No. G1-14-199 is hereby ***dismissed*** and his request for an investigation is denied.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on January 8, 2015.

A true record. Attest:

Commissioner

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.

Notice:

Stephen Pfaff, Esq. (for Appellant)

Earl Wilson, Esq. (for Respondent)

John Marra, Esq. (HRD)