

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

LUIS FELICIANO,
Appellant

v.

G1-11-127

SPRINGFIELD POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Jeffrey S. Morneau, Esq.
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73 State Street, Suite 310
Springfield, MA 01103

Respondent's Attorney:

Jeffrey Krok, Esq.¹
City of Springfield
Labor Relations
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Springfield, MA 01103

Commissioner:

Christopher C. Bowman²

DECISION

On April 14, 2011, the Appellant, Luis Feliciano (Mr. Feliciano), pursuant to G.L. c. 31, § 2 (b), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection for original appointment to the position of police officer by the Springfield Police Department (City or Police Department).

¹ Subsequent to submitting a post-hearing brief, Attorney Krok notified the Commission that he had accepted a position with another municipality. Thus, this decision is being mailed to City Solicitor Peter Fenton.

² The Commission acknowledges the assistance of Law Clerk Meredith Havard in preparing this decision.

On May 25, 2011, a pre-hearing conference was held at the Springfield State Building in Springfield, MA. Over the course of two (2) days on October 26, 2011 and November 9, 2011, a full hearing was conducted at the same location. The hearing was digitally recorded and both parties were provided with two (2) CDs of the hearing. On December 7, 2011 and December 9, 2011, the parties submitted post-hearing briefs to the Commission.

FINDINGS OF FACT

Fourteen (14) exhibits were entered into evidence. Based upon the documents and the testimony of:

For the City:

- Lieutenant Harry Kastrinakis, Springfield Police Department;
- Darrin Edwards, Police Officer, Springfield Police Department;

For the Appellant:

- Luis Feliciano, Appellant;

I make the following findings of facts:

1. Mr. Feliciano is thirty-two (32) years old. He is single and resides in Springfield. He attended Putnam Vocational Regional Technical High School from 1994 to 1997 and subsequently received his High School Equivalency Diploma in 2006. (Testimony of Mr. Feliciano, Exhibit 1 and Exhibit 14)
2. For the past ten (10) years, Mr. Feliciano has worked for a large retail company in the area of loss prevention. (Testimony of Mr. Feliciano and Exhibit 1)

3. On April 6, 2005, Mr. Feliciano signed a lease agreement to lease an apartment at the Morgan Square apartment complex located at 1607 Main Street, Apartment B405, beginning on April 30, 2005 and ending on April 30, 2006. (Exhibit 12)³
4. Darrin Edwards has been employed by the Springfield Police Department since 1998. He is currently assigned to the City's Gang Unit, which is part of the Police Department's Detective Bureau. (Testimony of Officer Edwards)
5. Approximately six (6) years ago, on June 9, 2006, Officer Edwards and another police officer were patrolling the Downtown / South End District of Springfield, also known as the Entertainment District. (Testimony of Officer Edwards)
6. At approximately 2:10 A.M., a citizen flagged down Officer Edwards and his partner while they were in their marked police cruiser near the walkway between Worthington and Taylor Streets. (Testimony of Officer Edwards)
7. Officer Edwards saw a group of people in front of the Morgan Square Apartments and then saw a black male and an Hispanic male fighting. Officer Edwards separated the two (2) males and handcuffed the black male. Neither of these individuals was Mr. Feliciano. Officer Edwards saw that there was blood on his own pants and that there was blood on the black male. At this point, Officer Edwards saw another male laying on the ground with his eyes rolling back. (Testimony of Officer Edwards)
8. Officer Edwards administered first aid to the person on the ground who was subsequently pronounced dead after being transported to a local hospital. (Testimony of Officer Edwards)

³ While there are varying references to Apartment 405 and Apartment B405 throughout the documents presented, it appears that there is no dispute that both of these addresses refer to the same apartment.

