

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 979-1900

DREW SILVIA,
Appellant

v.

G2-22-095

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Drew Silvia

Appearance for Respondent:

Joseph Santoro
Department of Correction
50 Maple Street
Milford, MA 01757

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission allowed the Appellant's promotional bypass appeal based on the results of a DOC internal affairs investigation that was pending at the time of Appellant's bypass. The result of that investigation was that the Appellant was not suspended for one day or more, meaning that he would have been eligible for promotion if the internal affairs investigation had been completed at the time of the bypass. For that reason, relief is appropriate to ensure that the Appellant receives at least one additional consideration for promotional appointment.

DECISION

On June 27, 2022, the Appellant, Drew Silvia (Appellant), a Correction Officer II (CO II or Sergeant) at the Department of Correction (DOC), filed a promotional bypass appeal with the Civil Service Commission (Commission) when he was bypassed for promotional appointment to Correction Officer III (CO III or Lieutenant).

On July 19, 2022, I held a remote pre-hearing conference which was attended by the Appellant and three DOC representatives. As part of the pre-hearing, the parties stipulated to the following:

- A. On November 7, 2020, the Appellant took the promotional examination for CO III and received a score of 80.
- B. On February 1, 2021, the state's Human Resources Division (HRD) created an eligible list for CO III.
- C. On February 15, 2022, DOC created Certification No. 08374, from which DOC promoted 30 candidates to CO III, 6 of whom were ranked below the Appellant.
- D. On May 9, 2022, DOC notified the Appellant that he was being bypassed for appointment due to a pending internal affairs investigation.
- E. On June 27, 2022, the Appellant filed a timely appeal with the Commission.

The parties agreed that, but for the pending investigation, the Appellant would have been promoted to CO III. At the pre-hearing conference, DOC reported that the investigation had been returned to the Superintendent for follow-up, meaning that the maximum discipline that could be imposed would be a 5-day suspension. According to DOC, if the Superintendent were to find that no discipline is warranted or decides that only a written warning is warranted, those two actions, if they had been disposed of prior to the promotions, would not have prevented the

Appellant from being promoted. Subsequent to the pre-hearing, the parties reported that the end result of the investigation was that the Appellant received a written reprimand, which would not have disqualified him for promotion had the investigation been completed at the time of bypass.

For the above reasons, the Appellant's appeal is *allowed* and the Commission, pursuant to Chapter 310 of the Acts of 1993, orders the following relief to ensure that the Appellant receives at least one additional consideration for promotion. HRD, or DOC in its delegated capacity, shall:

1. Place the name of the Appellant at the top of any future certification for Correction Officer III (CO III) at the Department of Correction until such time as he has been promoted or bypassed.

Civil Service Commission

/s/ Christopher Bowman
Christopher Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on August 11, 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:
Drew Silvia (Appellant)
Joseph Santoro (for Respondent)