

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ANDREW W. MULLIGAN,
Appellant
v.

Docket No.: G1-12-152

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro se

Appearance for Appointing Authority:

Nicole Taub, Esq.
Boston Police Department
One Schroder Plaza
Boston, MA 02120

Commissioner:

Cynthia Ittleman

DECISION ON MOTION TO DISMISS

On April 24, 2012, the Appellant, Andrew Mulligan (“Mr. Mulligan” or “Appellant”), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (“Commission”), regarding the decision of the Boston Police Department (“Department” or “Respondent”) to bypass him for appointment to the full-time permanent position of Police Officer.

A pre-hearing conference was held on June 19, 2012, which was attended by both parties and a representative of the state Human Resources Division (“HRD”). The Respondent filed a Motion to Dismiss the appeal (“Motion”) on July 18, 2012. Mr. Mulligan filed an opposition to the Motion (“Opposition”) on September 10, 2012. The Commission conducted a hearing on the Motion on October 22, 2012, which the Appellant and the Department attended. For the reasons stated herein, the Motion is allowed.

FINDINGS OF FACT

Giving appropriate weight to all of the documents filed in this case, the arguments presented by the parties, and inferences reasonably drawn from the evidence, the following were proved by a preponderance of the evidence:

1. In 1994, the Appellant was hired as a clerk by the city of Boston to work in the Details Division of the Department, at which time he was approximately twenty-three (23) years old.¹ (Motion - Exhibit 1 (including Appellant's Affidavit²); Opposition)
2. Thereafter, on June 11, 1994, the Appellant took the civil service exam for Police Officer. (Motion - Exhibit 1 (including Appellant's Affidavit); Administrative Notice of Prehearing conference) The Appellant has not taken a civil service exam for Police Officer since that date.³ (Motion)
3. On November 29, 1994, having passed the civil service exam⁴, the Appellant resigned from the clerk position to become a police cadet at the Department. (Motion - Exhibit 1 (including Appellant's Affidavit); HRD Documents Submitted at Motion Hearing)
4. In response to a request from the Department to fill one hundred (100) Police Officer vacancies, HRD issued certification 961156 on November 20, 1996. The Appellant's name is not on the certification issued on November 20, 1996. (Certifications provided by HRD)

¹ The Department avers that the Appellant was forty-one (41) years old at the time of the hearing on the Motion in 2012. The Appellant did not dispute his age. Since 1994 is eighteen (18) years earlier than 2012, the Appellant would have been approximately twenty-three (23) years old when he was hired to work in the Details Division of the Department in 1994. (Argument and Motion) The Appellant's age at other times noted herein is based on the indication that the Appellant was approximately forty-one years old at the 2012 hearing.

² Although the heading of the document submitted by the Appellant represents that it is Mr. Mulligan's affidavit, it is signed but not under the pains and penalties of perjury. As Mr. Mulligan is pro se, I accept that the document reflects his beliefs.

³ The Appellant does not dispute that he has not taken another exam since 1994.

⁴ It is undisputed that the Appellant passed the exam. The Appellant believes that his score was 98 but there was no documentation adduced in this regard.

5. The Appellant worked as a cadet until January 7, 1997, when he resigned, writing to Mr. Edward Callahan, then-Director of the Department Personnel, “Sir, I respectfully submit to you my resignation from the Boston Police Department. ...I am presently being investigated and processed for the academy (sic) and wish to use my time from now till then to better prepare myself and work elsewhere to earn adequate income” (Motion – Exhibits 1 (Appellant’s Affidavit) and 2) It was common practice for cadets being considered for the academy to resign from the cadet program. The Appellant was approximately twenty-seven (27) years old in 1997. (Argument of the Parties)
6. In response to the Department’s request for additional names from certification 961156 in order to fill the one hundred (100) Police Officer vacancies, HRD issued certification 961156 with additional names on March 5, 1997. The Appellant’s name is not on that certification. (Motion; Certifications provided by HRD)
7. On March 19, 1997, Police Commissioner Evans wrote to the Appellant, in pertinent part, “I am pleased to offer you an appointment as a probationary Boston Police Officer effective March 26, 1997. ... I congratulate you and hope that this marks for you the beginning of a long and successful career with the Boston Police Department.” (Motion - Exhibit 3)
8. A Department Personnel Order dated April 2, 1997, P.O.#97-87 (“Department Personnel Order”), is a list of persons, “... hereby appointed to this department as Student Officers in accordance with M.G.L.A. 41, section 96B, and assigned to the Training and Education Division-Recruits/Trainees, Org. #31116, effective Wednesday, March 26, 1997.” (Department Personnel Order filed at Hearing) The names on this list appear in

alphabetical order and include the Appellant's name.⁵ (Department Personnel Order filed at Hearing)

