

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

SEAN BARRETT,
Appellant

v.

B2-14-155

BOSTON FIRE DEPARTMENT &
HUMAN RESOURCES DIVISION,
Respondents

Appearance for Appellant:

Sean Barrett
Pro se

Appearance for Boston Fire Department:

Robert Boyle, Esq.
Office of Labor Relations
Boston City Hall, Room 624
Boston, MA 02201

Appearance for Human Resources Division:

Mark Detwiler, Esq.
Labor Counsel
Human Resources Division
One Ashburton Place, Room 301
Boston, MA02108

Commissioner:

Cynthia A. Ittleman

DECISION ON APPELLANT’S MOTION FOR RECONSIDERATION

Sean Barrett (Mr. Barrett or Appellant) filed the instant appeal at the Civil Service Commission (Commission) on July 7, 2014 under G.L. c. 31, s. 2(b) challenging the decision of the state’s Human Resources Division (HRD) to not allow him to take the Fire Captain promotional exam that was held on November 15, 2014. On July 6, 2016, the Commission issued a decision denying Mr. Barrett’s appeal.

Mr. Barrett filed a Motion for Reconsideration on July 18, 2016. The Boston Fire Department filed an opposition to Mr. Barrett’s motion on July 19, 2016. I received no response to the instant motion from HRD. Under 801 CMR 1.01(7)(l),

After a decision has been rendered and before the expiration of the time for filing a request for review or appeal, a Party may move for reconsideration. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. ...

(Id.)

The Motion for Reconsideration reiterates a number of arguments averred by Mr. Barrett in opposition to the Boston Fire Department's Motion to Dismiss in this case that if the Boston Fire Department appointed him to Lieutenant earlier than it did, he would have met the requirements to take the subsequent Captain exam. However, the Motion for Reconsideration does not identify a clerical or mechanical error in the decision or a significant factor the Commission may have overlooked in deciding the case.

Notwithstanding the failure of the Motion for Reconsideration to meet the standard of 801 CMR 1.01(7)(1), I take this opportunity to address Mr. Barrett's comments therein. In the Motion for Reconsideration, Mr. Barrett states that during the period August 31 to October 28, 2013 there "**could have been**" an emergency promotion to Lieutenant and that "**if** the BFD used the emergency promotion statute to cover a vacancy" from August 31 to October 28, 2013, Mr. Barrett would have fallen within the 2N+1 formula to be considered for promotion to Lieutenant. Like his previous arguments, these arguments are speculative. The Boston Fire Department was not required to obtain a certification at the period of time in question if it did not find that there was a vacancy, which term is not statutorily defined. Mr. Barrett further asserts that the term "vacancy" is not lacking definition because it is "defined simply by the fact it is an open position." However, Mr. Barrett's definition of the term as an "open position" offers no clearer insight and is not authoritative. In addition, it is the responsibility of the appointing authority to determine in which position there is an actual "vacancy" and how, consistent with civil service law, it is to be filled, as well as addressing staffing needs that arise because of illness, injured-on-duty leave, vacation and other similar events.

Since the Motion for Reconsideration failed to identify a clerical or mechanical error in the decision or a significant factor the Commission overlooked, as noted above, the Motion for Reconsideration is *denied*.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman, Esq.
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein, and Tivnan, Commissioners) on September 15, 2016.

Notice to:

Sean Barrett (Appellant)
Robert Boyle, Esq. (for Boston Fire Department)
Mark Detwiler, Esq. (for HRD)