

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

RICHARD ABREU,
Appellant

v.

CITY OF LAWRENCE,
Respondent

Docket Number: G1-23-157¹

Appearance for Appellant: Walter H. Jacobs, Esq.
Jacobs & Associates at Law, LLC
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North Andover, MA 01845

Appearance for Respondent: Kevin P. Foley, Esq.
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Commissioner: Angela C. McConney

SUMMARY OF DECISION

The Commission affirms the decision of the Respondent City to bypass the Appellant. Although the City failed to prove most of the allegations against a police officer candidate regarding alleged misstatements and omissions on a POST affidavit, the City did show that the candidate had failed to disclose a bypass from a second police department, thus justifying the Respondent City's decision to rescind Mr. Abreu's conditional offer of employment and bypass him for appointment as a Lawrence police officer. The City's decision was further supported by the fact that a third police department denied the Appellant's application for an LTC, a denial that was affirmed upon judicial appeal.

However, based on errors in the appointment process that do not appear limited to this matter, the Commission initiated an investigation into the City's process for the appointment of police

¹ For the reasons discussed within, the Commission determined that this matter concerned the City's decision to rescind Mr. Abreu's conditional offer of employment and bypass him for original appointment for the position of permanent full-time police officer. The Commission amended the docket number accordingly from Docket No. D1-23-157 to G1-23-157.

officers, staying such investigation until potentially related matters pending before the Commission and POST are reviewed and ruled upon.

DECISION

Procedural History

On December 24, 2023, Mr. Richard Abreu appealed to the Civil Service Commission (Commission)², contesting the action of the Respondent, the City of Lawrence (Lawrence or City), removing him involuntarily from the police academy and terminating his employment as a police officer with the Lawrence Police Department (LPD). At the January 30, 2024 pre-hearing conference, Chair Christopher Bowman requested that Lawrence provide additional information to address whether the appeal should proceed as a bypass. Lawrence provided the requested information on February 6, 2024.

On February 9, 2024, Lawrence filed a Motion to Dismiss the appeal, claiming that because Mr. Abreu was terminated during his probationary period, he was not a “tenured employee” entitled to appeal to the Commission, the Commission lacked the authority to treat the appeal as a bypass appeal, and even if the Commission had the jurisdiction to hear the matter, it was not filed in a timely manner. On February 13, 2024, Mr. Abreu opposed the Motion to Dismiss.

On March 19, 2024, Commissioner Paul Stein conducted a remote motion hearing on the Motion to Dismiss and provided a link to the recording to the parties. Mr. Abreu then submitted a Supplemental Opposition on March 25, 2024, and Lawrence submitted a Supplemental Argument in Support of the Motion to Dismiss on March 26, 2024.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

After reviewing the submissions of the parties and considering the argument of counsel, Commissioner Stein denied Lawrence's Motion to Dismiss; concluding that Mr. Abreu's appeal was properly deemed a revocation of his conditional offer of employment and a decision to bypass him for appointment as a Lawrence Police Officer, and that the Commission should allow the bypass appeal to proceed as timely to a full evidentiary hearing on the merits of the reasonable justification for the bypass decision.

On August 2, 2024, I conducted an evidentiary hearing at the Armand Mercier Community Center in Lowell, MA. The hearing was digitally recorded and both parties were provided with a copy of the recording³.

The witnesses were sequestered. At the commencement of the hearing, Lawrence renewed its Motion to Dismiss Mr. Abreu's appeal on jurisdictional grounds and Mr. Abreu opposed the renewed motion. I took Lawrence's renewed motion under advisement.

Mr. Abreu also filed a Motion to Impound all of Lawrence's exhibits and all the Appellant exhibits except for A. Exhibits 1-3, 6, 11 and 12. I took the matter under advisement.

The Respondent filed its post hearing brief on August 16, 2024. Mr. Abreu filed his post hearing brief on September 27, 2024, whereupon the record closed.

On December 9, 2024, Mr. Abreu filed a Motion to Strike the Testimony of Lt. Rossi. On December 16, 2024, the City filed an opposition thereto. For the reasons stated below, the City's renewed Motion to Dismiss is *denied* and Mr. Abreu's Motion to Strike the Testimony of Lt.

³ Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

Rossi is *denied*. The City's decision to bypass Mr. Abreu for original appointment is *affirmed* and Mr. Abreu's appeal is *denied*.

I further recommend that the Commission exercise its authority to initiate an investigation regarding the process of appointing police officers in the City of Lawrence.

FINDINGS OF FACT

Lawrence submitted two exhibits (R. Exhibits 1-2) and Mr. Abreu submitted 16 exhibits (A. Exhibits 1-16). Based on these documents, the testimony of the following witnesses:

Called by Lawrence:

- Lt. Paul J. Rossi, Lawrence Police Department;

Called by Mr. Abreu:

- Ms. A;
- Richard Abreu, Appellant;

and taking administrative notice of all matters filed in the case, including the findings and conclusions from the prior ruling regarding the City's Motion to Dismiss, pertinent rules, statutes, regulations, caselaw, policies and drawing reasonable inferences from credible evidence, I make the following findings of fact:

Chronology of Events Leading to the City's Decision to Rescind Mr. Abreu's Conditional Offer of Employment

1. Richard Abreu, a 32-year-old Hispanic man, is a Methuen resident. He graduated from high school in 2011. He is married, has four children and is working toward obtaining his associates degree. After completing a 6-month training program, he received his commercial driver's license (CDL) and began working for a commercial trucking company, driving double-trailer trucks from Dracut, MA to New York overnight five nights per week. His stated reason

for seeking to be a police officer is to set an example for his children and show them that you can overcome adversity in life. (R. Exhibit 1; Testimony of Appellant)

