

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

CHRISTOPHER LONG,
Appellant

v.

G1-06-334

**HUMAN RESOURCES DIVISION AND
NORTH ANDOVER FIRE DEPARTMENT¹**
Respondents

Appellant's Attorney:

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Respondent's Attorney:

Martha Lipchitz O'Connor, Esq.
Human Resources Division
One Ashburton Place, Room 207
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Commissioner:

John J. Guerin, Jr.

**DECISION ON APPELLANT'S AND RESPONDENT HRD'S
MOTIONS FOR SUMMARY DECISION**

Pursuant to the provisions of G.L. c. 31, § 2(b), on December 11, 2006, the Appellant, Christopher Long (hereafter "Long" or "Appellant") appealed the decision of the North Andover Fire Department denying him consideration for a full-time, permanent firefighter position and requesting that the Commission order the Human Resources

¹ The appeal was amended to join HRD and dismiss the North Andover Fire Department as parties.

Division (“HRD”) to revive the eligibility list. A pre-hearing conference was held at the offices of the Civil Service Commission on March 29, 2007 and on that date, the Appellant submitted a Motion for Summary Judgment.² On May 8, 2007, the Appellant filed a Supplement to his Motion for Summary Judgment. On May 14, 2007, the HRD submitted a Motion for Summary Decision and Opposition to the Appellant’s Motion for Summary Decision. On May 17, 2007, the Appellant submitted a letter correcting a statement in the supplement to the Motion for Summary Decision. The HRD submitted an Opposition to Appellant’s Supplement to Motion for Summary Judgment and a request for Summary Decision on May 30, 2007.

Factual Background

On or about April 2004, the Appellant took the firefighter entrance examination and received a score of 91. Based on his score, he was placed on an eligible list, from the April 2004 examination, that was established on November 1, 2004. On October 27, 2006, during the term of this list, the Fire Chief of the Town of North Andover submitted a requisition to the HRD for one full-time, permanent firefighter. The Appellant’s name was tied for third place on the eligible list. The HRD did not process the requisition and the list expired on November 30, 2006. The 2006 eligible list compiled from the June 6, 2006 open competitive examination for firefighter was established on December 1, 2006.

Appellant’s Grounds for Summary Judgment

The Appellant argues that, had the requisition in question been processed, he would have been considered for the full-time, permanent firefighter position. He

² Appellant’s Motion for Summary Judgment was dated March 29, 2006.

maintains that there was ample time to process the requisition, arguing that, as there were 36 days from the date of the requisition to the expiration of the suitable eligible list, the HRD should have processed the requisition pursuant to the Personnel Administrator Rules (“PAR”) 8 (1). This section states, in relevant part: “Whenever any appointing authority shall make requisition to fill a position, the Personnel Administrator shall, if a suitable eligible list exists, certify the names standing highest on such list in order of their place on such list, except as otherwise provided by law or civil service rule.” The Appellant asserts that a conditional offer of employment extended before the November 30, 2006 deadline was all that was required for the Personnel Administrator to approve the appointment and that it was feasible to tender the successful candidate a conditional offer of employment within the time period between the submission of the requisition and the expiration of the list.

The Appellant also argues that North Andover previously made an employment offer in a similar time period: 27 days from issuance of the certification to issuance of a letter from the Town of North Andover Fire Department informing a firefighter that he was selected for employment.

The Appellant asserts that HRD’s failure to process the requisition violated G.L. c. 31 and abridged, denied and/or prejudiced his rights in such a manner as to cause actual harm to his employment status as he was denied consideration for the position. He requests that the Commission order HRD to revive the eligibility list that expired on

November 30, 2006 for the position of fulltime permanent firefighter in order that the list be used to fill one vacancy.

Respondent's Grounds for Dismissal

The HRD states that G.L. c. 31, § 25 and the PAR rules require that the HRD receive notice of the conditional offer of employment from the Appointing Authority prior to the expiration of the eligible list. It argues that in this case, as the requisition was submitted by the North Andover Fire Department approximately four weeks prior to the expiration of the 2004 eligible list, they were “unlikely to state with confidence that a conditional offer could be made by November 30, 2006.”³ As it was unlikely that the names of candidates who were given conditional offers could be received by November 30, 2006, the date the list was to expire, the HRD did not issue a certification from the 2004 list and informed North Andover that it would issue a certification from the December 1, 2006 eligible list.

The HRD contends that North Andover’s history concerning the amount of time it requires to return certifications to the HRD is “inconsistent at best” and has ranged from four to eleven weeks for one appointment.⁴ The HRD also distinguishes the circumstance referred to by the Appellant in which an employment offer was issued in a short time frame and argues it is irrelevant to the present case.

³ Affidavit submitted by Jenifer Murphy, HRD Senior Personnel Analyst, on May 29, 2007.

⁴ Id.

Moreover, the HRD argues that the Commission should defer to its decision whether or not to establish a certification list, absent a finding of a violation of basic merit principles, because it (the HRD) is given the authority to create and maintain such lists. It asserts that it uniformly applies its practice and procedure regarding requisitions submitted less than twelve weeks before the expiration of an eligibility list.

Additionally, the HRD contends that an individual has no property interest in a position based on his existence on a Civil Service list and thus the Appellant is not a person “aggrieved.”

Based on the HRD’s above arguments and supporting documentation, the Appellant’s Motion for Summary Judgment is denied and the Respondent’s Motion for Summary Decision is allowed and the appeal under Docket G1-06-334 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Taylor, Marquis and Guerin, Commissioners) on July 12, 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 to:

Brian E. Simoneau, Esq.

Martha Lipchitz O'Connor, Esq.