COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JOSEPH COACH,
Appellant

v.

E-10-50

HUMAN RESOURCES DIVISION,
Respondent

Appellant's Attorney:

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Commissioners:

Christopher C. Bowman
Paul M. Stein

DECISION ON CROSS MOTIONS FOR SUMMARY DECISION

The Appellant, Joseph Coach (hereinafter "Appellant" or "Coach") filed this appeal with the Civil Service Commission (hereinafter "Commission") on March 8, 2010 appealing the state's Human Resources Division's (hereinafter "HRD") decision to deny the City of Westfield's (hereinafter "City" or Appointing Authority") request to reinstate him as a permanent full-time firefighter.

A pre-hearing conference was held on March 30, 2010 and both parties subsequently submitted motions for summary decision. The parties did not present oral arguments, instead asking the Commission to enter a decision after reviewing the submitted briefs.

Summary decision is proper because there are no material facts in dispute. At issue is whether the Appellant is entitled to be reinstated to his former position as a Westfield firefighter pursuant to G.L. c. 31, § 46.

FACTS

1. August 4, 1997, the City appointed the Appellant to the position of permanent full-time firefighter from a Certification issued by HRD that was created from an eligible list of candidates who had taken and passed a civil service examination.
2. On April 26, 2008, HRD administered a civil service examination for firefighter, which is typically administered every two years.
3. On May 15, 2008, the Appellant voluntarily resigned from his position as a Westfield firefighter.
4. On December 1, 2008, HRD established a new eligible list of candidates for original appointment to the position of Westfield firefighter based on the April 26, 2008 examination referenced above.
5. On February 9, 2010, HRD received a requested from the City to reinstate the Appellant to the position of permanent full-time firefighter.
6. On February 9, 2010, HRD denied the City's request stating in relevant part, "… an individual cannot be reinstated if he / she has been separated from the position for more than five years and if a suitable eligible list exists for said title. Although Mr. Coach's separation has been less than five years, a suitable eligible list for the title of firefighter does exist at this time." (Attachment F to HRD's Motion for Summary Decision)
7. On March 8, 2010, the Appellant appealed HRD's decision to the Commission.

Appellant's Argument

The Appellant argues that HRD has misconstrued the plain language of Section 46 which allows reinstatement unless an appointing authority has a viable eligible list and the person requesting reinstatement has been separated for more than five (5) years.

HRD's Argument

HRD argues that Section 46 must be read to prohibit reinstatement requests whenever an appointing authority has a viable eligible list. HRD maintains that Section 46 requires two prongs to be met before an individual may be voluntarily reinstated. First, an individual must have been separated for less than five years. Second, there must be no current eligible list for the position for which the individual seeks reinstatement. According to HRD, both of these elements must be met in order for an individual to be granted a voluntary reinstatement under Section 46.

HRD argues that if the Commission interprets Section 46 as the Appellant argues, then, theoretically, a civil service employee who voluntarily resigned thirty years ago could be reinstated as long as there was no eligible list. Further, HRD argues that this interpretation would allow the Appellant, who resigned his position less than five years ago, to "bypass" over two hundred individuals on the current eligible list for Westfield who have taken the most recent examination, many of whom are veterans, as well as numerous individuals on the statewide reemployment list who were laid off through no fault of their own.

CONCLUSION

G.L. c. 31, § 46 states in relevant part:

"A permanent employee who becomes separated from his position may, with the

> approval of the administrator, be reinstated in the same or in another departmental unit in a position having the same title or a lower title in the same series, provided that the appointing authority submits to the administrator a written request for such approval which shall contain the reasons why such reinstatement would be in the public interest. No such request shall be approved if the person whose reinstatement is sought has been separated from such position for over five years and there is a suitable eligible list containing the names of two or more persons available for appointment or promotion to such position…"

HRD has misconstrued the plain language of Section 46 and, in doing so, appears to have reversed its longstanding prior interpretation that has been relied upon by appointing authorities when considering reinstatement requests.

In interpreting Section 46, the Commission must be guided by the traditional rules of statutory interpretation. "We interpret a statute according to the intent of the Legislature." Commissioner of Correction v. Superior Court Dep't of the Trial Court for the County of Worcester, 446 Mass. 123, 124 (2006). Legislative intent is gleaned from the language of the statute. Id., quoting International Fid. Ins. Co. v. Wilson, 387 Mass. 841, 853 (1983). The language of a statute is the main source of insight into the intent of the legislature. Commonwealth v. Gove, 366 Mass 351, 354 (1974). Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent." Pyle v. School Committee, 423 Mass. 283, 285 (1996.) Explicit language of a statute cannot be ignored. Senior Housing Properties Trust v. Health South Corp., 447 Mass. 259, 272 (2006). "[A] statute is to be construed as written, in keeping with its plain meaning." eVineyard Retail Sales-Mass., Inc. v. Alcoholic Beverages Control Comm'n, 450 Mass. 825, 831 (2008), quoting Stop & Shop Supermarket Co. v. Urstadt Biddle Props., Inc., 433 Mass. 285, 289 (2001). Statutory language "is not to be enlarged or limited by construction unless its object and plain meaning require it." Rambert v. Commonwealth, 389 Mass. 771, 773 (1983). "We cannot read into a statute words that the Legislature did not see fit to