9. After administering first aid, Officer Edwards proceeded to detain potential witnesses. While detaining potential witnesses, a security guard told Officer Edwards that she saw individuals who had been fighting, who were previously known to her, flee into one of the apartments. (Testimony of Officer Edwards)
10. The security guard escorted Officer Edwards and at least one other police officer to Apartment 405. (Testimony of Officer Edwards)
11. When Officer Edwards knocked on the door, Mr. Feliciano opened the door. Officer Edwards noticed that one other male was in the apartment. Mr. Feliciano and the other male in the apartment fit the description given to him by the security officer. (Testimony of Officer Edwards)
12. Officer Edwards asked Mr. Feliciano and the other male to come out and assist them with the investigation. Both men were patted down and brought outside while two other officers stayed outside the entrance to the apartment. (Testimony of Officer Edwards)
13. A stand-up field identification was done individually. The security guard identified Mr. Feliciano and the other male as having been involved in a fight earlier and then fleeing to the apartment. (Testimony of Officer Edwards and Exhibit 5)
14. Mr. Feliciano and the other male were then placed under arrest and the matter was turned over to the Police Department's homicide unit. (Testimony of Officer Edwards)
15. As part of the homicide investigation, a search warrant was issued for 1607 Main Street, Apt. 405 and the Springfield Police Department took certain items from the

property, including various documents and pictures, and stored them as evidence at the Police Department. (Testimony of Officer Edwards and Exhibit 14)

16. Among the documents found at the apartment was mail addressed to Mr. Feliciano at that address. (Testimony of Officer Edwards and Exhibit 14)

17. Mr. Feliciano was charged with Assault and Battery with a dangerous weapon and incarcerated. Shortly after being incarcerated, he was charged with murder. (Exhibit 5 and Testimony of Mr. Feliciano)

18. On June 30, 2006, a Nolle Prosequi was filed in Springfield District Court by the Hampden County District Attorney's office which stated:

“Now comes the Commonwealth in the above-entitled matter [Commonwealth v. Luis Feliciano] and enters a nolle prosequi as to this complaint. As reason for this action, the Commonwealth states that, following additional investigation of this matter, the Commonwealth has determined that this defendant did not inflict the fatal injury to the victim. At this time, the investigation will continue to fully determine this defendant's involvement in the events of June 9, 2006.” (Exhibit 10)

19. Also on June 30, 2006, a person by the name of Jose Rivera was indicted for murder regarding the June 9, 2006 death that occurred at the Morgan Square apartment complex. Mr. Rivera was eventually convicted of Voluntary Manslaughter and sentenced to 5 – 7 years at MCI Cedar Junction. (Exhibit 10)

20. In April 2009, Mr. Feliciano took the civil service examination for police officer in Springfield and received a score of 98. As a result, his name was placed on an eligible list of candidates by the state's Human Resources Division (HRD).

(Stipulated Facts)

21. Since September 2009, Mr. Feliciano has resided in an apartment on Taylor Street in Springfield. (Testimony of Mr. Feliciano)

22. On July 1, 2010, the City requisitioned a Certification from HRD to fill thirty-five vacancies for permanent full-time police officer. (Stipulated Fact)
23. On July 6, 2010, HRD forwarded Certification No. 209006 to the City. Mr. Feliciano's name appeared on the Page 3 of the 6-page Certification. (Exhibit 3)
24. Mr. Feliciano, after receiving notification that his name was on the Certification, signed the Certification indicating his willingness to accept if appointed. (Exhibit 3)
25. On July 20, 2010, Mr. Feliciano completed a Personal History Statement and Pre-Background Packet required of all Police Officer applicants in the City. (Exhibits 1 and 2)
26. Mr. Feliciano answered "Yes" to certain questions on the Pre-Background Packet including the following: 1) Have you ever been arrested? 2) Have you ever been detained by a law enforcement officer? 3) Has anyone ever accused you of committing a crime? and 4) Is your name in a case report file with any police department or law enforcement agency that you are aware of? (Exhibit 2)
27. Lt. Harry Kastrinakis is the ranking Lieutenant for the City's Police Academy. In that capacity, he serves as the Academy Director. He supervises the recruitment and training process for police officer candidates. (Testimony of Lt. Harry Kastrinakis)
28. Lt. Kastrinakis has 8-10 police officers who serve as field investigators and conduct background investigations on police officer candidates. (Testimony of Lt. Kastrinakis)
29. Officer Lawrence Pietrucci was assigned to conduct the background investigation of Mr. Feliciano. (Testimony of Lt. Kastrinakis and Exhibit 4)

30. When Officer Edwards became aware that a background investigation was being completed regarding Mr. Feliciano, he penned the following email to Officer

Pietrucci:

“This email is in regard to the June 9, 2006 arrest of Luis Feliciano ... On that date Officer Erwin Greene and I, under the direction of Lt. Slepchuck, arrested Feliciano and three other subjects for the murder of Adrian Gonzalez. After the arrests were made a District Court search warrant was applied for and granted for Feliciano’s apartment at 1605 Main St., apt. #405. As a result of executing the search warrant the Crimes Scene Unit and Det. Dennis Prior discovered sneakers and clothing with blood stains. Also found were two bags of white powder consistent with the appearance of cocaine, a scale and packaging material.