2. Mr. Abreu passed the June 2021 civil service examination for police officer with a score of 87. His name appeared on Certification #08854 issued by the state Human Resources Division (HRD) to Lawrence for the appointment of police officers to the Lawrence Police Department (LPD or Department). (Testimony of Appellant; Respondent's email to Commission dated 2/6/24; Appellant's Opposition to Motion to Dismiss; Stipulated Facts)

3. On or about October 19, 2022, Lawrence extended a conditional offer to Mr. Abreu and nine other candidates, four of whom ranked below him on Certification #08854. (Respondent's email to Commission dated 2/6/24; Appellant's Opposition to Motion to Dismiss)

4. The conditional offer of employment was contingent on Mr. Abreu "being found qualified by the medical screening; psychological screening, passing the Physical Abilities Test (PAT), MPTC Physical Test, and successful completion of the Municipal Police Training Committee (MPTC) operated police academy." (Respondent's email to Commission dated 2/6/24; Appellant's Opposition to Motion to Dismiss)

5. Before making the conditional offer of employment, Lawrence conducted a background investigation, including a review of Mr. Abreu's criminal history, driving record and LPD employment application. Lawrence paid particular attention to the two affidavits, dated March 9 and September 17, 2022, contained in Mr. Abreu's file as required by the Peace Officer Standards and Training (POST) Commission.⁴ (Motion to Dismiss; Appellant's Opposition to Motion to Dismiss; Respondent's Supplemental Argument in Support of Motion to Dismiss)

⁴ The reason for requiring two separate affidavits appears to have been related to timing and administrative issues and is not unique to this appeal.

6. During the background investigation, a Lawrence police officer told the background investigator that he has known Mr. Abreu for several years, that they often work out together and that Mr. Abreu is a “hard working family man that also believes in a healthy lifestyle.” (R. Exhibit 1)

7. A Lawrence police detective reported to the background investigator that Mr. Abreu is “a good person, hard worker, family man, has been working hard to get an opportunity to become a police officer.” (R. Exhibit 1)

8. During the background investigation, a prior employer described him as a “great worker [who] could multi-task very well” and who would “always go above and beyond from what was expected of him.” Another prior employer “had nothing but positive things to say” about Mr. Abreu and strongly recommended him for appointment as a police officer. (R. Exhibit 1)

9. As discussed below in greater detail, Lawrence acknowledges that its background check of Mr. Abreu was deficient. For example, the background investigators were not provided with sufficient, uninterrupted time to conduct the investigation. They omitted certain key steps, including running a routine “Triple I” request for nationwide criminal charges. The investigators did, however, conduct telephone interviews of Mr. Abreu on at least two separate occasions.⁵ (Testimony of Rossi)

10. Although the LPD investigators ran a CORI check on Mr. Abreu, prior to this proceeding Lawrence failed to provide Mr. Abreu with a copy of his CORI – even when they

⁵ Lawrence failed to call either of the investigators as witnesses before the Commission. It appears that these interviews were not recorded. If they were, Lawrence did not provide the recordings of the interviews.

questioned him about CORI entries and made an adverse employment decision based in part on said CORI information. (Testimony of Appellant)

11. After Lawrence extended receiving the conditional offer of employment , Mr. Abreu successfully completed a medical, psychological and Physical Abilities Test (PAT), in addition to the requisite fitness standards required of the Municipal Police Training Committee (MPTC) for enrollment in a full-time police academy. Mr. Abreu then resigned from his job as a commercial truck driver where he was earning \$90,000 annually. (Respondent's Pre-Hearing Memo, Exhibit C; Appellant's Opposition to Motion to Dismiss; Respondents Supplemental Argument in Support of Motion to Dismiss; Testimony of Appellant)

12. On February 15, 2023, Mr. Abreu applied for a license to carry a firearm (LTC) from the Methuen Police Department. (R. Exhibit 1)

13. Around February 20, 2023, Mr. Abreu enrolled at the police academy and trained for approximately 19 weeks there before Lawrence involuntarily withdrew him, leading to this appeal. (Respondent's Pre-Hearing Memo, Exhibit C; Appellant's Opposition to Motion to Dismiss; Respondents Supplemental Argument in Support of Motion to Dismiss; Testimony of Appellant)

14. During his 19-week tenure at the police academy, Mr. Abreu passed all his examinations and was singled out in recognition for his outstanding driving skills. (Testimony of Appellant)

15. On June 6, 2023, the LPD learned that the Methuen Police Department (Methuen) would deny Mr. Abreu's LTC application. (*See* Finding of Fact 12; R. Exhibit 1; Testimony of Rossi)

16. In a June 14, 2023 letter, Methuen informed Mr. Abreu that it was denying his LTC because he had failed to disclose “2010 multiple felony charges” in New Hampshire. A Methuen Interdepartmental Memo states in part that: “Mr. Abrue (sic) failed to mention several Felony charges out of the State of New Hampshire that were Nolle Prosequi including Theft-willful Concealment and Receiving Stolen Property”. The June 14, 2023 letter also cited as further reason for denial a 2006 criminal charge in Lawrence and a 2010 warrant in Lowell. (R. Exhibit 1)

17. Lt. Paul Rossi has worked for Lawrence Police Department for approximately 23 years, and has overseen the Internal Affairs Division (IAD) for the past two years. In this capacity, however, he is not responsible for conducting applicant background investigations; nor has he ever done so. (Testimony of Lt. Rossi)

