

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**CRAIG P. GALE,**  
*Appellant*

v.  
**CITY OF WORCESTER,**  
*Respondent*

**CASE NO. G1-16-120**

Appearance for Appellant:

Craig P. Gale, Pro Se

Appearance for Respondent:

William R. Bagley, Jr., Esq.  
City of Worcester  
455 Main Street – Room 109  
Worcester, MA 01608

Commissioner:

Paul M. Stein

**DECISION ON RESPONDENT'S MOTION TO DISMISS**

The Appellant, Craig P. Gale, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), to contest his non-selection for appointment to the position of Firefighter in the City of Worcester. Following a pre-hearing conference before the Commission on August 9, 2016, Worcester filed a Motion to Dismiss the appeal for lack of jurisdiction on the grounds that the Appellant did not qualify for residency status in Worcester, as did all candidates appointed from the Certification in question and, therefore, the Appellant was not bypassed. The Appellant has not opposed the motion.

**FINDINGS OF FACT**

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

1. On April 26, 2014, the Appellant, Craig P. Gale, took and passed the written examination for Firefighter and took and passed the required preliminary physical abilities test (ELPAT) on

August 8, 2014. Mr. Gale's name appeared on the eligible list established by the Massachusetts Human Resources Division (HRD) on November 1, 2014. (*Administrative Notice [HRD Letter on File]*)

2. On or about September 3, 2015, HRD issued Certification #03219 to Worcester for the appointment of thirty Firefighters. The Certification contained eight names with statutory preference and approximately 110 other names, all of whom claimed Worcester residency preference. Mr. Gale's name appeared in 20<sup>th</sup> place, tied with 20 other candidates. . (*Administrative Notice [HRD Letter on File]*)

3. Mr. Gale is a resident of the Town of Holden, MA and lived in Holden during the year prior to his taking the 2014 Firefighter Examination. By his own admission, while he works in Worcester, he has never lived in the City of Worcester. (*Claim of Appeal; Worcester Motion*)

4. By letter dated May 23, 2016, Worcester informed Mr. Gale that HRD had approved its request to remove Mr. Gale's name from Certification #03219 on the grounds that he was not a Worcester resident. This appeal duly ensued. (*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, 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 establish that Mr. Gale resided in Holden, not Worcester, for the one-year period prior to the date on which he took the 2014 Firefighter examination. He does not dispute this but, apparently, believed (erroneously) that his status as a resident of Worcester County, qualified him for the residency preference. The statutory residency preference, however, is clearly defined to require residence in the “city or town” for which the candidate seeks appointment. G.L.c.31,§58,¶3. Thus, HRD correctly approved Worcester’s request that Mr. Gale be removed from Certification #03219 as he was not a Worcester resident and, therefore, not eligible to be considered for appointment from that Certification as he did not fall within the “2n+1” number of candidates (all Worcester residents) listed on the Certification. In sum, for the reasons stated herein, Mr. Gale has not been bypassed and the Commission lacks jurisdiction to hear this appeal. The Motion to Dismiss is hereby ***granted*** and the appeal of the Appellant, Craig P. Gale, 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.

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:

Craig P. Gale (Appellant)

William R. Bagley, Jr., Esq. (for Respondent)