9. HRD Employment Form 14s dated March 26, 1997 and June 19, 1997, sent by the Department to HRD, list the candidates that the Respondent appointed to the position of Police Officer from the 1994 exam on those dates. The Appellant's name does not appear on either of the two Form 14 forms. Like the Appellant, some of the other candidates whose names appeared on the Department Personnel Order were also not on the Form 14s. In addition, some candidates whose names appear on the Department Personnel Order were on the Certifications and some were not. (Form 14s provided by HRD; Certifications provided by HRD; Department Personnel Order filed at Hearing; Administrative Notice)
10. On March 25, 1997, the Appellant took the Physical Abilities test and passed. (2-page document adduced by HRD at Prehearing Conference and filed by Appellant at Hearing⁶)
11. On March 26, 1997, the Appellant reported to the academy, where he was told that the academy class had been overfilled and that he should resign to be considered for a possible future position. At the academy, he was told to report to the Department headquarters, where he was told the same thing. (Motion – Exhibit 1 (Appellant's Affidavit)) The Appellant refused to resign and, instead, requested a leave of absence. (Appellant Argument) There is no documentation of a leave of absence for the Appellant in the record. (Administrative Notice)

⁵ At the hearing on the Motion, the Appellant recognized a number of names on the Department Personnel Order who had been cadets at or about the same time that he was a cadet.

⁶ The 2-page document is comprised of a document that appears to be a computer print screen from a database that provides some of the Appellant's identifying information and that he took and passed the PAT on March 25, 1997. The other document appears to be a computer generated report of certain computer dates and functions related to the 1994 exam; it does not reference the Appellant or any other test-takers by name.

12. There is a City of Boston/Suffolk County Absence and Termination Notice (“Notice”) form in the Department’s records effective March 26, 1997 regarding the Appellant. This form is filled in by typing (not handwriting), and provides the Appellant’s name, address, and related information. The Notice provides spaces for a person to indicate whether he or she is taking a Leave of Absence or because of an Involuntary Separation. The Notice also asks if the person requested a Leave of Absence but did not receive it. The Leave of Absence section of the Notice is not filled in and there is no indication on the Notice that it was requested but denied. The Voluntary Separation section says that the reason given therefor is “Personal – Not attributable to the City of Boston (511)”. There is no place on this Notice. However, Commissioner Evans and others signed other documents stating that the Appellant resigned from the academy and that his resignation was accepted effective March 26, 1997. (Motion – Exhibits 4 and 5) The Appellant did not receive a document stating that he had resigned and that his resignation was approved. (Appellant Argument)

13. In a memorandum dated June 4, 1997, Darlene Filleti, who works in the Department’s Occupational Health Services office, wrote to Edward Callahan, then-Director of the Department’s Human Resources office, stating,

This week, I made several attempts to reach Andrew Mulligan by phone at [redacted phone number]. I left messages on his answering machine and I received no acknowledgment of these messages. Finally, today 6/5/97, I reached his parents home at [redacted phone number], and spoke with his mother who identified herself as such. I relayed the message that Mr. Callahan of the Boston Police Department would like Andrew to contact him. I also mentioned to her that I had left numerous messages at the [redacted phone number for the Appellant – same as identified in the first sentence above] number and had received no response. Mrs. Mulligan did confirm that was Andrew’s telephone number. She stated that she thought Andrew may be out of town. I asked her if it would be possible to reach him and ask him to call Mr. Callahan at the Boston Police Department, that we were doing the prescreening and getting ready for the

next class, and that it is very important that Andrew contact Mr. Callahan. Mrs. Mulligan said she would. (sic)
(Motion – Exhibit 6)

Legible handwriting at the bottom of the June 4, 1997 memorandum states, “Spoke w/ Mr. Richard Mulligan @ 10:45 a.m. Explained situation regarding pre-screening. ...”