18. After Lawrence received the LTC denial information from Methuen, Lt. Rossi conducted a “further review” of Mr. Abreu’s previous background investigations and his responses on the POST affidavits. (Testimony of Lt. Rossi)

19. Lt. Rossi testified that he did not conduct an actual background investigation, instead relying on the background investigations that had already been completed, and making some further inquiries. (Testimony of Lt. Rossi)

20. As part of his review, Lt. Rossi contacted Methuen Police and reviewed documents related to Mr. Abreu’s LTC denial. He also reviewed the two previous LPD background investigation reports completed before Lawrence extended the conditional offer of employment. (Testimony of Lt. Rossi)

21. Lt. Rossi then met Mr. Abreu at the Police Academy on June 12, 2023.⁶

(Testimony of Appellant)

22. During this meeting, Lt. Rossi informed Mr. Abreu that he needed to review a few questions from POST affidavit questionnaires that were completed during the LPD background investigations. (Testimony of Appellant)

23. At the end of the discussion, Lt. Rossi informed Mr. Abreu that he believed that the answers provided in the POST affidavits “weren’t honest” and that Mr. Abreu had omitted certain relevant information. (Testimony of Appellant)

24. Mr. Abreu attended the academy for an additional week after speaking with Lt. Rossi. (Testimony of Appellant)

25. On June 13, 2023, Lt. Rossi submitted a report to the Dep. Police Chief regarding the “review of recruit Richard Abreu’s Background and POST Application.” (R. Exhibit 1)

26. In his report, Lt. Rossi concluded that:

I don’t believe recruit Abreu adequately answered my questions regarding some of his answers on the POST questionnaire. He only strengthened my belief from some of his replies that he purposely omitted specific facts. I will request this background investigation be returned to an investigator so they can contact the Lowell Police, the State Police, DCF and Lowell District court for all relevant documents so they can be added to his background file.

All new information, audio interview, and documents must be submitted to POST, including the three (3) background checks. Furthermore, the hiring authority should be made aware of this new information to decide on Abreu’s employment status.

(R. Exhibit 1)

⁶ Lt. Rossi’s report indicates that the discussion was recorded, but the City did not submit a recording of this interview into evidence.

27. Lt. Rossi also made 10 specific recommendations for future Lawrence background investigations in order to correct the multiple deficiencies in the Abreu application process. (R. Exhibit 1)

28. Regarding the “misstatements and omissions of critical information” on the POST application, Lt. Rossi wrote the following in his report:

1. Question # 11 (Summary) Has your license ever been suspended or revoked?

Recruit Abreu wrote- Yes, his license got suspended when he had his permit; he received “many” tickets, and when he got his license, those “points” were transferred to his license.

This is not a completely accurate statement. Recruit Abreu has a three (3) Page driving history dating from 2007 until 2020. It appears his license was suspended multiple times for not only operating without a license, but operating after suspension, accumulating convictions, and failing to pay fines. From his statement, one could infer that [all] his infractions happened when he was young and immature.

2. Question #17 (Summary) Have the Police ever been called to your current or former residence based on a complaint about your conduct?

Recruit Abreu wrote- Yes, in 2018, [Ms. A] called the Lowell Police to so they could to (sic) tell him he could not kick her out of the house.

Again, this is not completely accurate. Lowell Police responded two (2) times to his residence in 2014 and 2015, where he was subsequently arrested for domestic assault and battery. However, in the following question (18), he does mention his 2014 and 2015 arrests in Lowell, MA.

3. Question #18 (Summary) Have you ever been arrested or the subject of a criminal complaint?

Recruit Abreu list (sic) several arrests, but he explains only some of them but not others. For example, he wrote for his 2015 Domestic arrest that [Ms. A] called the police while he was gone and nothing for his 2014 arrest for Domestic with the same reported victim.

I believe this statement is misleading. According to the Lowell Police Report, when [Ms. A] told him she was calling the police, he fled before the police arrived. He also states that he was charged in New Hampshire with the stolen property but did not mention pleading guilty to Unsworn Falsification. When I called the charging department (Salem, NH), they told me it would be related to

lying on an official document. Later determined to be a State of New Hampshire Affidavit reporting the items being pawned were not stolen.

4. **Question #20 (summary) Has a report pursuant to M.G.L. c. 119 & 51A, regarding abuse or neglect of a child in your household ever been filed by a mandated report.**

Recruit Abreu answered no. However, on both 2014 and 2015 arrests in Lowell, the Police filed 51A's with the Department of Child and Family Services (DCF).

(R. Exhibit 1)

29. Although he did not identify it as a misstatement or omission by Mr. Abreu in his POST affidavit, Lt. Rossi also wrote in part in his report that:

Recruit Abreu disclosed that he applied for the Lowell Police Department in early 2022 and the Massachusetts State Police just before entering the Methuen Police Academy. The Lowell Police and State Police both bypassed him because of his criminal record and driving history.

(R. Exhibit 1)

30. On June 28, 2023, Lawrence informed Mr. Abreu that as he was being separated from employment and that the City had initiated his withdrawal from the police academy, effective immediately. As reasons therefor, Lawrence cited, "based on your misstatements and omissions of critical information on your POST application." (Motion to Dismiss; Respondent's Pre-Hearing Memo, Exhibits B & C)

31. On December 24, 2023, Mr. Abreu appealed to the Commission in which he alleged that his termination of employment was unlawful and made in violation of civil service procedural requirements. (Claim of Appeal)

Specific Findings Related to the Four Questions in POST Questionnaire Cited by Lt. Rossi as Containing Misstatements or Omissions by Mr. Abreu

32. In response to Question 11: *Has your license ever been suspended or revoked?*, Mr. Abreu handwrote:

Yes, my licenses (sic) has been suspended. It got suspended because when I had my permit, I received to [sic] many tickets. Therefore, the DMV transferred all these point [sic] to my license once I finally got my license. My licenses got suspended back in 2011?

