

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

MATTHEW BERRYMAN,
Appellant

CASE NO. G1-16-119

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Matthew Berryman, Pro Se

Appearance for Respondent:

Nicole I. Taub, Esq.
Senior Special Assistant Corporation Counsel
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston MA 02120

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT’S MOTION TO DISMISS

The Appellant, Matthew Berryman, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31, §2(b), to contest his bypass on the grounds of medical disqualification for appointment to the position of police officer with the Boston Police Department (BPD). At the pre-hearing conference before the Commission on August 9, 2016, the BPD filed a Motion to Dismiss the appeal for lack of jurisdiction on the grounds that the appeal was untimely. The Appellant has not opposed the motion.

FINDINGS OF FACT

Based on the submissions of the parties, I find the following material facts are not disputed:

1. The Appellant, Matthew Berryman, took and passed the civil service examination for municipal police officer (with a score of 96) administered on June 15, 2013 by the Massachusetts Human Resources Division (HRD). Mr. Berryman qualified for disabled veteran’s status and his

name was placed on the eligible list established on November 1, 2013. (*Administrative Notice [HRD Letter on File]; Stipulated Facts*)

2. On April 27, 2015, HRD issued Certification #02742 to the BPD for appointment of new BPD police officers. Mr. Berryman's name was listed on the Certification in the 23rd tie group. Eventually, BPD made 71 appointments from the Certification, including candidates whose names appeared on the Certification in the 50th tie group. ((*Administrative Notice [HRD Letter on File]; Stipulated Facts*)

3. By letter dated March 16, 2016, sent by certified mail, the BPD informed Mr. Berryman that he had failed to complete the medical screening component of the hiring process due to a Category A medical condition set forth in Section IV(6)3.a.i. of the Commonwealth of Massachusetts Initial Hire Medical Standards. (*Claim of Appeal; BPD Motion; Stipulated Facts*)

4. On or before March 29, 2016, Mr. Berryman signed for and received the BPD's March 16, 2016 letter. (*Claim of Appeal; Administrative Notice [USPS Certified Mail Delivery Receipt]*)¹

5. On July 9, 2016, Mr. Berryman filed this appeal. (*Claim of Appeal*)

Applicable Legal Standard

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547,

¹ BPD contends that the Certified Mail Receipt indicates that Mr. Berryman signed for the letter on March 21, 2016, but the handwriting is not entirely clear. Whether the letter was received on March 21, 2016 or March 29, 2016 would not alter the Commission's decision.

550 n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

Analysis

The undisputed facts, viewed in a light most favorable to Mr. Berryman, establish that he was informed of the reason that the BPD had decided that he be bypassed on or before March 29, 2016. His appeal was filed on July 9, 2016, more than three months later. Thus, Mr. Berryman’s appeal comes well beyond the 60-day statute of limitations established by the Commission for filing of a bypass appeal. The period within which a candidate must appeal to the Commission after receipt of notice of an “action or inaction” that resulted in an allegedly unlawful bypass is a jurisdictional matter that the Commission has strictly enforced. See, e.g., Kelley v. City of Boston Fire Dep’t, 29 MCSR 176 (2016) and cases cited. See also, Walker v. City of New Bedford, 26 MCSR 398 (2013); Allen v. Taunton Public Schools, 26 MCSR 376 (2013); Mercedes v. Springfield Housing Auth., 26 MCSR 16 (2013); Murzin v. City of Westfield, 24 MCSR 610 (2011).²

CONCLUSION

In sum, for the reasons stated herein, the Commission lacks jurisdiction to hear this appeal. The Motion to Dismiss is hereby ***granted*** and the appeal of the Appellant, Matthew Berryman, is ***dismissed***.

Civil Service Commission
/s/Paul M. Stein
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman [absent], Stein and Tivnan, Commissioners) on September 29, 2016.

² The Commission does not address the merits of the Appellant’s contention that his medical disqualification was not justified. It is noted, however, that the Commission is not empowered to overrule HRD’s determination to categorize a particular medical condition as a Category A condition, which, if a candidate fits the definition, would be automatically disqualifying. See Grajales v. City of Attleboro, 28 MCSR 110 (2015); Corcoran v. Boston Fire Dep’t, 28 MCSR 100 (2015)

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)(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-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:

Matthew Berryman (Appellant)

Nicole I. Taub, Esq. (for Respondent)