Id. Richard Mulligan is the Appellant’s father. (Motion – Exhibit 6)

14. Mr. Callahan sent a letter dated June 5, 1997 to the Appellant stating, “Regarding your candidacy for the position of Boston Police Officer, please contact me at 343-4677 as soon as possible.” (Motion – Exhibit 7)

15. Approximately one year later, the Appellant called Mr. Callahan to inquire about his appointment and Mr. Callahan told him that the list generated from the 1994 civil service exam for police officer had expired and since the Appellant had not taken the subsequent exam, he was no longer eligible for employment with the BPD. (Motion – Exhibit 1 (Appellant’s Affidavit))

16. Several years thereafter, the Appellant called Mr. Callahan again, asserting that because he was out on a leave of absence, he was unaffected by the expiration of the list from the 1994 exam. Mr. Callahan told the Appellant that since he was more than thirty-two (32) years of age, and due to the added competition of the increasing number of candidates who were veterans, the Appellant would not be considered for appointment. (Motion – Exhibit 1 (Appellant’s Affidavit))

17. The Appellant was not appointed to the position of police officer in the Department in 1997 or thereafter. (Motion, Opposition, Parties’ Argument, Administrative Notice)

18. In late 2011, the Appellant concluded that the Department had discriminated against him because of his family relation to slain Department officer John Mulligan and/or that the

Department had misinformed him about his ability to be appointed. (Motion – Exhibit 1 (Appellant’s Affidavit), Opposition)

19. Mr. Mulligan filed this appeal at the Commission on April 24, 2012. (Administrative Notice) As of July 19, 2012, when the Department filed its Motion, the Appellant was approximately forty-one years old. (Motion, p. 5)

DISCUSSION

The Legal Standard for Consideration of a Motion to Dismiss

After the ruling in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547 (2007), the Massachusetts Supreme Judicial Court held that an adjudicator cannot grant a motion to dismiss if the non-moving party’s factual allegations are enough to raise a right to relief above the speculative level based on the assumption that all the allegations in the appeal are true, even if doubtful in fact. See Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008). At the Commission, the Standard Adjudicatory Rules of Practice and Procedure (hereinafter “Rules”) govern administrative adjudication. 801 CMR 1.01, *et seq.* However, Commission policy provides that when such rules conflict with G.L. c. 31, the latter shall prevail; there appears to be no such conflict here. The Rules indicate that the Commission may dismiss an appeal for lack of jurisdiction or in the event the appeal fails to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3).

Civil Service and Non-Civil Service Law Relating to Cadets and Police Officers

Under the provisions of G.L. c. 31, appointing authorities are authorized to hire police officers, following a detailed process prescribed therein and related statutes and Personnel Administrator Rules (“PARs”) and pertinent HRD policies. A candidate for civil service employment who believes that he was wrongly bypassed and was “aggrieved” thereby may

appeal to the Commission and must do so in a timely manner. *See* G.L. c. 31, s. 2(b); Commission sixty (60) day statute of limitations for bypass appeals. However, even when police officers are appointed pursuant to civil service law, they first attend an academy, during which time recruits are “student officers” without benefit of civil service law and, upon completion of the academy, they are probationary employees for twelve (12) months who may be terminated without civil service protections because they are not yet tenured civil service employees. *See* G.L. c. 41, s. 96B and G.L. c. 31, s. 61, respectively.

Pursuant to G.L. c. 147, s. 21A, appointing authorities may also appoint police cadets outside of G.L. c. 31, as follows, in pertinent part,

The board or officer in a city or town authorized to appoint police officers for such city or town **may**, when so authorized ... appoint as a police cadet, for a period of full-time ‘on the job’ training, any citizen resident in ... in the city of Boston any citizen resident who is not less than eighteen nor more than twenty-five years of age who meets the physical qualifications required of applications for appointment to the police force in such city or town, and who is determined by the appointing authority to be of good moral character. **Such appointment shall not be subject to the civil service law or rules**; nor shall a police cadet be entitled to any benefits of such law or rules. **Such appointment may be terminated by the appointing authority at any time**, and shall be terminated whenever a cadet fails to maintain a passing grade in any course of study the appointing authority determines he should undertake, and ... in the city of Boston whenever a cadet fails to maintain a passing grade in any course of study the appointing authority determines he should undertake, and when he reaches the age of twenty-seven. ...
Id.

