

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, SS.

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

DAVID C. BABINEAU,
Appellant

v.

CASE NO: G1-09-293

**MASSACHUSETTS PAROLE
BOARD,**
Respondent

Appellant, Pro Se:

David C. Babineau


Massachusetts Parole Board Attorney:

Timothy V. Dooling, Esq.
Deputy General Counsel
Parole Board
12 Mercer Road
Natick, MA 01760

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, David C. Babineau, acting pursuant to G.L.c.31, §2(b), asserts this appeal to the Civil Service Commission (Commission) from his non-selection for the position of Field Parole Officer by the Respondent, the Massachusetts Parole Board (Parole Board), Appointing Authority. The Parole Board filed a Motion To Dismiss the appeal, asserting the Appellant failed to state a claim upon which relief can be granted, in that the Parole Board made the appointment from a duly approved "protected" certification (PAR.10 list) of minority candidates and the Appellant's name did not appear on the list. The Appellant has filed no response to the motions and the Parole Board submitted on the papers.

FINDINGS OF FACT

Giving appropriate weight to the documents submitted by the Parole Board and inferences reasonably drawn from them, I find the following undisputed material facts:

1. On or about May 8, 2008, the Parole Board requested approval from the Massachusetts Human Resources Division (HRD) to hire a field parole officer from a group of minority candidates, in accordance with the provisions of HRD PAR.10.

(Respondent's Motion, Exhibit B)

2. On or about June 20, 2008, HRD approved the Parole Board's request and issued Certification No. 2080584 to the Massachusetts Parole Board for appointment of one permanent full-time Parole Officer A/B (Field) pursuant to PAR.10.

(Respondent's Motion, Exhibits A thru E)

3. Certification No. 2080584 was issued as two separate lists: (a) the "regular eligible list" (containing the names of all candidates who were eligible for appointment) and (b) the "protected list" (containing the names of those candidates qualified for appointment who met the definition of minority candidates pursuant to PAR.10.

Although the "regular eligible list" was included as part of the Certification, under the procedures set out by PAR.10, HRD specified that selection of protected candidates must precede selection of non-protected candidates. *(Respondent's Motion, Exhibits A thru E)*

4. The name of the Appellant, David C. Babineau, appeared on the "regular eligible list" but not the "protected list" of Certification No. 2080584 as he is not a qualified minority. *(Respondent's Motion, Exhibits A & E)*

5. The Parole Board duly hired two minority candidates for the position whose names appear on the protected list. *(Respondent's Motion, Exhibits A, E, F, G)*

CONCLUSION

Applicable Standard on Dispositive Motion

The party moving for summary disposition of an appeal before the Commission pursuant to 801 C.M.R. 7.00(7)(g)(3) or (h) is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., when “viewing the evidence in the light most favorable to the non-moving party” (here, Mr. Babineau), the moving party (here the Parole) has proffered substantial and credible evidence that Mr. Babineau, has “no reasonable expectation” of prevailing on at least one “essential element of the case”, and Mr. Babineau has not produced sufficient “specific facts” to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008) See generally Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36 (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (factual issues bearing on plaintiff’s standing required denial of motion to dismiss)

The Appellant Failure to State a Claim

The undisputed evidence has established that the Parole Board duly hired two minority candidates from a “protected list” certified by HRD in accordance with PAR.10 and that the Appellant’s name appears on the “regular eligible list” but not on the “protected list”. The procedures established for hiring from a PAR.10 protected list require that candidates on the “protected list”, by definition, are placed ahead of all non-protected candidates on the regular eligible list. Thus, ipso facto, the selection of two minority candidates for the position over the Appellant does not present any grounds for

Accordingly, for the reasons stated above, the appeal of the Appellant, David Babineau, is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman Chairman [absent]; Henderson, Marquis [absent], Stein and Taylor, Commissioners) on October 15, 2009.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. 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.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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 the Commission's order or decision.

Notice to:

David C. Babineau. (Appellant)

Timothy V. Dooling, Esq.. (for Appointing Authority)

John Marra, Esq. (HRD)