

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KEVIN SHEA,
Appellant

v.

G1-13-131

CITY OF MEDFORD,
Respondent

Appearance for Appellant:

Galen Gilbert, Esq.
Gilbert & O'Bryan, PC
333 Washington Street, Suite 623
Boston, MA 02108

Appearance for Respondent:

Eugene J. Sullivan, Esq.
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Commissioner:

Christopher C. Bowman

DECISION ON APPELLANT'S MOTION TO RE-OPEN

On May 24, 2013, the Appellant, Kevin Shea (Mr. Shea), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Medford (City), to bypass him for original appointment as a firefighter in the City's fire department. The reasons ranged from an OUI arrest in 2004, allegedly providing false information to the City regarding this 2004 incident, a poor driving history and allegedly providing misleading information surrounding prior discipline regarding prior employment.

On June 18, 2013, I held a pre-hearing conference which was attended by Mr. Shea and counsel for the City. The parties agreed to a series of stipulated facts and provided a summary of

their respective positions that would be the subject of a full hearing, which was scheduled to occur on August 16, 2013.

On August 13, 2013, the parties informed the Commission that the matter had been settled and asked the Commission to allow a joint request for relief and order that Mr. Shea's name be placed at the top of the next Certification issued to the City for the position of firefighter, which would allow Mr. Shea to be reconsidered as part of the City's next hiring cycle for firefighters. That same day, I issued a reply email, effectively informing the parties that such requests are not automatically granted by the Commission and that the Commission would need justification for allowing the joint request. In response, the City stated in part: "... The Appellant met with the City of Medford Mayor, Michael McGlynn to discuss the incidents that are set forth in the Appellant's refusal letter dated April 5, 2013. After that meeting, the Mayor, as Appointing Authority, is satisfied with the Appellant's sincerity and his explanation of past events."

The Commission, on August 22, 2013, accepted the parties' joint request for relief and ordered that the Appellant's name be placed on the top of the next Certification for appointment to ensure that he would receive reconsideration. The decision contained the following information regarding appeal rights:

"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."

The parties did not request, and the Commission did not order as part of the decision, that the Appellant receive a retroactive civil service seniority date the same as those who were appointed from the prior Certification. Such relief is not automatic and is considered on a case-by-case basis, based on the individual circumstances, including, but not limited to, the initial reasons for bypass. Even if such relief had been granted, it would have been limited “for civil service purposes only” with an explicit restriction that said date is not intended to provide the Appellant with any additional pay or benefits, including creditable service toward retirement. Practically speaking, a retroactive civil service seniority date only becomes relevant if and when layoffs occur, which must be done in accordance with an employee’s civil service seniority date.

The Appellant did not file a motion for reconsideration within ten days of receipt of the Commission decision nor did he initiate processing for judicial review within thirty days.

On August 11, 2017, almost four (4) years after the Commission’s order entered, the Appellant filed a “Motion to Re-Open” the appeal for the purposes of granting him a retroactive civil service seniority date. The City filed an opposition.

The Appellant’s motion is denied for the following reasons. Despite the lack of express authority, the Commission is vested with inherent discretionary power to reopen a closed proceeding in an appropriate case; however such power to reopen should be exercised by the Commission with due circumspection – “sparingly” as the cases say. Keller-Brittle v. Boston Police Dep’t, 23 MCSR 276 (2010), *citing* Ung. V. Lowell, 22 MCSR 471 (2009). The Appellant has not presented sufficient reasons for the Commission to take the rare step of reopening an appeal that was disposed of approximately four (4) years ago other than he recently asked the City to change his seniority date and that request was presumably denied (as the City has no such authority to do so).

Second, the Appellant failed to file a motion for reconsideration and/or pursue judicial review within the timeframe allowed.

Third, as noted by the City, the finality of judgments is the bedrock of importance to our judicial and administrative systems. See, e.g., Comfort v. Lynn Sch. Comm., 541 F. Supp. 2d 429,430 (D. Mass. 2008) (“The Federal Rules of Civil Procedure place considerable importance on the finality of judgments, even as legal precedents come and go. Parties who complete litigation must be able to expect that a court’s decision will continue to have effect.”).

Finally, based on the information in the record, it is (highly) unlikely that the Commission would have concluded that a retroactive civil service seniority date was warranted here, even if the parties had requested and/or agreed upon it.

For these reasons, the Appellant’s motion to re-open is *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – not participating]) on November 9, 2017.

Notice:

Galen Gilbert, Esq. (for Appellant)
Eugene J. Sullivan, Esq. (for Respondent)