

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

STEPHEN WALSH,
Appellant
v.

Case No.: E-12-54

**CITY OF QUINCY AND
HUMAN RESOURCES
DIVISION,**
Respondents

PROCEDURAL ORDER

On February 16, 2012, the Appellant, a fire lieutenant in the Quincy Fire Department, filed an appeal with the Civil Service Commission (Commission) against the City of Quincy and the state's Human Resources Division (HRD), seeking to postpone by one year the promotional examination for Quincy Deputy Fire Chief to be held on Saturday, March 24, 2012.

A pre-hearing conference was held at the offices of the Commission on March 20, 2012, which was attended by the Appellant, counsel for HRD, counsel for the City of Quincy and a Quincy Fire Captain scheduled to take the March 24th examination. The City submitted a Motion to Dismiss the Appellant's appeal.

I heard oral argument from all parties regarding the Appellant's request to postpone the March 24th examination.

Based on the documents submitted and the statements of the parties, I find the following:

1. On January 18, 2011, information regarding a March 19, 2011 promotional examination for Deputy Fire Chief was posted on HRD's website.
2. On February 25, 2011, HRD sent a letter to the City of Quincy advising that the March 19, 2011 examination would be postponed as only three captains registered to take it.

Pursuant to G.L. c. 31, § 59, which requires at least four (4) individuals to sign-up for a promotional examination, the examination was postponed and opened to the next lower title.

3. The February 25, 2011 letter from HRD to the City of Quincy stated in part, “Please post this notice in all conspicuous places throughout the Quincy Fire Department.”
4. The City does not dispute that this notice was not posted throughout the Quincy Fire Department until January 18, 2012, almost eleven (11) months after it was received by HRD. The City, however, argues that it was “common knowledge” that the March 19, 2011 promotional examination was canceled and that a re-scheduled examination would be open to those in the next lower title in the Quincy Fire Department (Fire Lieutenant).
5. The Appellant stated that he was not aware at the time that a re-scheduled examination would be open to individuals, such as himself, in the next lower title of fire lieutenant.
6. Also on February 25, 2011, HRD sent refund letters to applicants for the March 19, 2011 Quincy Deputy Fire Chief promotional examination.
7. On February 28, 2011, according to HRD, the postponement of the March 19, 2011 examination was posted on HRD’s website.
8. In September 2011, a notice from HRD to all Fire Chiefs was posted throughout the Quincy Fire Department, that included a list of reading material for the Deputy Fire Chief examination to be held on March 24, 2012.
9. The Appellant stated that even if he saw the September 2011 posting, he did not believe it applied to him as he believed he wasn’t eligible to sit for the examination.
10. On January 18, 2012, Provisional Fire Chief Joseph Barron posted a memorandum throughout the Quincy Fire Department which stated in relevant part: “Please find attached the February 25, 2011 letter from ... HRD ... to Mayor Thomas P. Koch. This letter indicates that the March 19, 2011 Promotional Exam for Deputy Chief was

postponed because there were not enough eligible applicants. Therefore, the next promotional exam cycle will be opened to the next lower grade.”

11. The Appellant stated that the January 18, 2012 communication was the first time he became aware that he was eligible to sit for the March 24, 2012 promotional examination.
12. Four (4) Fire Captains and two (2) Fire Lieutenants, including the Appellant, are scheduled to take the Quincy Deputy Fire Chief promotional examination on March 24th.
13. It is uncertain whether there will be any vacancy in the position of Quincy Deputy Fire Chief during the life of the eligible list that will be created from the March 24th promotional examination.

Arguments of the Parties

The Appellant argues that the City’s failure to promptly notify all potential candidates, in February 2011, that individuals in the next lower title of fire lieutenant would be eligible to sit for the next Deputy Fire Chief examination (in 2012) deprived him of the opportunity to sufficiently prepare for the 2012 examination and put him at a disadvantage to others who had at least thirteen (13) months to study for the examination. (i.e. – the Fire Captains who received notice (and a refund) directly from HRD.)

The City argues that, even if all of the statements of the Appellant are true, 1) there is no justification to postpone the March 24th promotional examination; and 2) his appeal is premature because any potential harm is speculative (i.e. – he may receive the highest score on the March 24th promotional examination.)

HRD argues that it followed all requirements related to the administration of the upcoming examination and that there is no justification for the Commission to postpone it.

Orders

1. The Appellant’s request to postpone the March 24, 2012 examination is ***denied*** for the following reasons: a) the Appellant cannot show that he is an aggrieved individual prior

to taking the promotional examination; b) even if the Appellant is able to show, after the examination, that he was harmed, he is unlikely, based on the facts submitted thus far, to show that any such harm was solely through no fault of his own; and c) there has been no evidence presented to show that factors such as personal bias or favoritism were at play here.

2. HRD has until April 27, 2012 to submit its own Motion to Dismiss the Appellant's appeal.
3. The Appellant has until July 6, 2012, to submit an opposition to the City and HRD's motions to dismiss his appeal.
4. Should the Appellant wish to pursue his appeal, a motion hearing will be held on Monday, August 27, 2012 at 9:00 A.M. at the offices of the Commission. A hearing notice will be sent under separate cover.
5. Any individual seeking participant or intervenor status should file such request with the Commission on or before August 27, 2012.

Civil Service Commission

Christopher C. Bowman
Chairman
March 21, 2012

Notice to:
Stephen Walsh (Appellant)
Janet Petkun, Esq. (for Appellant)
Andrew Levrault, Esq. (for HRD)