

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

ANTHONY HORIGAN,
Appellant

v.

**BOSTON FIRE
DEPARTMENT,**
Respondent

Case No.: G1-15-194

RULING ON PAR.09 REMOVAL

Anthony Horigan (“Appellant”) filed this appeal with the Civil Service Commission (“Commission”) pursuant to G.L. c. 31, s. 2(b) on October 16, 2015 appealing the decision of the state’s Human Resources Division (“HRD”), at the request of the Boston Fire Department (“Respondent”), to remove his name from firefighter Certification 02712 as indicated in a letter to the Appellant dated October 5, 2015. The Appellant had been ranked on Certification 02712 in the 11th tie group, as indicated in documentation provided by HRD.¹ HRD documentation also indicated that it approved the Respondent’s request to remove the Appellant’s name from the Certification pursuant to Personnel Administrator Rule (“PAR”).09. PAR.09(2) provides, in part,

“If an appointing authority concludes the appointment of a person whose name has been certified to it would be detrimental to the public interest, it may submit to the administrator a written statement giving in detail the specific reasons substantiating such conclusion. The administrator shall review each such statement, and if he agrees, he shall remove the name of such perform from the certification and shall not again certify the name of such person to such appointing authority for appointment to such position ...”

(Id.)

Removal of a candidate’s name from a Certification should not be used as a routine substitute for bypassing an individual. Radochia v. City of Somerville, 25 MCSR 559 (2012).

A prehearing conference in this case was held on November 3, 2015. It was attended by the Appellant, *pro se*; the Respondent’s counsel; and counsel for the state’s Human Resources Division. A full hearing was held in the case on January 6, 2016, which was attended by the Appellant, *pro se*; the Respondent’s counsel and Boston Fire Department Deputy Commissioner Wong. It is undisputed that the Respondent asked HRD to remove the

¹ The Certification provided by HRD indicates that there were fifty (50) vacancies to be filled and that there were approximately one hundred (100) names on the list above the name of the Appellant. There were twenty-three (23) people tied for 11th, including the Appellant.

Appellant's name from the Certification but it is also undisputed that the Respondent did not bypass the Appellant since he was in a tie on the Certification.

Following the full hearing, but prior to the issuance of a decision, the Respondent sent an email message to the Commission (copying the Appellant), stating,

“Please be advised that the Appointing Authority has decided to withdraw its PAR.09 removal request dated September 30, 2015. The Department will consider Mr. Horigan when his name comes up for our anticipated class in April 2016. We reserve the right to conduct our standard and usual review of Mr. Horigan's application.”

Since the Respondent has withdrawn its PAR.09 request to remove the Appellant's name from Certification 02712 and the Appellant was not bypassed, HRD shall, forthwith, insert the Appellant's name on Certification 02712, at its former ranking, for consideration of by the Respondent for its anticipated class in April 2016 and the appeal is otherwise dismissed as moot.

Civil Service Commission

/s/ Cynthia A. Ittleman
Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 4, 2016.

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. 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 to:

Anthony Horigan (Appellant)
Natacha Thomas, Esq. (for Respondent)
Patrick Butler, Esq. (for HRD)
John Marra, Esq. (HRD)