There are additional statutory provisions relating to the manner in which the Department may appoint a cadet to the position of police officer. Specifically, Chapter 277 of the Acts and Resolves of 1984, provides, in pertinent part,

Notwithstanding the provisions of chapter thirty-one of the General Laws, any person who has completed not less than two years of service as a police cadet in the police department of the city of Boston, or any person who has completed any such service as a cadet; provided however, that such person has also completed at least two years of service as a civilian employee of said department performing the same or similar function as performed while a cadet in the police department of said city under the provisions of section twenty-one A of chapter one hundred and forty-seven of the General Laws, or any

employee who has completed two years of service as a civilian within said department; ... **may**, subject to a program established by the police commission of said city and approved by the personnel administrator of the state division of personnel administration and the Massachusetts criminal justice training council, **be appointed to fill a vacancy in a position in the lowest grade in the police force of said city without certification from an eligible list prepared under the provisions of chapter thirty-one of the General Laws; and provided, further, that such person either is on a police entrance eligible list prepared under said chapter thirty-one or passes a qualifying examination to be given by said personnel administrator.**

Id.

While the Department is thus authorized to appoint cadets to the position of police officer in the manner prescribed, the number of such police officer appointments is limited. St. 1979, Chapter 560, section 2 provides as follows, in pertinent part,

... Not more than five, or thirty-three and one-third per cent, whichever is greater, of the total number of appointments to the regular police force of the city of Boston in any calendar year, shall be made under the provisions of this act.

Id. (amending St. 1978, Chapter 174, s. 3 to strike previous section 3 and insert the above in lieu thereof)

Although there is a maximum number of cadets the Department may appoint, there appears to be no requirement to hire a minimum number of cadets or any cadets at all. Given this statutory construct, the Superior Court has held that, “ ... the appointment of cadets as new police officers, like the appointment of new cadets, is not subject to the civil service law or rules, and a cadet may not seek Commission review regarding the denial or withdrawal of his appointment.” Boston Police Department v. Munroe, SUCV01-0725-F (1990), p. 4) Although we are not bound by a Superior Court decision in another case, the Commission agrees with, and has repeatedly applied the tenets therein. *See, e.g.* Finn v. Boston Police Department, Docket No. G1-05-441 (2007). Further, the Court in Monroe held that, “The Commission has jurisdiction under G.L. c. 31, s. 2 [for bypass appeals] only when a person is ‘aggrieved’ because of decisions, acts, or failures to act that were in violation of G.L. c. 31, or in violation of ‘the rules or basic merit principles promulgated thereunder.’” Id.

With respect to timeliness of an appeal pursuant to G.L. c. 31, s. 2(b), effective October 1, 2008, the Commission adopted a sixty-day (60) statute of limitations for bypass appeals requiring Appellants to file their bypass appeals at the Commission within sixty days of receiving notification of the bypass in view of the absence of an applicable statutory statute of limitations. Effective December 1, 1999, the Commission adopted the Standard Adjudicatory Rules of Practice and Procedure (“Rules”) at 801 CMR 1.00 (Formal Rules), which provides, in part, “Parties must file papers required or permitted to be filed with the Agency under 801 CMR 1.00, or any provision of applicable law, within the time provided by statute or Agency rule. ...” 801 CMR 1.01(4)(a). Prior to the Commission’s adoption of the Rules, the Commission operated under the Massachusetts Civil Service Commission Rules of Practice and Procedure (“CSC Rules”), enacted pursuant to G.L. c. 31, effective July 1, 1981 with limited exceptions. CSC Rules, Section 8.

There are statutory age limitations with respect to the hiring of police officers. Specifically, G.L. c. 31, s. 58A provides that unless a city has enacted a special law otherwise, no person shall be eligible for the position of if they have reached thirty-two (32) years of age. Pursuant to St. 2007, Chapter 43, the City of Boston allows for candidates up to the age of forty (40) to be considered eligible for appointment as a police officer.

Department’s Argument

The Department avers that the appeal should be dismissed for several reasons. First, the Appellant has no bypass rights because he received his appointment because of his cadet status, not because of a civil service appointment. Secondly, the Department argues that the appeal is untimely. Lastly, the Appellant is over the age limit to become a Boston police officer.