(R. Exhibit 1)

33. Before extending the conditional offer of employment, Lawrence background investigators prepared 3 ½-pages of an interoffice memorandum with a narrative for Mr. Abreu's driving record, including notations of his 2009, 2011 and 2015 license suspensions. (R. Exhibit 1)

34. In response to Question 17—
*Have the police ever been called to your current residence or any former residence of yours, while you were a resident or occupant therein, based on a complaint about your conduct? If so, please give the address of each residence and the date of each occurrence—*Mr. Abreu handwrote:

Yes, back in 2018 [Ms. A] called the Lowell PD, to make sure I cannot kick her out the [sic] house. She wanted to make sure there was a law in place stating [sic].

(R. Exhibit 1)

35. The Lowell Police Department responded to Ms. A's residence in 2014 and 2015 and subsequently arrested Mr. Abreu for domestic assault and battery. (R. Exhibit 1)

36. Ms. A's lease listed only herself and her children as residents of the addresses where police responded in 2014 and 2015. Mr. Abreu's credit reports show his parents' home address for the years 2014 and 2015. (A. Exhibits 8-10, 15)

37. As discussed below, Mr. Abreu did reference the arrests in 2014 and 2015 in his response to the next question (Question 18) on the POST affidavit, which asks, without regard to Mr. Abreu's residence at the time, whether Mr. Abreu had ever been arrested or subject to a criminal complaint. (R. Exhibit 1)

38. The Interoffice Memo prepared by LPD background investigators referenced Mr. Abreu's 2014 and 2015 arrests under the heading: "MA CRIMINAL HISTORY SEALED BOP". (R. Exhibit 1)

Question 18: *Have you ever been arrested or been the subject of a criminal complaint as an adult or a juvenile? If so, please indicate the disposition of each case, including any dismissal or other disposition not resulting in a conviction.*

39. Mr. Abreu responded to this question by hand-writing a list of incidents, including one incident as a juvenile, one incident in 2008 in New York, and the 2014 and 2015 arrests in Lowell. Mr. Abreu also hand-wrote the following:

2010 – Salem, NH (charged with stolen property from Kmart, I returned everything and got a misdemeanor.

(R. Exhibit 1)

40. The Triple I report, which was requested by Lt. Rossi, but not the Lawrence background investigators, show that Mr. Abreu was arrested on June 14, 2010 and charged with unsworn falsification, a Class B misdemeanor; pled guilty and was sentenced on June 13, 2011 to confinement of 12 months deferred and a fine of \$250. (R. Exhibit 1)

41. Mr. Abreu did not reference the above-referenced specific charges in his response to Question 18 of the POST affidavit. (R. Exhibit 1)

42. Mr. Abreu shared the NH criminal matter with the LPD background investigators before being granted the conditional offer of employment. (Testimony of Appellant)⁷

⁷ The record does not establish whether Mr. Abreu specifically discussed the Unsworn Falsification charges with the background investigators, whom the City failed to call as witnesses as part of this proceeding.

43. Under the heading, QH/QR: Criminal History NICI/III (AFIS-R)” of the Lawrence Interoffice Memo, the background investigators stated that, “Richard Abreu has the following out of New Hampshire” but failed to complete the answer. (R. Exhibit 1)

44. Before this matter proceeded to the Commission, none of the LPD background investigators or Lt. Rossi provided the Appellant with a copy of his CORI, even though they were relying on this information to complete their investigation or review of Mr. Abreu.

(Testimony of Appellant)

45. *Question 20: Has a report pursuant to M.G.L. c. 119, § 51A, regarding suspected abuse or neglect of a child in your household ever been filed by a mandated reporter? If so, please give the date and circumstances of each such report?*

In response to this question in his POST affidavit, Mr. Abreu wrote: “no”. (R. Exhibit 1)

46. The Department of Children and Families (DCF) filed two 51A reports regarding Mr. Abreu’s arrests in 2014 and 2015, neither of which was obtained or reviewed by the LPD prior to granting Mr. Abreu a conditional offer of employment. (A. Exhibit 14; Testimony of Lt. Rossi)

47. Prior to this proceeding, Mr. Abreu was not familiar with the definition of the term “mandated reporter”; nor was he aware that such a mandated reporter had filed a report under M.G.L. c. 119, § 51A. Rather, he was aware that DCF employees had interviewed him in 2014 and 2015 regarding the incidents that resulted in assault and battery charges against him. (Testimony of Appellant)

48. DCF “supported” allegations of neglect against Mr. Abreu in both above-referenced 51A reports. (A. Exhibit 14)

Findings Related to Other Matters Cited in Lt. Rossi’s Report

49. Although not specifically cited in Lt. Rossi’s report as an omission or

misstatement, Mr. Abreu answered “no” to Question #3 on the POST affidavit which asks: *Have you ever applied to any other law enforcement or correction agency?* (R. Exhibit 1)

50. Approximately 19 months before Mr. Abreu answered “no” to Question #3, the Lowell Police Department had bypassed Mr. Abreu for original appointment to the position of permanent full-time police office. (R. Exhibit 1)

Legal Standard Related to the City’s Renewed Motion to Dismiss

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should be decided first. 801 CMR 1.01(7)(g)(3). When there is no genuine issue of fact relating to all or part of a claim or defense and the party is entitled to prevail as a matter of law, a party may move for summary disposition on the claim or defense pursuant to 801 CMR 1.01(7)(h). *See Mangino v. HRD*, 27 MCSR 34 (2014) and cases cited (the notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing); *Morehouse v. Weymouth Fire Dep’t*, 26 MCSR 176 (2013) (a party may move for summary decision when . . . there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law).

