

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MANUEL BONET,
Appellant

v.

G1-18-057

BOSTON FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Manuel Bonet

Appearance for Respondent:

Jordana Westerman, Esq.
City of Boston
City Hall: Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On March 26, 2018, the Appellant, Manuel Bonet (Mr. Bonet), filed a bypass appeal with the Civil Service Commission (Commission), contesting his non-selection for original appointment to the position of permanent full-time firefighter in the Boston Fire Department (BFD).
2. On April 24, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Bonet, counsel for the BFD and the BFD's Director of Human Resources.
3. As part of the pre-hearing conference, the parties agreed that: a) Mr. Bonet took the written portion of the examination for firefighter on April 16, 2016; b) as of April 16, 2016, Mr. Bonet had reached his 32nd birthday; c) Mr. Bonet's name appeared on Certification No. 04837 tied in the 19th (last) ranking.
4. G.L. c. 31, § 58A, which the BFD has apparently adopted, states: "Notwithstanding the provisions of any general or special law to the contrary, in any city, town or district that accepts this section, no person shall be eligible to have his name certified for original appointment to the position of firefighter or police officer if such person has reached his

thirty-second birthday on the date of the entrance examination. Any veteran shall be allowed to exceed the maximum age provision of this section by the number of years served on active military duty, but in no case shall said candidate for appointment be credited more than four years of active military duty.”

5. Mr. Bonet is not a veteran.

Analysis / Conclusion

Mr. Bonet’s appeal must be dismissed for two (2) reasons.

First, Mr. Bonet’s name appeared in the 19th (last) ranking on Certification No. 04837 and, thus, no candidates ranked below him were appointed. The Commission has long held that the appointment of a candidate among those with the same rank on a Certification is not a bypass . See Edson v. Reading, 21 MCSR 453 (2008) (upheld by Superior Court; Edson v. Civil Service Comm’n, Middlesex Sup. Ct. No. 08-CV3418 (2009); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dept’, 11 MCSR 73 (1998); Servello v. Dep’t of Correction, 28 MCSR 252 (2015); See also Thompson v. Civil Service Comm’n, Suffolk Superior Ct. No. MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass); Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 261 (2001) (“In deciding bypass appeals, the commission must determine whether the appointing authority has complied with the requirements of Massachusetts civil service law for selecting lower scoring candidates over higher scoring candidates); Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002) (citing HRD’s guide), rev’d in part on other grounds, 323 F.3d 160 (1St Cir. 2003) (“when a civil service exam results in a tie -score, and the appointing authority ... promotes some but not all of the candidates, no actionable `bypass` has taken place in the parlance of... civil service”). Since no candidate ranked below Mr. Bonet was appointed to the position of police officer, there was no bypass.

Second, there is no dispute that Mr. Bonet had reached his 32nd birthday as of the date of the written examination for firefighter on April 16, 2016. Thus, he is not eligible to be a Boston firefighter pursuant to Section 58A of the civil service law.

For these reasons, Mr. Bonet’s appeal under Docket No. G1-18-057 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 May 10, 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:

Manuel Bonet (Appellant)

Jordana Westerman, Esq. (for Respondent)