In support of these averments, the Department argues that cadets are not civil service appointees under G.L. c. 31, that the Appellant's name is not on the 1997 civil service certifications, and that the Appellant resigned from the first day of the academy to which he was assigned, leaving him with no rights to further consideration at that time. Further, the Department argues that Director Callahan made efforts to reach the Appellant in 1997 for consideration for the next academy, and spoke to the Appellant's mother in this regard, but that the Appellant did not respond. In addition, the Appellant's appeal was filed in 2012, which is fifteen (15) years after the Appellant resigned from the academy. Since the Commission's statute of limitations is sixty (60) days, the Department avers, the appeal was filed many years too late. With regard to the age limitation for appointment to the position of police officer in Boston, the age limit was changed from thirty-two (32) to forty (40) in 2007 via St. 2007, Chapter 43. The Department asserts that since the Appellant would have been approximately thirty-six (36) years old in 2007, he had the opportunity to take a couple of more civil service exams in order to be considered for appointment to the position of police officer but he did not retake the exam during that time period or at any other time after the 1994 exam. Finally, the Department avers, the Appellant was forty-one (41) years old when he filed his appeal and, therefore, he has exceeded the statutory age limit and cannot be appointed to the position of police officer.

Appellant's Argument

The Appellant argues that he was wrongly bypassed because he took the exam, passed it with a score of 98, he was "chosen off the civil service list" (Appellant's Affidavit) and not because he had been a cadet, that he received notice of his appointment to attend the academy, that he resigned his position as a cadet in order to attend the academy, he took and passed the

PAT on March 25, 1997, and he appeared for first day of the academy on March 26, 1997.

When he appeared at the academy, he asserts that he was told that the academy was overfilled, to go to police headquarters, and that the Department did not want another Mulligan in its ranks, referring to his uncle, who was a Boston Police Officer who was killed in 1993.⁷ At headquarters, he avers, then-Department Human Resources Director Edward Callahan told him that the academy class was overfilled and for “political reasons” he was “being passed over.” Mr. Callahan allegedly told the Appellant to resign (rather than being fired) so that the Appellant would have a chance to be assigned to a future academy. The Appellant states that he refused to resign and filled out a leave of absence form instead, which he was told would allow him to be processed for the next academy. He was not processed for the next academy.

Thereafter, the Appellant called Mr. Callahan, who allegedly told him again to resign and seek reappointment and not to “make waves” by seeking a bypass appeal hearing.

Approximately one year later, the Appellant states that he called Mr. Callahan again to inquire about his status and Mr. Callahan stated that the list from the civil service exam that the Appellant took had expired and, since the Appellant had not taken the subsequent exam, he could not be considered for appointment. At or about the time that the list for the 1994 exam expired, the Appellant avers that his father met with Mr. Callahan and others at the Department and he was told the same thing that they had said to the Appellant.

Several years later, the Appellant asserts, he called Mr. Callahan to state that he believed that his leave of absence froze his eligibility. Mr. Callahan is asserted to have told the Appellant

⁷ The Appellant further averred that some at the Department disagreed with certain of his uncle’s approaches to policing, suggesting that the Department unfairly imputed to the Appellant the disagreements it had with his deceased uncle. That the Appellant was hired at the Department Details Division and then as a cadet undermines the Appellant’s averment. If the Department could not prove by a preponderance of the evidence that such a statement was not made in response to a timely appeal, the Court in Munroe, *supra* at p. 4, suggests that such conduct may be arbitrary and capricious in violation of basic merit principles.

in response that he was not eligible because he was over thirty (32) years of age, the age limit at the time, and given the influx of veterans seeking police appointments, the Appellant would not be considered for appointment. Motion – Exhibit 1, Appellant’s Affidavit. Only in “the past several months,” when the Appellant filed this appeal, did he learn that his leave of absence ‘froze’ his age and test score. The Appellant believes that the Department has misled him for years, was biased against him, and appointed people in his academy class who had “lower civil service standings and qualifications” than him, and, therefore, the Department should appoint him to the next academy. Motion – Exhibit 1, Appellant’s Affidavit.