The Commission will decide a dispositive motion when the undisputed material facts, viewed “in the light most favorable to the non-moving party”, affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. *See, e.g., Milliken & Co. v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 249 (2008); *Lydon v.*

Massachusetts Parole Bd., 18 MCSR 216 (2005). If a motion is granted as to part of a claim or defense that is not dispositive of the case, further proceedings shall be held on the remaining issues. 801 CMR 1.01(7)(h).

Legal Standard related to the City's decision to rescind Mr. Abreu's conditional offer of employment and bypass him for appointment as a police officer.

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. *See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm’n*, 40 Mass. App. Ct. 632, 635 (1995), *rev. den.*, 423 Mass. 1106 (1996).

Original appointments to permanent civil service positions, such as a municipal police officer, are made from a list, called a “certification”, with candidates’ names ranked in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4). A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. *Boston Police Dep’t v. Civil Service Comm’n*, 483 Mass. 461, 474-78 (2019); *Police Dep’t of*

Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Service Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

The Commission also is vested with authority to hear and decide appeals from “tenured” civil service employees who have been discharged, demoted, laid off or suspended without “just cause”. G.L. c. 31, § 41 through § 45. A “tenured employee” is “a civil service employee who is employed following (1) an original appointment to a position on a permanent basis and the actual performance of the duties of such position for the probationary period required by law; or (2) a promotional appointment on a permanent basis. G.L. c. 31, § 1. A civil service employee who has not gained tenured status is not protected by the “just cause” requirements and does not have a right to appeal his or her discharge, demotion, or discipline to the Commission. *See, e.g., Brandao v. Boston Police Dep’t*, 32 MCSR 255 (2019), *aff’d*, Suffolk Sup. C.A.1984CV02606 (2020) *and cases cited* (police officer still in probationary period); *Downer v. Northampton*, 31 MCSR 98 (2018), *aff’d*, 97 Mass. App. Ct. 1119 (2020) (Rule 1:28) (provisionally, not permanently, appointed employee).

Analysis

There is something amiss regarding the appointment process for police officers in the City of Lawrence.

First, despite Mr. Abreu’s oral and written communication informing them that he had prior NH criminal charges dating back several years, the LPD failed to run a routine Triple I check before granting him a conditional offer of employment as a police officer.

Secondly, the City violated state law when it made an adverse employment decision based in part on Mr. Abreu’s criminal history without providing him a copy of the CORI. This is not the first time the City has engaged in unlawful behavior regarding the handling of a

candidate's CORI records. Approximately two years ago, in *Camilo v. Lawrence*, 35 MCSR 287 (2022), Chair Bowman and then-Commissioner Cynthia Ittleman concluded:

The City ... ignored [...] provisions of the law regarding the manner in which they relied upon the criminal record information regarding [Camilo].

Section 171A of G.L. c. 6 states in part:

“In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant's criminal offender record information shall provide the applicant with the criminal history record in the person's possession, whether obtained from the department or any other source prior to questioning the applicant about his criminal history. If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person's possession, whether obtained from the department or any other source; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time in connection with an adverse decision based on this information.” (emphasis added)

- Sharing CORI-related information with a candidate and giving them the opportunity to discuss that information is consistent with Executive Order 495 (2008) (EO 495): “Regarding the Use and Dissemination of Criminal Offender Record Information by the Executive Department.” In 2009, speaking on behalf of his CORI reform legislation before the Joint Committee on the Judiciary, then-Governor Deval Patrick stated: “The only condition we impose is that the employer give the applicant a chance to discuss the criminal record, both its accuracy and its relevance to the job in question, before the employer makes a hiring decision.”
- That is not what occurred here. The City did not provide Mr. Abreu with the CORI printout from CJIS, nor did they provide Mr. Abreu with the additional criminal history-related information that they had received (the docket sheet and the arrest reports). This does not constitute the type of fair, impartial and transparent review process that is required under the law.

Third, based on the testimony of their own witness, the LPD failed to provide background investigators with sufficient time to complete Mr. Abreu's background investigation in a thorough manner.

Fourth, the City apparently ignored Lt. Rossi's recommendation to *re-open and re-conduct* Mr. Abreu's background investigation in a proper manner. Rather, the City, based on Lt. Rossi's "review", which he emphasized during his testimony did not constitute a background investigation, effectively revoked the conditional offer of employment; withdrew Mr. Abreu's sponsorship at the police academy and treated the action as a termination of a probationary employee, with the effect of deeming Mr. Abreu with no right of appeal. This disturbing playbook is strikingly like another appeal currently pending before the Commission where it is undisputed that Lawrence's Mayor signed off on the transfer of a reserve police officer from another police department without conducting *any* background investigation, then terminated him after a review was completed post-hire; and then challenged whether the Commission had jurisdiction to hear Mr. Abreu's appeal.

Fifth, the City's letter announcing the adverse employment decision against Mr. Abreu lacks specificity regarding the alleged omissions and misstatements Mr. Abreu purportedly made on his POST affidavit.

