

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

ANN M. REGAN,
Appellant

v.

G2-05-390

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

Pro Se
Ann M. Regan
505 Royalston Road
Phillipston, MA 01331

Respondent's Attorney:

Alexandra McInnis
Director of Personnel
Department of Correction
Division of Human Resources
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Donald R. Marquis

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Ann M. Regan (hereafter "Regan" or Appellant") appealed the decision of the Respondent, the Department of Correction (hereafter "Appointing Authority", or "DOC"), to not select her for promotional appointment to the position of Correction Officer II (CO II) on September 25, 2005. The appeal was filed timely with the Commission on November 7, 2005.

A pre-hearing conference was conducted by the Commission on February 16, 2006 at which time DOC argued that the Appellant was not bypassed for the position of CO II as the Appellant's score was reached, but the site she was willing to accept had no vacancies. According to DOC, the Appellant selected only one site and, while the Appellant's civil service score of 83 was reached, the institution she selected had no more vacancies.

At the pre-hearing conference, DOC acknowledged, however, that the site selection / assignment process may need to be reviewed to eliminate any confusion in the future. In regard to this particular appeal, DOC, while still maintaining there was no bypass in this particular case, offered to engage in settlement discussions to forego the need for a full hearing before the Commission.

Subsequent to the pre-hearing conference, DOC forwarded a settlement offer to the Commission, which was copied to the Appellant, on March 13, 2006. DOC's settlement agreement called for DOC to place the Appellant's name at the top of the next CO II certification list for NCCI-Gardner for consideration of promotion in exchange for the Appellant withdrawing her civil service appeal and agreeing not to pursue this matter in any other forum.

The Appellant, in a written letter received by the Commission on March 22, 2006, rejected the settlement offer and submitted a "counter offer" calling for DOC to agree to immediately promote the Appellant to the position of CO II in exchange for the Appellant withdrawing her civil service appeal and agreeing not to pursue this matter in any other forum.

Based on the initial information presented at the pre-hearing conference, there is a high likelihood that DOC would be able to show at a full hearing that there was no bypass in this case. Regardless, assuming *arguendo* that the Appellant was bypassed *and* DOC was not able to show reasonable justification for bypassing her, the Commission would not be inclined to order her appointment as a CO II. Rather, consistent with the Commission's customary practice in bypass cases in which the Appellant is successful, the Commission would have ordered the Appellant's name to be placed top on the CO II certification list for consideration for the next promotional opportunity available at NCCI-Gardner.

It would be against equity and good conscience for the Commission to effectively penalize the Appellant for making a personally disadvantageous decision to reject a settlement offer that, had she been armed with more information regarding the customary practices of the Commission, she likely would not have made.

Therefore, consistent with its powers inherent in Chapter 310 of the Acts of 1993, the Commission hereby orders the state's Human Resources Division and /or the Massachusetts Department of Correction to take the following actions (which are consistent with DOC's settlement offer):

The state's Human Resources Division (HRD) and/or the Massachusetts Department of Correction are hereby ordered to place the name of Ann M. Regan at the top of the existing Correction Officer II certification list for NCCI-Gardner for consideration of promotion. If there is no such list in existence, Ms. Regan's name shall be placed at the next available Correction Officer II certification list for NCCI-Gardner. Consistent with all promotional review processes conducted by DOC, the promotional review of the Appellant will include a review of her job performance and employment record.

Civil Service Commission

Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman; Bowman, Guerin, Marquis and Taylor, Commissioners) on January 11, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Ann M. Regan

Alexandra McInnis (DOC)

Kerry A. Bonner, Esq. (HRD)