

COMMONWEALTH OF MASSACHUSETTS

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

ADAM M. SIEGEL,
Appellant

v.

E-23-216

MALDEN POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Adam M. Siegel

Appearance for Respondent:

Police Chief Glenn Cronin
Malden Police Department
800 Eastern Avenue
Malden, MA 02148

Commissioner:

Christopher C. Bowman

Summary of Order

The Commission dismissed the non-bypass equity appeal of the Appellant, a Malden Police Sergeant, as he was unable to show that he was aggrieved by a decision to revive the eligible list for Malden Police Lieutenant.

ORDER OF DISMISSAL

Background Regarding Commission’s Prior Decision to Revive Eligible List for Malden Police Lieutenant

On September 5, 2023, Glenn Cronin, Chief of the Malden Police Department (MPD), filed a request with the Civil Service Commission (Commission) to revive a revoked eligible list for Police Lieutenant. On September 12, 2023, I held a remote pre-hearing conference which was attended by the General Counsel of the state’s Human Resources Division (HRD) and Chief

Cronin. Counsel for the local superior officer's union emailed the Commission prior to the pre-hearing and indicated that the union took no position on the petition. Based on the information provided prior to and at the pre-hearing conference, the following was undisputed:

1. On September 21, 2019, HRD administered a promotional examination for Malden Police Lieutenant.
2. On December 17, 2019, HRD established an eligible list for Malden Police Lieutenant.
3. The MPD made two promotional appointments from the lieutenant eligible list between November 5, 2021 and July 1, 2022.
4. The eligible list was set to expire in December 2021, two years from when it was established. However, since no new eligible list was in place at the time, the eligible list, pursuant to HRD policy, was extended until September 1, 2022, three years from the first day of the month in which the eligible list was established (September 2019).
5. On September 1, 2022, HRD revoked the eligible list, along with many other eligible lists in other communities that had been established on the same date.
6. At the time that the eligible list was revoked, the name of Sergeant Scott Carroll was ranked first on that eligible list.
7. On September 17, 2022, HRD administered statewide police promotional examinations, including for Malden Police Lieutenant. Multiple Malden police sergeants sat for the September 17th examination.
8. On October 27, 2022, the Superior Court issued its decision re: [Tatum et al. v. Human Resources Division](#). In response to the Court's Tatum decision, HRD decided to not score any of these September 2022 police promotional examinations. Instead, HRD, with the

assistance of a stakeholders' group, is working to establish and administer revised promotional examinations that address the issues raised in Tatum.

9. Should vacancies arise between now and December 2023, the MPD stated that it wished to fill the vacancies through a permanent, full-time promotional appointment, as opposed to a provisional promotion.

Reasons Stated by MPD to Revive Revoked Eligible List

As part of his request submitted to the Commission, the Malden Police Chief wrote in part:

The City of Malden is of the belief that we would rather make a permanent appointment from a certified list whenever possible instead of having to make a provisional appointment that may ultimately result in the appointed individual(s) having to vacate the position upon establishment of a new list.

Having an active list in place ensures that should a vacancy arise, which we anticipate; the vacancy is filled in accordance with Civil service Law and basic merit principles in play. In addition to these reasons, I have been asked by the Union to request this extension.

We have candidates signed up for the readministered exam in September so by granting our request to resurrect the list and extend, it would not likely be extended for a lengthy time, assuming the new list will be available shortly after the administration of the September exam.

Prior Commission Order

Based on the facts presented, the Commission concluded that reviving the revoked eligible list for MPD Police Lieutenant was consistent with the effective maintenance of the merit system and, on September 21, 2023, ordered HRD to revive the MPD eligible list for Police Lieutenant revoked on September 1, 2022, allowing the City to appoint from the revived list until such time as a new eligible list is established from the results of the September 23, 2023

promotional examination.

