

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503
Boston, MA 02108

WILLIAM CASTRO,
Appellant

v.

G1-11-232

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

Pro Se
William Castro

Respondent's Attorney:

Amy Hughes, Esq.
Department of Correction
One Industries Drive
P.O. Box 946
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, William Castro (hereinafter "Castro" or "Appellant"), filed an appeal with the Civil Service Commission (hereinafter "Commission") on July 22, 2011 contesting his non-selection as a Correction Officer I by the Department of Correction (hereinafter "DOC" or "Appointing Authority").

DOC filed a Motion to Dismiss the Appellant's appeal on July 29, 2011. A pre-hearing conference was held at the offices of the Commission on August 23, 2011.

The following facts are not disputed:

1. On September 26, 2009, the Appellant took a civil service examination for the position of Correction Officer I (CO I) at DOC. He received a score of 85.
2. On February 8, 2010, the state's Human Resources Division (HRD) established an eligible list of candidates for CO I and the Appellant's name appeared on that eligible list.
3. On October 12, 2010, Certification No. 4010034 was created to select 50 minority CO Is. The Appellant's name was ranked 161st on the Certification among those willing to accept employment.
4. On May 6, 2011, DOC selected 38 candidates for appointment from Certification No. 4010034.
5. Although some candidates with the same score (85) as the Appellant were selected, none of the candidates selected had a score of less than 85.
6. On May 6, 2011, DOC erroneously sent the Appellant a letter informing him that he had been "bypassed" and had a right to file an appeal with the Commission.
7. The Appellant subsequently filed a bypass appeal with the Commission.

Conclusion

The party moving for summary disposition of an appeal before the Commission pursuant to 801 C.M.R. 7.00(7)(g)(3) or (h) is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., "viewing the evidence in the light most favorable to the non-moving party", the movant has presented substantial and credible evidence that the opponent has "no reasonable expectation" of prevailing on at least one "essential element of the case", and that the non-moving party

has not produced sufficient “specific facts” to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Bd., 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, 887 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, 881 (2008).

The Presiding Officer may also, at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter or for failure of the Petitioner to state a claim upon which relief can be granted. 801 C.M.R. 7.00(7)(g)(3)

There is no factual dispute here. DOC selected 38 candidates for original appointment to the position of Correction Officer I from Certification No. 4010034. Although some of the candidates selected had a tied score with the Appellant, nobody selected was ranked below the Appellant.

Years of Commission decisions have established that the appointment of a candidate among several with the same score on the civil service examination is not a bypass. See Edson v. Reading, 21 MCSR 453 (2008); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth Police Dep’t, 19 MCSR 434 (2006) (“[T]he Commission ... continues to believe that selection among a group of tied candidates is *not* a bypass under civil service law.” (*emphasis in original*)); Kallas v. Franklin Sch. Dep’t, 11 MCSR 73 (1996).

The Appellant was not bypassed for appointment and the Commission does not have jurisdiction to hear his appeal. For this reason, the Appellant’s appeal under Docket No. G1-11-23 is hereby ***dismissed***.

Civil Service Commission

Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman - Yes; Marquis, Commissioner – Yes; Stein, Commissioner – Yes; McDowell, Commissioner – Yes; Henderson, Commissioner - No) on September 8, 2011.

A true Copy. Attest:

Commissioner
Civil Service Commission

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 to:
William Castro (Appellant)
Amy Hughes, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)