Witnesses identified Feliciano on scene as being one of the assailants. Furthermore several witness statements also describe how Feliciano and four other males beat the victim, Adrian Gonzalez and his friend. They specifically described how Feliciano and another male punched Gonzalez to start the fight and how Feliciano later kicked the victim’s friend repeatedly while the friend was being held down by another assailant. During this assault Gonzalez and his friend were stabbed but it was never determined who did the stabbing.” (Exhibit 6)

31. On August 20, 2010, Officer Pietrucci submitted a “Background Investigator Report Form” regarding Mr. Feliciano to Lt. Kastrinakis. Under the heading “Criminal History”, the following entries are listed on the report:

6/9/06: A&B Dangerous Weapon (Knife)
6/9/06: Murder

(Testimony of Lt. Kastrinakis and Exhibit 4)

32. In his August 20, 2010 report, Officer Pietrucci wrote:

“Spoke to Detective Dean, Springfield Police Department who was involved in a murder case in which Mr. Feliciano was involved and identified as suspect. Detective Dean stated that Mr. Feliciano was in a group of men that were involved in an altercation which resulted in the death of another subject. Mr. Feliciano was cleared in court due to a false identification. Mr. Dean also stated that Mr. Feliciano knew all the subjects involved.” (Exhibit 4)

33. Lt. Kastrinakis hand-wrote the following words on Page 2 of Officer Pietrucci's report: "Street Crimes says no good. Found drugs in apt w/ others. -Says Bad Guy." On Page 4 of Officer Pietrucci's report, Lt. Kastrinakis hand-wrote, "* Talked to J. Goldberg and D. Edwards. Says Bad Guy - Do Not Hire." (Exhibit 4) During his testimony before the Commission, Lt. Kastrinakis could not remember why he wrote these comments. (Testimony of Lt. Kastrinakis)
34. After reviewing Officer Pietrucci's report, Lt. Kastrinakis looked up and reviewed the June 9, 2006 arrest report. On that report, Mr. Feliciano's address was listed as 1607 Main Street, Apartment B405, Springfield, MA. (Exhibit 5)
35. After reviewing the arrest report, Lt. Kastrinakis concluded that Mr. Feliciano was one of four individuals directly involved somehow in a serious assault that led to the death of an individual. (Testimony of Lt. Kastrinakis)
36. Lt. Kastrinakis was also concerned about the portion of the arrest report that stated that, after executing a search warrant for 1607 Main Street, Apartment 405, police officers found "one clear plastic bag containing a scale, a box of plastic bags, and two clear plastic bags which contained a white powdery substance and chunks of an off-white substance." The officers who penned the report wrote, "this is consistent with how Cocaine is packaged and stored for future sale in the city of Springfield." As part of their report, the police officers requested an additional charge of Trafficking in Class "B" Cocaine 14-28 g's. (Testimony of Lt. Kastrinakis and Exhibit 5) There is no evidence that this additional charge was ever filed and I find that it was not.
37. Lt. Kastrinakis did not do any further investigation to determine the disposition of the charges of murder and assault and battery with a deadly weapon that were filed

against Mr. Feliciano. He was unaware of the Nolle Prosequi that was filed and he did not know that someone else was subsequently convicted of Involuntary Manslaughter related to the death. (Testimony of Lt. Kastrinakis)

38. Even if he had been aware of the Nolle Prosequi, Lt. Kastrinakis still would have recommended that Mr. Feliciano be bypassed for appointment because there were too many questions surrounding Mr. Feliciano and his involvement regarding what occurred on June 9, 2006. (Testimony of Lt. Kastrinakis)

39. There was no testimony or other evidence presented at the Commission hearing regarding how the City reached its conclusion that “Street Crimes Unit may be currently involved in narcotics daily background subject involved (sic) in daily checks at his residence.”