Appellant's Instant Appeal

On October 23, 2023, the Appellant, a sergeant in the Malden Police Department who was unaware of the request to revive the Malden Police Lieutenant eligible list, filed an appeal with the Commission stating in part that:

Six Sergeants took the 2022 promotional Lt. Exam and the same six of us just took the makeup test. To promote off a more than 4 year old revoked list is not fair and equitable. Between now and the end of December it appears that there will only be one Lieutenant opening as an individual who currently holds the rank of Lieutenant is [retiring] in November. This particular Lieutenant spot has been vacant for close to two years and has been filled via overtime. There has been no apparent effort to fill the spot while the current occupant has been out. Because of this, and previous mentioned points, there does not seem to be any reason why a temporary emergency appointment couldn't be made to fill the anticipated vacancy, and then within weeks a permanent appointment could be made from the new list which will have been generated via a test not tainted by the Tatum decision.

On November 14, 2023, I held a remote pre-hearing conference which was attended by the Appellant and Chief Cronin. Prior to the pre-hearing, the Appellant submitted a pre-hearing memorandum outlining his argument why no permanent appointment should be made from the revived eligible list, while Chief Cronin reiterated his desire to make a permanent, rather than provisional, temporary or emergency promotional appointment.

Summary Decision Standard

When there is no genuine issue of disputed material fact relating to the Appellant's stated claim, no viable ground of appeal on the facts stated, and the Respondent is entitled to prevail as

a matter of law, this party may move, with or without supporting affidavits, either to dismiss the entire appeal or for summary decision on a particular claim. 801 CMR 1.01(7)(h). Such motions are decided under the well-recognized standards 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., Nigro v. City of Everett*, 30 MCSR 277 (2017); *Lydon v. Massachusetts Parole Bd.*, 18 MCSR 216 (2005). *Accord 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 Co.*, 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) (factual issues bearing on plaintiff’s standing required denial of motion to dismiss). *See also Zachary v. Civ. Serv. Comm’n & Dept. of Correction*, Suffolk Sup. Ct. No. 07-3197 (2008) (Commission was justified in upholding a 5-day suspension without a full hearing when the Appellant admitted that he engaged in the alleged misconduct.)

Analysis

Even when viewing the evidence in the light most favorable to the Appellant, he has no reasonable expectation of prevailing here for the reasons stated below.

First, any argument that the Appellant has been harmed is too speculative. No new eligible list for police lieutenant has been established; it is unknown what the Appellant’s rank on that eligible list will be; and thus, it is not known if the Appellant would be promoted, let

alone eligible, for the next promotional appointment if no appointment were to be made from the now-revived eligible list. The Appellant acknowledged that any potential harm to him is speculative at this time but stated that his appeal was effectively also filed in an attempt to protect the other candidates who took the 2023 promotional examination who are not on the revived eligible list.

Second, although it is unfortunate that the Appellant was not aware of the request to revive the eligible list at the time, the Commission, anticipating such requests “post-Tatum”, put in place protocols to ensure transparency. Prior to submitting a request to revive an eligible list, a Police or Fire Chief is required to first notify the local union, providing them with an opportunity to oppose the request. It is undisputed that the local union was notified in this case and voiced no opposition to the request. It would not be prudent -- or appropriate -- for the Commission to reconsider its decision because this information did not make its way down to all of the union membership.

Third, even when reviewing the Appellant’s well-stated reasons underlying his appeal, there is no allegation of personal bias or favoritism that would warrant a fairly unprecedented reversal of a recent Commission decision.

Finally, as discussed at the pre-hearing conference, the Commission’s decision does not *require* the City, or its Police Chief, to make a promotional appointment to police lieutenant if and when the vacancy occurs prior to the establishment of the new eligible list. In fact, the revived eligible list is a “short list” which still provides the Police Chief with the prerogative to make a provisional appointment until such time as the new eligible list is established. Frankly, I would encourage the Police Chief to keep an open mind in this regard after reviewing the well-stated reasons of the Appellant as part of this appeal.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. E-23-216 is ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on November 30, 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 their 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:

Adam Siegel (Appellant)

Chief Glenn Cronin (Malden Police Department)

Michele Heffernan, Esq. (HRD)