

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

SERGIO SERVELLO,
Appellant

G2-15-32

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Sergio Servello

Appearance for Respondent:

Joseph Santoro
Department of Correction
Industries Drive: P.O. Box 946
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On February 9, 2015, the Appellant, Sergio Servello (Mr. Servello), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection by the Department of Correction (DOC) for promotional appointment to Correction Officer III (CO III).

On March 17, 2015, I held a pre-hearing conference which was attended by Mr. Servello and Joseph Santoro, a representative for DOC.

The parties agreed that Mr. Servello took the CO III examination on June 11, 2011 and received a score of 82 and that, on November 24, 2014, Mr. Servello's name appeared on Certification No. 02482 and he was ranked 7th. The parties also agreed that no person ranked below 7th was promoted.

As part of his appeal, Mr. Servello argued that DOC incorrectly applied its tie-breaking method to determine who would be considered for promotion. Specifically, Mr. Servello argued that, based on DOC's own policies, his seniority in the next lower grade, as opposed to title, should be used to determine if he should be considered.

DOC argued that it properly applied its tie-breaking method which is to consider a person's seniority in the next lower (qualifying) title (i.e. – CO II).

Since Mr. Servello appears to have additional time as an Industrial Instructor III, which he argues is also the next lower grade (in addition to CO II), he argued that he would have been considered if the tie-breaking method was properly applied.

I informed both parties that there is a real question of whether the Commission has jurisdiction to adjudicate this factual dispute since there was no bypass and the tie-breaking method (whether properly applied or not) does not appear to violate basic merit principles (i.e. – is not discriminatory, etc.)

I provided DOC with ten (10) days to file a Motion to Dismiss and Mr. Servello had ten (10) days thereafter to file a reply. DOC subsequently filed a Motion to Dismiss. Mr. Servello did not submit a reply / opposition.

Legal Standard

The Commission has long held that the appointment of a candidate among those with the same rank on a Certification is not a bypass . See Edson v. Reading, 21 MCSR 453 (2008) (upheld by Superior Court; Edson v. Civil Service Comm'n, Middlesex Sup. Ct. No. 08-CV3418 (2009); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1998). See also Thompson v. Civil Service Comm'n, Suffolk Superior Ct. No. MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass); Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 261 (2001) ("In deciding bypass appeals, the commission must determine whether the appointing authority has complied with the requirements of Massachusetts civil service law for selecting lower scoring candidates over higher scoring candidates); Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002) (citing HRD's guide), rev'd in part on other grounds, 323 F.3d 160 (1st Cir. 2003) ("when a civil service exam results in a tie -score, and the appointing authority ... promotes some but not all of the candidates, no actionable `bypass ' has taken place in the parlance of... civil service")

Analysis

Since no candidate ranked below Mr. Servello was promoted to the position of Correction Officer III, there was no bypass and no requirement that DOC provide Mr. Servello reasons for his non-selection, as would be the case under civil service law and rules had a bypass actually occurred.

Further, Mr. Servello has not presented any evidence (or allegation) that the tie-breaking method used by DOC discriminated against any candidate based on his / her political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion. (See G.L. c. 31, § 1, Definition of Basic Merit Principles.)

Rather, Mr. Servello argues that the tie-breaking method used was not properly implemented and/or consistent with DOC's past practices. Based on the facts here, redress for those allegations falls outside the jurisdiction of the Commission. Mr. Servello, however, is not left without any recourse, as he presumably may file a grievance under the applicable collective

bargaining agreement.

Conclusion

For the reasons discussed above, Mr. Servello's appeal under Docket No. G2-15-32 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on May 14, 2015.

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.

Notice:

Sergio Servello (Appellant)

Joseph Santoro (for Respondent)