

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

PAUL A. CAMPBELL,
Appellant

v.

G1-16-26

ABINGTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Paul Campbell

Appearance for Respondent:

Jeff Hughes, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On February 18, 2016, the Appellant, Paul A. Campbell (Mr. Campbell), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Abington (Town)'s Police Department to bypass him from original appointment as a police officer. On March 8, 2016, I held a pre-hearing conference which was attended by Mr. Campbell, counsel for the Town and the Town's Police Chief.

Based on the stipulated facts and the statements of the parties, the following is undisputed:

1. On April 25, 2015, Mr. Campbell took and passed the civil service examination for police officer, which was administered by the state's Human Resources Division (HRD).
2. On October 2, 2015, HRD established an eligible list of candidates for police officer from the April 2015 examination.
3. On December 14, 2015, HRD sent Certification No. 03385 to the Town from which it could appoint three (3) permanent, full-time police officers.
4. Mr. Campbell was ranked tenth (10th) on Certification No. 03385 among those willing to accept employment as an Abington police officer.
5. Mr. Campbell's rank was based in part on his qualification for a residency preference in Abington.
6. But for his residency preference, Mr. Campbell's name would not have been among those within the so-called "2N+1" formula to be considered for appointment.
7. The Town did not reach any candidates on the Certification who did not qualify for the residency preference.
8. In order to qualify for the residency preference in Abington, Mr. Campbell must have resided in Abington during the one-year period prior to when the qualifying civil service examination was administered (April 25, 2014 – April 25, 2015).
9. Mr. Campbell's application for employment to the Town's Police Department indicates that he resided in Abington from January 2010 to March 2015.
10. At the pre-hearing conference, Mr. Campbell stated that he moved from Abington to Whitman on April 7, 2015, eighteen (18) days prior to the end date of the residency look-back used to determine if an applicant qualifies for the residency preference.

11. Mr. Campbell stated that he, his wife and young child were forced to move on short notice due to plumbing and other issues in the unit he was renting and the unexpected non-renewal of his lease.
12. Mr. Campbell stated that he was unable to find an affordable unit to rent in Abington on short notice and, thus, chose to move to the Town of Whitman, where rents were more affordable.
13. Since the Town determined that Mr. Campbell was not eligible for the residency preference, he was no longer “reach-able” on the eligible list and was not given any further consideration for appointment.
14. On February 25, 2016, at the Town’s request, HRD removed Mr. Campbell’s residency preference on the eligible list.

Analysis

G.L. c. 31, § 58 states in relevant part:

“If any person who has resided in a city or town for one year immediately prior to the date of examination for original appointment to the police force or fire force of said city or town has the same standing on the eligible list established as the result of such examination as another person who has not so resided in said city or town, the administrator, when certifying names to the appointing authority for the police force or the fire force of said city or town, shall place the name of the person who has so resided ahead of the name of the person who has not so resided.”

For the purposes of Civil Service law, "...`reside' is used to designate the physical location of the employee's house or other dwelling place." Doris v. Police Comm'r. of Boston, 374 Mass 443, 444 (1978).

It is undisputed that Mr. Campbell did not continuously reside in Abington for “one year immediately prior to the date of [the civil service] examination.” Rather, he moved

from Abington to Whitman eighteen (18) days prior to the end of the one (1)-year period required by the statute to qualify for the residency preference.

I am not unsympathetic to Mr. Campbell's plight here. Finding himself in the unexpected position of having to relocate within the one-year residency lookback time period, he was unable to find affordable housing in Abington, where he had resided for several years. Thus, he moved to the neighboring Town of Whitman, where he and his young family were able to find more affordable housing. It is unlikely that the Legislature intended for this arguably inequitable result. However, it would appear, at least in this case, that the statutory residency preference has created a barrier to entry for those that cannot afford to live in a particular community. That is particularly troubling when, as here, it involves the consideration of a minority candidate who appears to have a strong background and interest in law enforcement.

Notwithstanding the potentially inequitable outcome here, the statute and/or Personnel Administration Rules do not provide for, nor am I aware of any Court or Commission decision that has granted a waiver of this straightforward residency preference requirement, with the exception of those on active military duty.

Without the residency preference in Abington, Mr. Campbell's name was not ranked high enough to be considered for appointment by the Abington Police Department. Thus, there was no bypass. For this reason, Mr. Campbell's appeal under Docket No. G1-16-26 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By vote of the Civil Service Commission (Bowman, Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 17, 2016..

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:

Paul A. Campbell (Appellant)

Jeff Hughes, Esq. (for Respondent)

Michael Downey, Esq. (HRD)