embody in the enactment. We are bound to interpret a statute as it is written." E.I. Dupont De Nemours & Co. v. Commonwealth, 65 Mass. App. Ct. 350, 353 2005 quoting West's Case, 313 Mass. 146, 149 (1943). "We do not 'read into [a] statute a provision which the Legislature did not see fit to put there.'") McCoy v. Cityof Kingston, 68 Mass. App. Ct. 819 825 (2007) quoting from King v. Viscoloid Co., 219 Mass. 420, 425 (1914). Guided by these familiar principles of statutory construction, the Commission must interpret the clear, plain, and unambiguous language of Section 46 to allow for the Appellant's reinstatement.

Section 46 simply prohibits reinstatements where the individual seeking to be reinstated has been separated for more than 5 years and there is a suitable eligible list. Notwithstanding the clarity of Section 46, HRD offers of a misinterpretation to prevent any reinstatements during the existence of a suitable eligible list. This reading is contrary to well established canons of statutory construction, which unequivocally require that the statute be applied as written. "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms." Commonwealth v. Boe, SJC-10443 (March 25, 2010), quoting James J. Welch & Co. v.Deputy Comm'r of Capital Planning & Operations, 387 Mass. 662, 666 (1982), quoting Caminetti v. United States, 242 U.S. 470, 485 (1917).

The Legislature sought only to prohibit reinstatements where the individual seeking his former position has been separated for more than 5 years and a suitable list of candidates for the position exists. This is the only legally tenable reading of the language

at issue. “It is axiomatic that the word ‘and’ is not synonymous with the word ‘or’; the word ‘or’ is disjunctive, while the word ‘and’ is conjunctive. Commonwealth v. Aponte, 71 Mass. App. Ct. 758, 761 (2008). “The word ‘or’ is not synonymous with the word ‘and,’ is a disjunctive particle in its accurate use, and marks an alternative and not a conjunctive.” Central Trust Co. v.Howard, 275 Mass. 153, 158 (1931). Therefore, the provision that “[n]o such request shall be approved if the person whose reinstatement is sought has been separated from such position for over five years and there is a suitable eligible list...” cannot be read to prohibit the Appellant’s reinstatement.

In urging the Commission to uphold its denial of the Appellant’s reinstatement, HRD claims that following the plain language of Section 46 would produce “absurd results.” We disagree. First, for former employees to be reinstated, the appointing authority is required to approve the reinstatement and seek HRD’s approval. This statutory requirement prohibits employees from returning without approval and prevents individuals who may lack the necessary skills or require substantial re-training from being rehired. Second, there is a substantial benefit conferred upon the public by having a seasoned, trained and experienced employee, such as the Appellant, whose reinstatement has been approved by his appointing authority, return to his former position. The savings achieved by hiring an academy trained and experienced firefighter are substantial. Reinstating a trained and experienced employee saves training, overtime, academy, and shift coverage costs. Nowhere is that more apparent than in this case. During his absences, Mr. Coach acquired and developed advanced paramedic skills which he seeks to apply as a firefighter for Westfield. Denying the city the benefit of such training and skills would be an injustice to the Appellant and the public.

Finally, it would be not only illogical, but patently unfair and contrary to basic merit principles to deny reinstatement to former employees who relied on the plain language of Section 46 and HRD's prior interpretation of Section 46 when they decided to vacate their positions. HRD has a longstanding practice of allowing reinstatements while an active eligible list exists, even when it operates to deny those on said lists an opportunity for consideration. For example, in Mandracchia v. Everett & HRD, 22 MCSR 143, 146 (2009), the Commission upheld the reinstatement, during the existence of a valid eligible list, of a police sergeant who, like the Appellant was absent for less than 5 years. In that case, HRD had approved the City's request to reinstate the police sergeant even though there was an active eligible list for that position. Parties have a right to expect that a longstanding practice of HRD will be followed. Predictability and precedent are fundamental aspects of any statutory scheme, so that all the parties are able to make plans and projections in reliance on it. See Moloney et al v. City of Lynn, 17 MCSR 13, 14 (2004).

HRD's decision to deny reinstatement was arbitrary and capricious and based on a misreading of Section 46 as explained above.

ORDER

Pursuant to Chapter 310 of the Acts of 1993, the Commission hereby remands this case to HRD and orders HRD to reconsider the City's request to reinstate the Appellant and to issue a determination that is consistent with this decision.

Civil Service Commission

_____
Christopher C. Bowman
Chairman

_____
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Henderson, Marquis, McDowell and Stein, Commissioners [Bowman, Chairman – Absent] on May 20, 2010.

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:
Brian E. Simoneau, Esq. (for Appellant)
Martha O'Connor, Esq. (for HRD)
Albert J. Masciadrelli (Chairman, Westfield Fire Commission / Appointing Authority)