

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

RENE ARCHAMBAULT,

Appellant

v.

Case No.: G2-12-43

CITY OF LAWRENCE,

Respondent

ORDER OF DISMISSAL

On February 3, 2012, the Appellant filed an appeal with the Civil Service Commission (Commission) contesting his non-selection for provisional promotion to the position of Fire Lieutenant in the City of Lawrence's Fire Department (Department).

On March 20, 2012, a pre-hearing conference was held at the offices of the Commission, which was attended by the Appellant, counsel for the Department and the City's Fire Chief.

Based on the documents submitted and the statements of the parties, the following appears to be undisputed:

1. As of February 5, 2012, there was no active eligible list for the position of fire lieutenant in the City of Lawrence.
2. On February 5, 2012, the Department provisionally promoted five permanent full-time firefighters (the next lower title) to the position of provisional fire lieutenant.
3. The City has requested that the state's Human Resources Division (HRD) conduct an examination for the position of fire lieutenant, so that an eligible list can be created and Certification(s) generated from which permanent appointments can be made to said position. The Appellant has not signed up for this examination.
4. The Appellant argues that he is more qualified than the individuals provisionally promoted and, as such, should have been selected for one of the provisional promotions.

CONCLUSION

G.L. c. 31, § 15 allows Appointing Authorities to make provisional promotions when no eligible list exists or there is a "short list". When the individual promoted is a permanent civil service employee in the next lower title, the Appointing Authority need not provide selection or non-selection reasons. See Kasprzak v. Department of Revenue, 18 MCSR 68 (2005), on reconsideration, 19 MCSR 34 (2006), on further reconsideration, 20 MCSR 628 (2007)

(provisional promotion of a permanent Child Enforcement Worker C to next higher title of Child Enforcement Worker D under G.L.c.31, §15, ¶1).

Here, the Department provisionally promoted permanent firefighters to the next higher title of fire lieutenant. Nothing in the civil service law or rules requires the Department, in this case, to provide reasons showing that the individuals selected are more qualified than the Appellant.

For these reasons, the Appellant's appeal under Docket No. G2-12-43 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on April 19, 2012.

A True Record. Attest:

Commissioner

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)(1), 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 to:

Rene C. Archambault (Appellant)
James M. Pender, Esq. (for Respondent)
John Marra, Esq. (HRD)