

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JUSTIN GAGNON,
Appellant

G1-14-303

v.

BOSTON FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Daniel J. Magoon
Massachusetts Fallen Heroes
Veterans Edge
100 Hallet Street
Dorchester, MA 02124

Appearance for Respondent:

David LaChappelle, Esq.
City of Boston
City Hall: Room 624
Boston, MA 02108

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On December 29, 2014, the Appellant, Justin Gagnon (Mr. Gagnon), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Fire Department (BFD), to bypass him for original appointment as a firefighter.

On February 24, 2015¹, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Gagnon, his representative, counsel for the BFD and the BFD's Director of Human Resources.

¹ Two (2) previously-scheduled pre-hearing conferences were continued due to weather-related reasons.

Prior to the pre-hearing conference, the BFD filed a Motion to Dismiss Mr. Gagnon's appeal. Subsequent to the pre-hearing conference, Mr. Gagnon filed his opposition. Based on the statements at the pre-hearing conference and the parties' written submissions, the following facts are not disputed, unless otherwise noted:

1. On April 28, 2012, Mr. Gagnon took the civil service examination for firefighter and received a score of 98.
2. On December 31, 2012, the state's Human Resources Division (HRD) created an eligible list of candidates for Boston firefighter. Mr. Gagnon's name appeared near the top of that list as a disabled veteran.
3. On December 13, 2013, HRD issued Certification No. 01418 to the BFD, from which the BFD ultimately appointed fifty-three (53) candidates for appointment. Mr. Gagnon was ranked sixth on that Certification and the majority of candidates selected for appointment were ranked below Mr. Gagnon.
4. In a letter dated August 29, 2014, the BFD notified Mr. Gagnon that "it has been determined by a Physician that you are currently medically unqualified for the position of Fire Fighter. If you wish to seek a second medical opinion, please contact Mr. Robert Moran, Director of Human Resources ... Please be advised, you have 16 weeks from the date of this letter to be retested."
5. The same August 29, 2014 letter stated, "You have a right to appeal this decision to bypass you to the Civil Service Commission, which is located at One Ashburton Place, Room 503, Boston, within sixty (60) days from receipt of this notice."
6. Mr. Gagnon stated at the pre-hearing conference that he did not receive the BFD notice dated August 29, 2014 until "mid-September [2014]."

7. The parties generally agree that the medical disqualification relates to a “red-green color deficiency” in Mr. Gagnon’s vision and whether this deficiency, tracking the 2014 HRD medical guidelines, is an “eye condition that results in a candidate not being able to safely perform one or more essential job tasks.” The BFD’s medical screening appears to have concluded that the condition would prevent Mr. Gagnon from safely performing one or more job tasks required of firefighters.
8. By rule adopted by the Commission in 2000, bypass appeals must be received by the Commission within sixty (60) days of the bypassed candidates receiving notice of the bypass.
9. G.L. c. 31, § 61A states in relevant part that, if a public safety candidate fails an initial medical examination, he “shall be eligible to undergo a re-examination within 16 weeks of the date of the failure of the initial examination. If he fails to pass the reexamination, his appointment shall be rescinded.”
10. On December 29, 2014, Mr. Gagnon filed a bypass appeal with the Civil Service Commission.
11. Even if Mr. Gagnon received the notice of bypass on the last day of September 2014 (he claims he received it in mid-September), both parties agree that the bypass appeal was not received by the Commission within sixty (60) days of receipt.
12. At the pre-hearing conference on February 24, 2015 and as part of his opposition to the BFD’s Motion to Dismiss, Mr. Gagnon submitted correspondence from three (3) different physicians dated January 14, 2015, February 12, 2015 and February 18, 2015 respectively.
13. The medical correspondence dated January 14, 2015 was penned by Dr. Emily LeVeen of the Providence Medical Center. It states in relevant part, “He [Mr. Gagnon] was last seen by me 6/5/14. I have reviewed the medical requirements for firefighter in the Commonwealth of

Massachusetts as well as the patient's eye exam findings. This veterans only eye deficiency is color blindness which is not outlined in the guide as a contraindication to hiring. It is my feeling that this should not impede his ability to perform his duty as a firefighter."

14. The letter dated February 12, 2015 also does not reference a "reexamination" but, rather, contests whether Mr. Gagnon's vision deficiency constitutes a medical disqualification under HRD's medical guidelines.

15. The letter dated February 18, 2015 states that Mr. Gagnon was seen at the Mass Eye and Ear Infirmary for "full retinal testing including color vision screening." The letter confirms Mr. Gagnon's "red/green color deficiency" but states "We do not feel this should affect his job as a firefighter."

Analysis

Mr. Gagnon does not dispute that he received the letter from the BFD dated August 29, 2014, although he states that he received the letter in "mid-September" [2014]. Further, he acknowledges that, even based on the "mid-September" estimate, his bypass appeal to the Commission was not received within the prescribed 60-day deadline established by Commission rule.

Mr. Gagnon argues, however, that the Commission should waive the 60-day filing requirement for what Mr. Gagnon effectively argues are good cause reasons, including the long delay by BFD in making appointments and notifying him of the reason for bypass and the upheaval related to leaving his employment after receiving the conditional offer of employment by BFD.

The BFD argues that Mr. Gagnon received proper notice of his bypass reasons and his right of appeal, which explicitly referenced the Commission's 60-day filing deadline. Thus, according to the BFD, Mr. Gagnon's appeal should be deemed untimely and dismissed.

The Commission's rule establishing a 60-day filing deadline for bypass appeals does not contain provisions to waive the deadline for good cause nor am I aware of any Commission decision since this rule was established approximately fifteen (15) years ago in which the filing deadline was extended. Even if such provisions did exist, the reasons cited by Mr. Gagnon for his delay in filing an appeal do not constitute the type of circumstances that would warrant such a waiver.

While not directly raised by Mr. Gagnon here, the applicability of the 16-week statutory right to a "reexamination" warrants discussion. While the Commission's rule requires bypassed candidates to file an appeal within sixty (60) days of receipt of the bypass notice, G.L. c. 31, § 61A gives applicants who fail an initial medical examination sixteen (16) weeks to undergo a reexamination. The two deadlines are not in conflict with each other. As applied here, nothing prevented Mr. Gagnon from filing a bypass appeal with the Commission within sixty (60) days of receiving notice of the bypass and subsequently exercising his right to a reexamination. In fact, it is not uncommon for the Commission to receive bypass appeals and conduct a pre-hearing conference where the sixteen (16)-week reexamination window is still open. In those cases, the parties discuss how and when said reexamination will occur and, based on the results of the reexamination, whether the bypass appeal will go forward or be deemed moot. Further, based on the undisputed facts here, Mr. Gagnon did not undergo a "reexamination" within sixteen (16) weeks, even when using: a) BFD's statement that the timeframe for requesting such a reexamination began upon receipt of the bypass letter; and b) Mr. Gagnon's statement that he did

not receive that letter until “mid-September” of 2014. The medical correspondence dated January 14, 2015, which is the only date that could possibly fall within that 16-week window, simply disputes BFD’s findings, but does not reference a reexamination of Mr. Gagnon.

For these reasons, Mr. Gagnon’s appeal to the Commission under Docket No. G1-4-303 is not timely and 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 April 2, 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:

Justin Gagnon (Appellant)
Daniel S. Magoon (Appellant’s Representative)
David LaChappelle, Esq. (for Respondent)
John Marra, Esq. (HRD)