Sixth, as part of the hearing before the Commission, the City failed to call the LPD background investigators, making it almost impossible to determine with any certainty what Mr. Abreu disclosed to the investigators.

Finally, the Commission does not approach matters before it in a vacuum. In March 2024, the state's Peace Officer and Standards Training (POST) Commission reported that it was investigating "credible reports [that] ... have called into question the City of Lawrence's hiring and certification practices concerning certain candidates for employment as law enforcement officers for the Lawrence Police Department."

It is with this background in mind that I review the appeal before me, including the City's renewed motion to dismiss Mr. Abreu's appeal on jurisdictional grounds. As stated in Commissioner Stein's well-reasoned [denial](#) of the City's initial motion to dismiss, Lawrence's actions in ordering Mr. Abreu's withdrawal from the police academy and denying him employment as an LPD police officer must be treated as a bypass for purposes of civil service law, for which an appeal to the Commission is duly permitted. Further, for the reasons articulated by Commissioner Stein, good cause existed to toll the time within which Mr. Abreu was permitted to file a bypass appeal with the Commission.

The troubling series of actions by the City revealed as part of the full hearing I conducted only reinforce the appropriateness of the Commission retaining jurisdiction of this matter, under either Section 2(b) of the civil service law or under Sections 2(a) and 72-74 of the civil service law, which, taken together, authorize the Commission to investigate all aspects of the process used to appoint and promote civil service employees in Massachusetts. To ensure clarity, I am not convinced that the City's missteps here are the result of isolated oversights or administrative mistakes. Rather, a further review is warranted to determine whether the City is knowingly flouting the civil service law for reasons inconsistent with basic merit principles. *See also Re: Investigation conducted by the Civil Service Commission regarding the non-selection of a candidate for promotion to Lawrence Deputy Fire Chief*, Docket No. E-22-135 (Jul. 13, 2023).⁸ For all of the above reasons, the City's renewed motion to dismiss Mr. Abreu's appeal is *denied*.

I now examine the substantive issue regarding whether the City had reasonable justification to rescind Mr. Abreu's conditional offer of employment and bypass him for appointment as a Lawrence Police Officer. As referenced above, the letter from the City to Mr.

⁸ <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mass.gov/doc/leduc-wayne-v-city-of-lawrence-71323/download>

Abreu regarding the adverse employment decision stated only that the decision was based on “your misstatements and omissions of critical information on your POST application.” Section 8(4) of the Personnel Administration Rules (PAR 08 (4)) states in part that an Appointing Authority, when bypassing a candidate for appointment, must provide the candidate with:

... a full and complete statement of the reason or reasons for bypassing the candidate and that such statement shall indicate all ... negative reasons for bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are known or reasonably discoverable by the appointing authority ... shall later be admissible as reasons for selection or bypass in any proceeding before the Civil Service Commission.

The purpose of this rule is simple. A candidate bypassed for appointment should have sufficient information available to them regarding the reasons for bypass when deciding whether to challenge that bypass determination to the Commission. Here, the cryptic wording of the City’s letter to Mr. Abreu lacks the type of specificity expected. Only after filing his appeal with the Commission, obtaining counsel and pursuing discovery was Mr. Abreu able to get a sufficient understanding of the specific reasons for the City’s actions here. While the City fell short on what is expected here, I have concluded, for the purposes of this appeal, that they barely met the minimum notification requirements. Thus, I did permit the City to present evidence regarding the four specific alleged omissions or misstatements on the POST affidavit identified in Lt. Rossi’s internal report.

Question 11 on the POST affidavit asks whether Mr. Abreu’s license was ever suspended. Mr. Abreu answered yes and cited *one* license suspension in 2011. His full driving history, obtained by the LPD as part of the background investigation, showed *three* license suspensions: one in 2009; one in 2011; and one in 2015. These suspensions, and the reasons for them, were well known to the LPD at the time as they were included in an interoffice

memorandum prepared by investigators. Further, I credit Mr. Abreu's testimony that he discussed his full driving history with the background investigators, presumably after the investigators had reviewed his RMV records. Based on these documents and the credible—and unrebutted—testimony of Mr. Abreu, I conclude that the LPD was aware of the three license suspensions as well as the discrepancy between his answer on Question 11 and his actual driving history at the time that Mr. Abreu was given a conditional offer of employment.

In that context, the City has not shown, by a preponderance of the evidence, that Mr. Abreu's failure to list all three license suspensions from many years ago on the POST affidavit was a valid reason to bypass Mr. Abreu for appointment. Had this issue been raised prior to granting Mr. Abreu a conditional offer of employment and/or had the City presented evidence (i.e. – witness testimony from the actual background investigators) showing that Mr. Abreu was attempting to conceal his driving history, I may have reached a different conclusion.

Question 17 on the POST affidavit asks if the police have ever been called to Mr. Abreu's current residence or former residence, while he was a resident or occupant therein, based on a complaint about his conduct. If so, Mr. Abreu is instructed to give the address of each residence and the date of each occurrence. The City takes issue with Mr. Abreu for only listing an incident from 2018 where police were called by Ms. A to their joint residence but failing to list that police responded to Ms. A's home in 2014 or 2015. Lt. Rossi testified that, in his opinion, Question 17 requires applicants to provide information regarding any time police were called regarding an applicant's alleged misconduct to a location where the applicant was an occupant, regardless of whether they were residing there. Based on that interpretation, or based on his belief that Mr. Abreu did reside with Ms. A. in 2014 or 2015, Lt. Rossi concluded that Mr. Abreu omitted relevant information.

