

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

BENJAMIN DUGA,  
Appellant

v.

E-17-200

TOWN OF WEST SPRINGFIELD &  
HUMAN RESOURCES DIVISION,  
Respondents

Appearance for Appellant:

Timothy J. Ryan, Esq.  
Egan, Flanagan & Cohen, P.C.  
67 Market Street, P.O. Box 9035  
Springfield, MA 01102-9035

Appearance for Human Resources Division:

Patrick Butler, Esq.  
Human Resources Division  
One Ashburton Place: Room 211  
Boston, MA 02108

Appearance for Town of West Springfield:

Kate R. O'Brien, Esq.  
Town of West Springfield  
26 Central Street, Suite 23  
West Springfield, MA 01089

Commissioner:

Christopher C. Bowman

**DECISION ON TOWN'S MOTION FOR SUMMARY DECISION &  
HRD'S MOTION TO DISMISS**

1. On March 25, 2017, the Appellant, Benjamin Duga (Mr. Duga), took and passed a civil service examination for police officer, administered by the state's Human Resources Division (HRD).
2. As part of the examination, Mr. Duga claimed a residency preference for the Town of West Springfield (Town).
3. On August 9, 2017, HRD notified Mr. Duga that he passed the civil service examination; that his name would be placed on an eligible list of candidates for police officer; and that, if and

when his name is reached for consideration for appointment, he will receive a vacancy notice via email.

4. Important to this appeal, the August 9, 2017 correspondence from HRD stated in part, “ ... Please be sure to check your inbox, spam folder, and junk folder regularly for emailed notices from our office.”
5. On August 31, 2017, HRD established an eligible list of candidates for police officer for the Town of West Springfield.
6. On September 18, 2017, HRD, at the request of the Town, sent the Town Certification No. 04946 from which the Town could appoint 9 of the first 19 willing to accept appointment. Mr. Duga’s name appeared tied for 10<sup>th</sup> on the Certification.
7. Also on September 18, 2017, HRD sent emails to all those candidates whose names appeared on Certification No. 04946, including Mr. Duga.
8. The September 18, 2017 HRD email stated in relevant part that, if you desired to be considered, you must report to the Town’s Human Resources Office “ ... on or before 09/25/2017.”
9. According to Mr. Duga, the email did not appear in his email “inbox”. Rather, it appeared in his email “spam” folder.
10. Again, according to Mr. Duga, he did not check his email spam folder until October 3, 2017.
11. Upon inquiring with the Town that same day, he was ultimately told that, since he had missed the deadline of September 25<sup>th</sup>, he could not be considered for appointment.
12. The Town was then in the process of vetting other candidates from Certification No. 04946, all of whom, according to the Town, signed the Certification on or before 9/25/17, including candidates ranked below Mr. Duga.
13. On October 5, 2017, Mr. Duga filed the instant appeal with the Commission.
14. On October 24, 2017, I held a pre-hearing conference at the offices of the Commission, with Mr. Duga, his counsel, and counsel for the Town participating via conference call and counsel for HRD appearing in person.
15. At the pre-hearing conference, counsel for HRD and the Town argued that Mr. Duga was not an aggrieved person as the harm that occurred here was not through no fault of his own as he failed to follow explicit instructions from HRD to check his spam and junk email folders. Both HRD and the Town argued, therefore, that no relief was warranted here.

16. Counsel for Mr. Duga argued that he is indeed aggrieved, both because the email sent by HRD arrived in Mr. Duga's spam folder and because the Town has refused to exercise its discretion to allow Mr. Duga to sign the Certification late.
17. Counsel for the Town argued that the Town was acting in accordance with past practice, having refused to allow other candidates in the past to sign the Certification late, and because it did not want to establish a precedent of allowing candidates to be considered after they failed to sign the Certification before the deadline. Further, counsel for the Town argued that it would be prejudicial to the other candidates on Certification No. 04946 who signed the Certification on or before 9/25/17 and were then being considered for appointment to one of the nine (9) available vacancies.
18. I suggested that the parties consider a non-precedent setting resolution in which Mr. Duga's name would be placed at the top of the next Certification for appointment as a police officer in the Town to ensure that he receive consideration, but that there be no retroactive civil service seniority date, if and when Mr. Duga was appointed.
19. Counsel for Mr. Duga objected to the proposed resolution, arguing that Mr. Duga should be entitled to a retroactive civil service seniority date if appointed.
20. Subsequent to the pre-hearing, counsel for the Town informed the Commission that the Town was not amenable to the proposed resolution, even without the retroactive civil service seniority date.
21. HRD filed a Motion to Dismiss the Appellant's appeal and the Town filed a Motion for Summary Decision. The Appellant filed an opposition.
22. On February 14, 2018, I held a motion hearing at the Springfield State Building in Springfield, MA, which was attended by counsel for the Town, counsel for HRD, counsel for the Appellant and the Appellant. I heard oral argument from all parties and reviewed their submissions and the entire record regarding this appeal.

### *Analysis*

I am not unsympathetic to Mr. Duga's plight. It is safe to assume that most individuals, myself included, do not check "spam" or "junk" email folders on a daily basis. Here, however, Mr. Duga was put on notice on *August 19, 2017* that: a) his name had been placed on an eligible list of candidates for police officer; and b) he should check his email account, including his "spam" and "junk" email folders regularly for communication from HRD.

Given the importance of that potential communication, including notifications regarding police officer vacancies, it is not unreasonable to expect that Mr. Duga should have been checking his email account, including spam and junk folders, on a regular (i.e. – daily or at least weekly) basis in September 2017. The undisputed facts show that Mr. Duga was not. He let a period of over two (2) weeks go by where, despite explicit instructions from HRD, he failed to check his spam and junk folders. Unfortunately for Mr. Duga, it was during this approximately

two (2)-week period that he received, but failed to read, the time-sensitive information regarding the police officer vacancy in West Springfield. Thus, he is not an aggrieved person as he was not harmed through no fault of his own. For this reason, and because there is no evidence that the Town has not uniformly enforced this signing deadline, and because the Appellant does not argue that the Town's decision was based on personal or political bias, relief by the Commission is not warranted here.<sup>1</sup>

*Conclusion*

Mr. Duga's appeal under Docket No. E-17-200 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 15, 2018.

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:

Timothy J. Ryan, Esq. (for Appellant)  
Patrick Butler, Esq. (for HRD)  
Kate R. O'Brien, Esq. (for Town of West Springfield)

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<sup>1</sup> Mr. Duga's name will remain on the current eligible list for police officer and he may potentially be considered for appointment if and when there is another hiring cycle prior to the expiration of this eligible list.