

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss.

CIVIL SERVICE COMMISSION

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

MICHAEL J. ARMANO II,
Appellant

v.

E-15-227

CITY OF LAWRENCE,
Respondent

Appearance for Appellant:

Pro Se
Michael J. Armano II, Esq.

Appearance for Respondent:

Matthew J. Buckley, Esq.
Deutsch Williams
1 Design Center Plaza
Boston, MA 02110

Commissioner:

Christopher C. Bowman

DENIAL OF APPELLANT’S REQUEST FOR RELIEF RELATED TO A
2007 CIVIL SERVICE COMMISSION DECISION

On December 5, 2015, the Appellant, Michael J. Armano II (Mr. Armano), a fire lieutenant in the City of Lawrence (City)’s Fire Department, filed a request with the Civil Service Commission (Commission), to adjust his civil service seniority date *from* May 4, 2011 (the day he was appointed as a permanent, full-time firefighter) *to* November 29, 2004 (the day he was initially bypassed for appointment for this position).

This request is related to an unpublished decision issued by the Commission on June 28, 2007. In Michael Armano II v. City of Lawrence, G1-06-305 (2007), the Commission, acting on a joint request for relief submitted by counsel for both parties, ordered that Mr. Armano’s name be placed at the top of any current or future Certifications issued to

Lawrence for the position of firefighter. The joint request for relief was submitted by the parties at the time to resolve a bypass appeal filed by Mr. Armano after he was bypassed for appointment to the position of firefighter. Mr. Armano received the relief ordered and was subsequently appointed as a reserve firefighter, then promoted to permanent, full-time firefighter.

The 2007 joint request did not request, and the Commission did not order, that Mr. Armano be granted a retroactive civil service seniority date back to the date of bypass if and when he was appointed in the future.

Today, eight (8) years after the issuance of that decision, Mr. Armano has filed what he deems a “non-bypass equity appeal”, asking that the Commission grant him the retroactive civil service seniority date that was not sought by either party in 2007. Notwithstanding how Mr. Armano has sought to label this request, it is effectively a motion to reconsider and amend the 2007 decision.

Mr. Armano states that the sole reason for his request is to protect himself in the event of any future layoffs. The City seems to doubt whether this is Mr. Armano’s motivation, noting that dozens of Lawrence firefighters have less civil service seniority than him, making it highly unlikely that his name would ever be reached in the event of future layoffs. Rather, the City is concerned that the request is related to a 2013 Memorandum of Understanding between the City and the local firefighters union that ties members’ civil service seniority dates with their departmental, collective bargaining seniority date. According to the City, this new provision means that any action by the Commission to adjust Mr. Armano’s civil service seniority date could have significant financial

consequences, including a potential demand for retroactive longevity payments called for in the applicable collective bargaining agreement.

For some of the same reasons stated in Michel v. City of Waltham, 24 MCSR 252 (2011), Mr. Armano's request is *denied* for the following reasons:

1. There was no error in the Commission's 2007 decision. The Commission accepted the mutual agreement of the parties, in which neither party, both of whom were represented by counsel at the time, sought a retroactive civil service seniority date at the time.
2. Even if there was an error in the order, the time period to request a reconsideration of that decision has now passed. A motion for reconsideration must be filed within ten days of the receipt of a Commission decision or order.
3. Even if this current request is not a motion for consideration, but, rather, a "non-bypass equity appeal", the time period for filing such an appeal has long since expired. (See 801 CMR 1.06 (b) which requires that such appeals be filed within 30 days from the date that the Agency notice of action is sent to the Party.) It is undisputed that Mr. Armano was aware when the 2007 Commission decision was issued that he was not granted a retroactive civil service seniority date.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Camuso, Ittleman, Stein and Tivnan, Commissioners [Bowman, Chairman – Absent] on January 21, 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)(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 to:

Michael Armano II, Esq. (Appellant)

Matthew Buckley, Esq. (for Respondent)