

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

CALVIN J. SMITH,
Appellant

G1-14-98

v.

CITY OF HOLYOKE,
Respondent

Appearance for Appellant:

Pro Se
Calvin J. Smith

Appearance for Respondent:

Sara J. Carroll, Esq.
Holyoke Law Department
20 Korean Veterans Plaza: Room 204
Holyoke, MA 01040

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On April 24, 2014, the Appellant, Calvin Smith (Mr. Smith), filed a bypass appeal with the Civil Service Commission (Commission), contesting his non-selection as a permanent reserve police officer by the City of Holyoke (City).

On April 24, 2014, a pre-hearing conference was held at the Springfield State Building in Springfield, MA, which was attended by Mr. Smith and counsel for the City.

It is undisputed that Mr. Smith took and passed the civil service examination for police officer on April 30, 2011, receiving a score of 92. As a result of passing the examination, Mr. Smith's name was placed on an eligible list of candidates for police officer in Holyoke by the state's Human Resources Division (HRD). Said eligible list was established on November 1, 2011.

In August 2013, the City requested a Certification to appoint fifteen (15) reserve police officers. On August 2, 2013, HRD sent Certification No. 01035 to the City. On August 15th and September 12th of 2013, HRD forwarded additional names to the City.

Between September 24th and September 26th 2013, there were a series of email exchanges between the City and HRD regarding the order in which the names on the Certification should appear in order to comply with a consent decree under which the City is still covered. As a result of those email exchanges, HRD, using the names of those candidates willing to accept appointment from all of the names sent to the City on three different dates, created a Certification that it believes is consistent with the consent decree guidelines

On the “new” certification created by HRD, the name of another candidate appeared above that of Mr. Smith, even though the name of the other candidate appeared below Mr. Smith on the initial (pre-signatures) Certification sent to the City on August 15th.

Mr. Smith’s appeal is two-fold. First, he argues that the other candidate is ranked below him and, thus, his non-selection was a bypass which requires the City to provide sound and sufficient reasons to HRD. Second, Mr. Smith argues that another candidate (alleged non-resident), who was listed as a resident, was not actually a resident and should not be ranked above him. Mr. Smith bases this on a court log in a local newspaper which, according to Mr. Smith, stated that the alleged non-resident candidate in question did not reside in Holyoke.

In order to address both of these issues, prior to determining whether a full evidentiary hearing was necessary, I ordered the following as part of the pre-hearing conference: A) HRD was joined as a party in this matter; B) HRD was given the opportunity to submit an affidavit regarding what steps were taken to create a new Certification regarding this hiring cycle and why said Certification is consistent with the requirements of the consent decree; and C) the City was given the opportunity to submit an affidavit, without disclosing such information as addresses or date of birth, regarding how it determined that the person referenced in the local court log is not the same person that was appointed by Holyoke as a reserve police officer, as stated by counsel for the City at the pre-hearing conference.

I subsequently received an affidavit from Nuwanda Evans of HRD, providing a detailed explanation regarding how the names on the (signed) Certification were ranked and, how, according to HRD, the rankings were consistent with the consent decree related to Holyoke. Based on that affidavit, it is clear to me that the name of the other candidate was properly listed above the name of Mr. Smith.

I also received an affidavit from counsel for the City which clearly shows that the person identified in the court log viewed by Mr. Smith was not the same person appointed by the City.

In summary, no person ranked below Mr. Smith was appointed by the City as a permanent reserve police officer and the alleged non-resident identified by Mr. Smith was actually a resident. Thus, there is no basis for Mr. Smith’s bypass appeal.

For these reasons, Mr. Smith’s bypass appeal under Docket No. G1-14-98 is hereby *dismissed*.

Civil Service Commission

/s/Christopher C. Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on July 24, 2014.

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:

Calvin Smith (Appellant)

Sara Carroll, Esq. (for Respondent)

Ernest Law, Esq. (for HRD)