Analysis

The Motion is granted because the Appellant failed to raise a right to relief above the speculative level, warranting dismissal of the appeal based on a number of factors. First, the appeal is plainly untimely by any relevant measure. The actions and/or inactions of which the Appellant complains occurred in 1997 and several years thereafter. Although the statute of limitations for filing an appeal at the Commission under G.L. c. 31, s. 2(b) since 2000 has been sixty (60) days, for the recent past preceding this statute of limitations there appears to have been none since there is none in the statute and the Commission is not aware of any rules establishing a statute of limitations for such appeals prior to 2000. Even if there was no explicit statute of limitations for such an appeal in 1997, that cannot be interpreted to mean that a person can file an appeal ad infinitum. Further, shortly after he left the academy, the Department made a number of attempts to reach him in order to consider him for appointment and attendance at the next academy, to which the Appellant did not respond. In addition, the Appellant avers that on a number of occasions over several years, he contacted the Department and was repeatedly told that he could not be considered. Specifically, the Appellant stated that when he initially

followed up with the Department, he was told that the list of eligible candidates from the 1994 exam had expired and, since the Appellant had not taken a subsequent exam, he could not be considered for appointment. Several years later when the Appellant contacted the Department again, Mr. Callahan told him that he could no longer be considered for appointment since he was over the age limit at the time, which was thirty-two. At all of these occasions, the Appellant was aware that he was not being appointed and yet he filed no appeal and did not re-take the exam. Thus, even though the sixty (60) day statute of limitations did not exist until 2000, the Appellant let pass for years the opportunity to file an appeal in this case or otherwise pursue his reported interest in the job, for example, by retaking the police officer exam. Moreover, since the Appellant was approximately forty-one (41) years of age at about the time of the hearing on the Motion, he has exceeded the revised age limit for appointment to the position of police officer in Boston. Asked why he did not appeal sooner, the Appellant himself asserted at the hearing on the Motion, "life takes charge." The Commission cannot consider timely an appeal filed years late when the Appellant was repeatedly told, by his own assertion, that he could not be considered.

Granting the Motion is also warranted based on statutes and caselaw cited herein regarding the appointment of cadets to the position of police officer. As noted above, appointment of a cadet to the position of police officer by the Department, and withdrawal of the appointment, is not subject to appeal in this case given the explicit wording of the applicable statutes. Therefore, the Appellant cannot properly assert that he is "aggrieved", pursuant to G.L. c. 31, s. 2(b) by violation of civil service laws. Further, the Appellant avers that he was appointed to the position of police officer based on his score on the "civil service list" based on

the 1994 exam that he took,⁸ not by dint of his having been a cadet. To this end, the Appellant asserts that a two-page document produced by HRD counsel at the prehearing conference shows that his name was on a certification. However, the two pages provide little more than the Appellant's name and the date that he took and passed the PAT, which does not establish that he was selected from a "civil service list." The Appellant's name does not appear on either of the two certifications for the 1994 exam nor on the Form 14s submitted by the Department to HRD with the names of the candidates the Department had hired. Comparing the Form 14s with the Department Personnel Order, it is clear that the Appellant is not the only one whose name appeared on the Department Personnel Order but not on the Form 14s because they were not selected. In any event, a preponderance of the evidence indicates that the Appellant was appointed a probationary police officer and sent to the academy because of his status as a cadet and not pursuant to G.L. c. 31.

The Appellant also argues in opposition to the Motion that instead of resigning, he filled out a leave of absence form and gave it to the Department and that someone told him that the leave of absence preserved his exam score and age as of the time he left the academy in 1997 so that he can still be appointed to the position of police officer. The Appellant does not have a copy of the leave of absence and he avers that he asked the Department to produce it, to no avail. The Department produced documents indicating that it processed and approved his resignation, although there is no document signed by the Appellant indicating that he asked to resign. As indicated here, the passage of this much time from the date of alleged events limits the availability of information on which decisions can be reliably rendered. In addition to their age,

⁸ Even if the Appellant had been appointed based on his placement on a "civil service list," and not because of his status as a cadet, there is no indication that the Appellant's name appeared on a civil service list within the 2N+1 formula and that someone whose name appeared lower on the list than the Appellant was appointed in place of the Appellant.

these matters are beyond the Commission's purview because the process of appointing cadets to the position of police officer is outside the scope of G.L. c. 31. The Appellant further asserts that he was not appointed for "political reasons," including that he was related to a deceased Officer who had disagreements with the Department. These assertions are unsupported.

Conclusion

For all of the above reasons, the Appellant has failed to state a claim for which relief may be granted above the speculative level. Therefore, the Motion is hereby ***granted*** and the appeal is ***dismissed***.

Civil Service Commission

Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on January 8, 2015.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten (10) 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 (30) 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:

Andrew Mulligan (Appellant)
Nicole Taub, Esq. (for Appointing Authority)
John Marra, Esq. (for HRD)

