

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

JAMES V. WEBSTER, JR.,
Appellant

v.

Docket No. G1-06-28

DEPARTMENT OF CORRECTION,
Respondents

Appellant's Representative:

Brian E. Simoneau, Esq.
Law Office of Brian E. Simoneau
161 Worcester Road, Suite 200
Framingham, MA 01701

Respondent's Representatives:

Alexandra E. McInnis
Personnel Director
Department of Correction
Industries Drive, P.O. Box 946
Norfolk, MA 02056

Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to G.L. c. 31, § 2 (b), the Appellant, James V. Webster, Jr.), filed this appeal on February 9, 2006 with the Civil Service Commission (hereafter "Commission") claiming that an action taken by the Respondent, Department of Correction (hereafter "DOC") as Appointing Authority, bypassed him for original appointment to the position of Permanent Full Time Correction Officer I in the DOC. The appeal was timely filed. A Full Hearing was held on September 24, 2007 at the offices of the Commission. One tape was made of the hearing and the proceedings were also transcribed.

FINDINGS OF FACT:

The Commission's decision on this appeal is based solely on the following stipulated facts:

1. The Appellant began his employment with the DOC on June 5, 2005 when he entered the DOC Recruit Training Academy, Class No. 291.
2. Upon entrance to said Academy, the Appellant passed the physical fitness entrance requirements.
3. On June 29, 2005, the Appellant took and passed the mid-term physical fitness test and passed it.
4. On August 3, 2005, the Appellant was administered an exit physical fitness test. He did 32 sit-ups in one minute instead of the required 38 sit-ups. He successfully completed the other elements of the fitness test, including push-ups and the timed 1.5 mile run.
5. On August 3, 2005, the DOC terminated the Appellant due to his inability to complete the physical training portion of the Recruit Training Program.
6. The Appellant's name appeared on a subsequent eligibility list and certification for the position of Permanent Full Time Correction Officer I.
7. The DOC bypassed the Appellant for the position in May 2006 because he received a negative reference from the DOC's Training Academy where he was previously employed as a Correction Officer I Recruit in the recruit training program. The Appellant also failed to mention this termination in the employment application section titled "Employment History Addendum", where applicants are asked to report any discipline received from previous employers.

8. The Appellant filed this timely appeal under Civil Service Docket No. G1-06-28.
9. During the pendency of this appeal, the Appellant's name again appeared on a subsequent eligibility list and certification for the position of Full Time Permanent Correction Officer I.
10. The DOC re-hired the Appellant on February 18, 2007.
11. But for the bypass, the Appellant would have been re-appointed on January 29, 2006.

CONCLUSION:

The Appellant, having been re-hired by the DOC, seeks a retroactive Civil Service seniority date of January 29, 2006 as, but for the bypass in May 2006, the Appellant would have been re-hired effective that date. Pursuant to 801 CMR 1.01 7 (h), the Appellant made an oral Motion for Summary Decision for an order by the Commission for equitable relief. As there exists no genuine issue of fact relating to the Appellant's claim, in accordance with the previously stated and applicable section of the CMR's, the Commission allows the motion and pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, orders the Human Resources Division to take the following action:

The Appellant, James V. Webster, Jr., shall have established, for civil service purposes only, a seniority date of January 29, 2006 as a Full Time Permanent Correction Officer I for the Department of Correction.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceeding for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of commission's order or decision.

Notice to:

Brian E. Simoneau, Esq.
Alexandra E. McInnis, DOC