Lt. Rossi's interpretation of this question would require the reader to ignore the words current residence, former residence, resident and residence in this two-sentence question. The question clearly asks the applicant to limit their response to those occasions when police were called to an applicant's *current or former residence* when the applicant was indeed an occupant at their residence. While the City surmises that Mr. Abreu was indeed a "resident" at the apartment rented by Ms. A at the time, they have not proven this by a preponderance of the evidence. In fact, most, but not all, of the evidence supports the credible testimony of Ms. A that Mr. Abreu did not reside with her during 2014 and 2015.

More globally, Mr. Abreu fully disclosed the same information in response to the next question on the affidavit regarding his criminal record. In summary, the evidence does not support the City's contention that Mr. Abreu omitted information in response to this question. Even if my interpretation of the question is mistaken, the City, after having already reviewed Mr. Abreu's answer to this question, and having been fully aware of the arrests that occurred at Ms. A's residence, in part due to disclosure by Mr. Abreu, proceeded to grant Mr. Abreu a conditional offer of employment. Rescinding that offer based on the City's misplaced interpretation of the question is not justified.

Question 18 on the POST affidavit asks whether Mr. Abreu has "ever been arrested or been the subject of a criminal complaint as an adult or juvenile." If so, the affidavit instructs Mr. Abreu to "indicate the disposition of each case, including any dismissal or other disposition not resulting in a conviction." Mr. Abreu responded to this question by hand-writing a list of incidents, including that he was charged with "stolen property" regarding an incident in New Hampshire. Lawrence takes issue with the fact that Mr. Abreu failed to disclose other charges

against him (all denominated “unsworn falsification”) related to the same New Hampshire incident.

How to obtain, review and inquire about a candidate’s criminal record is not new ground for the Commission. As stated in *Camilo*, state law requires an employer to provide an applicant with any CORI records in their possession *prior* to questioning the candidate about their criminal records. Lawrence *never* provided Mr. Abreu with the CORI records that they had obtained prior to questioning him and, despite being informed by Mr. Abreu of criminal charges against him in New Hampshire, the LPD never ran a routine Triple I check to review the New Hampshire charges.

Further, there is a thornier issue that is relevant here. Section 4 of G.L. c. 151B states that it shall be an unlawful practice:

For an employer, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 3 or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within 3 years immediately preceding the date of such application for employment or such request for information, or (iv) a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276. [emphasis added]

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.

Nothing contained herein shall be construed to affect the application of section thirty-four of chapter ninety-four C, or of chapter two hundred and seventy-six relative to the sealing of records. 9 1/2. For an employer to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any criminal 13 convictions on an applicant's application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or (ii) the employer or an affiliate of such employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.

A series of Commission decisions, including *Camilo*, have concluded that, while public safety employers are rightfully granted far greater access to a candidate's CORI records (including sealed records) than non-public safety employers, the anti-discrimination laws do not appear to exempt public safety employers from the limitations regarding what questions can—and cannot—be asked of a job applicant regarding their criminal records. Operationally, this means that public safety agencies may obtain a candidate's CORI record and, after providing the candidate with a copy of those records, ask the candidate to address the information contained therein. The Commission is unaware of any statute change that has superseded the anti-discrimination law as it pertains to the permissibility of employment application questions.

Given the specific facts of this case, however, I need not address the issue of whether the broad question now contained on the POST affidavit is permitted under state law. Rather, even if the question is permissible, the evidence here does not sufficiently establish that Mr. Abreu knowingly omitted the “unsworn falsification” charge to conceal information from the City.

Commonsense suggests otherwise. Having failed to run a routine out-of-state criminal check, the *only* reason that LPD investigators were aware of *any* New Hampshire charges was Mr. Abreu's disclosure on the affidavit. Further, all the charges were related to an incident that Mr. Abreu discussed with background investigators at length. Again, the City's failure to call

the background investigators as witnesses before the Commission, and the decision to not record the background investigation interviews, makes it almost impossible to determine whether Mr. Abreu was seeking to conceal information or, whether, as someone without a legal background, he simply forgot to list the “unsworn falsification” charge from many years ago on the POST affidavit. Based solely on the information in the record, I conclude that the City has not shown, by a preponderance of the evidence, that Mr. Abreu’s answers to Question 18 on the POST affidavit were a valid reason to bypass Mr. Abreu for appointment.

Question 20 on the POST affidavit asks whether a report, pursuant to G.L. c. 119, § 51A, regarding suspected abuse or neglect of a child in your household has ever been filed by a mandated reporter. If so, the applicant is instructed to give the date and circumstances of each such report. MR. Abreu answered “no” to this question. DCF involvement was triggered in 2014 and 2015 when Mr. Abreu was charged with assault and battery against Ms. A and Lowell police officers, who are deemed “mandatory reporters” observed children at the home where the alleged assault occurred. DCF, after review, concluded that child neglect occurred because Mr. Abreu had allegedly engaged in an assault and battery in the home where the children were present.

There is no understating the serious nature of DCF involvement, particularly when the triggering events here were charges of assault and battery (that were later dismissed) against Mr. Abreu. The findings of the DCF 51A reports, however, are not the basis of the City’s decision to rescind Mr. Abreu’s conditional offer of employment. Rather, the City’s reason is based on the conclusion that Mr. Abreu made a misstatement when he answered “no” to this question.

