

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

DANIEL VARGAS,
Appellant

v.

G2-21-113

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Daniel Vargas

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On June 28, 2021, the Appellant, Daniel Vargas (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Department of Correction (DOC) to bypass him for promotional appointment to the position of Correction Officer III (CO III). On July 20, 2021, I held a remote pre-hearing conference which was attended by the Appellant and a DOC representative.

At the pre-hearing conference, DOC stated that the reason for bypass was that the Appellant had been the subject of discipline within the past year which, according to DOC, is an automatic disqualifier for promotion. Specifically, DOC indicated that, on November 20, 2020, the Appellant was the Officer In Charge ("OIC") in the Special Housing Unit on the 7:00 a.m. to 3:00 p.m. when he failed to ensure that a condiment packet only had approved items in it before

it was given to an inmate on an eyeball watch. According to DOC, the inmate received a plastic fork while on watch which he then inserted into his abdomen requiring outside hospital care.

Also at the pre-hearing conference, DOC indicated that there was a likelihood of further promotions to CO III prior to the expiration of the eligible list, for which the Appellant may be eligible if they were to occur more than one year after the incident referenced above. For that reason, the Commission, on July 29, 2021, issued an Order of Dismissal Effective December 31, 2021, with the appeal subject to reinstatement only if the Appellant had not been promoted on or before December 31, 2021. The appeal was subsequently reinstated after the anticipated promotions were delayed. However, effective May 8, 2022, the Appellant was promoted to CO III, making this appeal moot.

The Appellant has opted not to withdraw his appeal, however, stating that, should he prevail, he believes he may be eligible for retroactive pay, citing to a recent Commission decision re: Paiva and Finkle v. Department of Correction, CSC Docket Nos. B2-18-038 & 039 (April 21, 2022). First, the Appellant has no likelihood of success regarding his appeal should it go forward. DOC's policy to not consider candidates for promotions who have been subject to discipline in the prior year is reasonable. Second, the Commission's decision in Paiva and Finkle related to rare circumstances regarding an *examination* appeal that are not applicable to this appeal, nor is that type of relief anticipated in *any* appeal except in the rarest of circumstances.

For all of the above reasons, the Appellant's appeal under Docket No G2-21-113 is ***dismissed*** as moot as there is no relief that can be awarded to the Appellant that he has not already received via his recent promotion.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein and Tivnan, Commissioners) on May 20, 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:

Daniel Vargas (Appellant)

Joseph Santoro (for Respondent)