40. On November 9, 2010, Police Commissioner William Fitchet sent a letter to HRD listing the following reasons for bypassing Mr. Feliciano: “Applicant has been identified by witnesses as a possible murder suspect in open case # 06-3162-AR. Street Crimes Unit may be currently involved in narcotics daily background subject (sic) involved in daily checks at this residence.” (Exhibit 7)

LEGAL STANDARD

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm’n., 43 Mass.App.Ct. at 304. “Basic merit principles” means, among other things, “assuring fair treatment of all applicants

and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 1.

The role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge at 304. Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions, City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police officers appropriately are held, appointing authorities are given significant latitude in screening candidates. Beverly citing Cambridge at 305, and cases cited. In those cases where the appointing authority relies on negative reasons (i.e. – allegations of prior misconduct) related to the applicant, the Commission must examine whether the appointing authority conducted “an impartial and reasonably thorough review that confirmed that there appeared to be a credible basis for the allegations.” Id.

ANALYSIS

Since there was no evidence that Mr. Feliciano's residence is the subject of daily background checks and/or that Mr. Feliciano is currently being investigated for any crimes related to narcotics, the City's second reason for bypass fails.

In regard to the other reason for bypass, it is undisputed that there is not currently, nor was there at the time of the bypass, an *open* murder case in which Mr. Feliciano is the suspect. The unrefuted evidence shows that the murder charge against Mr. Feliciano was the subject of a Nolle Prosequi within thirty (30) days of being filed.

While there is no open criminal case, the City, after conducting an otherwise reasonably thorough review of events and circumstances related to this murder charge, discovered information that justifies their decision not to hire Mr. Feliciano as a Springfield police officer. The City may rely on this information even though the criminal charge was later dismissed. See Preece v. Dep't of Correction, 20 MCSR 152 (2007) (DOC could rely on a CORI report even though the Appellant was exonerated on all criminal charges.)

First, Mr. Feliciano was identified as an individual who was engaged in a physical fight at the scene of a murder and then seen fleeing to a nearby apartment. When Springfield Police went to that apartment, Mr. Feliciano was present.

Second, police found cocaine in the apartment where Mr. Feliciano was present on the night in question. Despite his testimony to the contrary before the Commission, Mr. Feliciano did indeed sign a lease for that apartment. The evidence presented by the City (mail addressed to Mr. Feliciano at this address) provides indicia that Mr. Feliciano resided at this apartment.

These events, along with the negative feedback from veteran Springfield police officers about Mr. Feliciano's candidacy, raised questions about whether Mr. Feliciano should be issued a badge, a gun and all of the responsibility that comes with them. Ultimately, Lt. Kastrinakis concluded that appointing Mr. Feliciano carried too much of a risk and recommended that he be bypassed for appointment.

Given the substantial deference that must be accorded to appointing authorities in making hiring decisions, particularly in regard to police officers, the City has provided reasonable justification for bypassing Mr. Feliciano.

In making my findings and conclusions, I did consider the testimony of Mr. Feliciano, including his testimony regarding the events that unfolded on June 9, 2006. According to Mr. Feliciano, he was only a spectator to the violence that occurred that night, which, according to him, was already underway when he passed by after exiting a local nightclub. Again according to Mr. Feliciano, he happened to receive a call from his relative in Apartment 405, who told Mr. Feliciano that he had been in a fight and asked for Mr. Feliciano's assistance. Mr. Feliciano testified that, after receiving this call, he walked to the apartment, solely in response to the call for assistance from his relative. Standing alone, this testimony struck me as plausible.

However, Mr. Feliciano also testified that he did not live at Apartment 405 and that he did not sign a lease for this Apartment. This is not true. The City produced a lease agreement for Apartment 405 signed by Mr. Feliciano. Further, evidence obtained by the Police Department showed that mail addressed to Mr. Feliciano was delivered to this address. Only after being presented with this documentation, did Mr. Feliciano testify that he used his cousin's residence for a legal mailing address. I infer that Mr. Feliciano

did indeed reside at this address. His failure to offer truthful, forthright testimony from the outset on this issue undercut his credibility and, therefore, I do not credit his testimony in regard to the events that occurred on June 9, 2006.

For all of the above reasons, Mr. Feliciano's appeal under Docket No. G1-11-127 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on September 20, 2012.

A True copy. Attest:

Commissioner

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)(I), 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.

Notice to:
Jeffrey Morneau, Esq. (for Appellant)
Peter Fenton, Esq. (for Respondent)
John Marra, Esq. (HRD)