While Mr. Abreu does not deny that he recalls being questioned by DCF workers in 2014 and 2015, he had no understanding that it was in the context of what is referred to as a 51A report or that a police officer is deemed a “mandatory reporter” under the law. It is certainly

plausible that Mr. Abreu, when asked in the POST affidavit, whether an allegation regarding abuse or neglect of a child in his household was ever reported by a mandatory reporter under G.L. c. 119, § 51A, was simply unaware that the 2014 and 2015 police encounters (which he reported to the LPD in a different question) required a “yes” answer to this question. For this reason, I find that the City has not proven that Mr. Abreu was untruthful in his response to this question. Thus, this reason for bypass is also invalid.

As referenced above, those four questions and answers were specifically identified by Lt. Rossi in his report as representing alleged omissions or misstatements by Mr. Abreu in the POST affidavit. Thus, it is reasonable to conclude that when the City vaguely referred to Mr. Abreu’s alleged “misstatements and omissions of critical information on your POST application” in the letter rescinding Mr. Abreu’s conditional offer of employment, they were likely referring solely to the four questions and answers referenced above.

However, as part of this proceeding, beginning with the submission of its pre-hearing memorandum, the City specifically identified a *fifth* question (Question #3⁹) on the POST affidavit in which they allege that Mr. Abreu’s answer was a misstatement. After considering that Lt. Rossi did make some reference to this question and Mr. Abreu’s response in his report, and because it does fall under the category of alleged omissions and misstatements, I allowed the City to raise this issue during the hearing, including during Mr. Abreu’s cross examination.

Question #3 of the POST affidavit asks:

Have you ever applied to any other law enforcement or corrections agency?·If so, were you offered the position for which you applied? If you were not offered the position, what was the reason, If you know? Please provide the requested information as to each such application.

⁹ The City’s pre-hearing memo references Question #4, but this appears to be a scrivener’s error as the question cited is actually Question #3.

Mr. Abreu answered: “no”. However, approximately 19 months prior to answering “no” to Question #3, Mr. Abreu had been bypassed for original appointment for police officer by the Lowell Police Department.

Mr. Abreu’s testimony before the Commission regarding why he answered no to this question was not credible. He suggested that he answered “no” because he believed the question referred to hiring cycles that used prior examinations, as opposed to the most recent examination and eligible list. This is not plausible as there is no qualifying language in the question. Rather, applicants are unambiguously asked if they have *ever* applied to *any* other law enforcement or corrections agency.

I also do not credit Mr. Abreu’s testimony that he discussed the application and bypass by the Lowell Police Department with background investigators just prior to starting the Police Academy. According to Mr. Abreu, LPD investigators purportedly asked him a question along the lines of “if Lowell and the State Police” don’t want you, why should we? However, at the time that Mr. Abreu started the Police Academy, he had not been “bypassed” or non-selected by the State Police. A decision of non-selection by the State Police did not come until months later, making Mr. Abreu’s memory of the conversation with background investigators not credible.

After reviewing all the evidence, I conclude that Mr. Abreu falsely answered “no” to Question #3, hoping that Lawrence background investigators would not discover that he had been bypassed for appointment in Lowell for multiple negative reasons. Further, it is highly likely that, given the far more comprehensive nature of the Lowell investigation, it would have tipped the scales against Mr. Abreu in his application to the Lawrence Police Department.

Finally, it is now undisputed that, after Mr. Abreu was granted a conditional offer of employment in Lawrence, and after he had started the Police Academy, Methuen denied his LTC

application for reasons related to alleged omissions and misstatements in the LTC application. During his testimony before the Commission, Mr. Abreu shared that the LTC application denial was affirmed upon judicial appeal.

In summary, while the review process here leaves much to be desired, and most of the allegations of omissions and misstatements against Mr. Abreu were not supported by a preponderance of the evidence, the overwhelming evidence does support the City's contention that Mr. Abreu was not truthful when he stated in his POST affidavit that he had never applied to another law enforcement agency. He had indeed applied in the nearby community of Lowell and he had an obligation to provide that critical information to the LPD investigators by answering "yes" on the POST affidavit. Moreover, although the LTC denial in Methuen occurred after Mr. Abreu was granted a conditional offer of employment, the relevance of that denial, and the unsuccessful judicial appeal, must be considered here as it forms a valid, uncontestable basis for the City's decision to rescind the conditional offer of employment, even after Mr. Abreu had completed some 20 weeks of the Police Academy.

Although, for these reasons, Mr. Abreu's bypass should be affirmed, I am not persuaded that left to its own devices, the City will, on a going forward basis, conduct fair, impartial and sufficiently thorough background investigations that form the foundation of a fair, impartial and transparent appointment process.

For that reason, I recommend that the Commission exercise its authority under G.L. c. 31, §§ 2(a) and 72-74, and open an investigation into the review and appointment process of police officers in the City of Lawrence, staying any action until (1) the POST Commission concludes its investigation in the matter involving the City pending before POST and (2) at the completion of the hearing and decision in the matter currently pending before the Commission in *Wood v.*

Lawrence, docketed as D1-24-079, regarding the City's decision to accept the transfer of a reserve police officer from another community without conducting any background investigation.

CONCLUSION

Richard Abreu's appeal filed under Docket Number G1-23-157 is hereby *denied* and I recommend the Commission open an investigation as referenced above.

Civil Service Commission

Angela C. McConney

Angela C. McConney
Commissioner

By a vote 5-0, the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on December 19, 2024 voted to deny Mr. Abreu's bypass appeal, open an investigation into the appointment process of police officers in Lawrence Police Department, but stay such investigation until the resolution of related matters currently pending before the Commission and POST.

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 C.M.R. § 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 to:

Walter H. Jacobs, Esq. (for Appellant)
Kevin P. Foley, Esq. (for Respondent)
Caryl M. Garcia (for Respondent)