

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

617-979-1900

ZOUHEIR ALAMI,  
*Appellant*

v.

G1-22R-125

SALISBURY POLICE DEPARTMENT,  
*Respondent*

Appearance for Appellant:

Galen Gilbert, Esq.  
G. Gilbert Law Office  
92 State Street, Suite 904  
Boston, MA 02109

Appearance for Respondent:

Darren R. Klein, Esq.  
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Commissioner:

Shawn C. Dooley

Summary of Decision

The Commission denied the bypass appeal of a candidate seeking appointment as a reserve police officer, concluding that the Town of Salisbury had reasonable justification to bypass him for failing to follow the Town's directions for the hiring process, including failure to fill out the employment application packet required by all candidates.

DECISION

On September 7, 2022, the Appellant, Zouheir Alami (Appellant), filed a timely appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 31, § 2(b), challenging the decision of the Town Manager of the Town of Salisbury (Town) to bypass him for appointment as a reserve police officer for the Salisbury Police Department (Department). A pre-hearing conference was held via videoconference (Webex) on October 4, 2022. In anticipation of

additional hirings by the Town, the appeal was dismissed with a future effective date. Since no hirings took place on or before the future effective date, this appeal was reinstated under the current docket number. I conducted an in-person full hearing on January 23, 2024. The hearing was recorded via Webex and copies were provided to the parties.<sup>1</sup> Both parties filed Proposed Decisions. For the reasons set forth below, the Appellant's appeal is denied.

## **FINDINGS OF FACT**

The Town submitted as evidence ten exhibits (Exhibits 1 – 10; R001-R0028). Based on the documents submitted and the testimony of the following witnesses:

### *Called by the Town*

- James Leavitt, Sgt.
- Richard Dellaria, Lt.
- Thomas W. Fowler, Chief of Police

### *Called by the Appellant:*

- Zouheir Alami, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following facts:

1. The Appellant, Zouheir Alami, is a resident of the Town of Salisbury where he resides with his wife and their five children. (*Appellant's testimony*)
2. The Appellant is originally from Morocco. (*Appellant's testimony*)
3. The Appellant has been employed by the MBTA for 20 years and currently holds the position of inspector. (*Appellant's testimony*)

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<sup>1</sup> The Commission sent the parties a copy of the recording. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to use the recording to supply the court with a written transcript of the 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.

4. The Appellant took the civil service examination for police officer on June 12, 2021 and the eligible list for Salisbury Police Officer was established by the state's Human Resources Division (HRD) on September 1, 2021. *(Stipulated facts)*

5. On July 18, 2022, HRD provided the Town with Certification #08750 to appoint up to three reserve police officers. *(Exhibit 2)*

6. On or before July 25, 2022, five candidates, including the Appellant, signed the certification at the Salisbury Police Department indicating their willingness to accept appointment to the position of reserve police officer with the Department. The Appellant was ranked second among those who signed as willing to accept appointment. *(Exhibit 2)*

7. Sgt. James Leavitt (Sgt. Leavitt) is an administrative Sergeant for the Town's Police Department, and he oversaw the Department's civil service hiring process in the summer of 2022. *(Testimony of Sgt. Leavitt)*

8. On July 28, 2022, Sgt. Leavitt e-mailed all five candidates who signed the civil service certification stating that e-mail was going to be the primary mode of communication and requesting that each candidate reply to confirm that their e-mail was in working order. *(Exhibit 3; Testimony of Sgt. Leavitt)*

9. Additionally, Sgt. Leavitt's e-mail indicated that once he received confirmation from each candidate, he would provide them with additional steps and instructions for the hiring process. *(Exhibit 3; Testimony of Sgt. Leavitt)*

10. The Appellant responded to Sgt. Leavitt's July 28, 2022 e-mail later that same day confirming that his e-mail was in working order. *(Exhibit 4; Testimony of Appellant)*

11. The Appellant also called Sgt. Leavitt and left a voicemail later that same day. This phone call was not returned. *(Exhibit 4; Testimony of Appellant)*

12. The next day, on July 29, 2022, Sgt. Leavitt e-mailed all five candidates with detailed instructions to submit a completed Department application, a resume, and a cover letter (Employment Package) to the Department by dropping copies off physically or e-mailing copies to Sgt. Leavitt no later than August 7, 2022 at 3:00 pm. (*Testimony of Sgt. Leavitt; Exhibit 5*)

13. The email also stated that interviews would be scheduled during the weeks of August 8<sup>th</sup> or August 15<sup>th</sup>. (*Exhibit 5*)

14. As of the August 7, 2022 deadline at 3:00 pm, three out of the five candidates submitted their full employment package. The other two candidates, including the Appellant, failed to respond. (*Testimony of Sgt. Leavitt*)

15. On August 15, 2022, the Department conducted interviews of the three candidates that submitted employment packages. The Appellant and the other candidate who failed to respond and submit an employment package were not selected for an interview. (*Testimony of Sgt. Leavitt*)

16. On August 16, 2022, conditional offers of employment were given to two of the three candidates that were interviewed, one of whom was ranked below the Appellant. (*Testimony of Sgt. Leavitt, Stipulated facts*)

17. Also on August 16, 2022, the Chief of Police, Thomas W. Fowler (Chief Fowler) sent out a letter to the Appellant and the other applicant who failed to respond to Sgt. Leavitt's email or submit an employment package stating that they were removed from the hiring process for failing to provide an employment package before the deadline. (*Exhibit 6, Testimony of Sgt. Leavitt and Chief Fowler*).

18. The Appellant then wrote to Sgt. Leavitt, Chief Fowler, and the Salisbury Town Manager expressing continued interest in the position. (*Testimony of Appellant*)

19. On September 7, 2022 the Appellant filed a timely appeal with the Civil Service Commission. (*stipulated facts*)

*Applicable Civil Service Law*

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 of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn 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, §§ 6–11, 16-27; 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. The Commission’s role is 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). “Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’” Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited; see also Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

The governing statute, G.L. c. 31, gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority’s action”. City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). However, the Commission “. . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority”; although, when there are “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.” Id. (emphasis added). See also Town of Brookline v. Alston, 487 Mass. 278 (2021).

### *Analysis*

By a preponderance of the evidence, the Town of Salisbury has shown that it had reasonable justification to bypass the Appellant for appointment as a reserve police officer with the Department based on his failure to follow instructions and submit an employment package. The Appellant acknowledges that this was an honest mistake on his part and that he did not open the email because he thought that it was the same email that he had received the day before. While there may have been personal contributing factors, such as the Appellant being exhausted due to the recent birth of his fifth child, the Appellant’s failure to complete and return the

employment package was not through no fault of his own. Rather, for several days, he failed to open the email and follow the instructions provided by the Town. The Commission has found on numerous occasions that a failure to demonstrate the care and attention expected of an applicant for a public safety officer position by failing to submit information reasonably required to consider their application properly is a valid reason for bypassing a candidate for appointment.

Sgt. Leavitt's July 28, 2022 e-mail to all five candidates clearly stated that "[e]-mail will be the primary mode of communication as we get started, so I need each of you to respond back to me upon receipt of this e-mail. Once I receive a confirmation from each of you, I will provide additional steps and instructions for the hiring process." The Appellant responded to this e-mail the same day confirming that his e-mail was in working order to receive communications from the Department. Unfortunately, although the Appellant acknowledges that he received a follow up email from Sgt. Leavitt on July 29, 2022, he failed to open said email which contained detailed instructions and the application package to be hired by the Salisbury Police Department. Further, the Appellant failed to contact Sgt. Leavitt or anyone with the Salisbury Police Department after this date to inquire as to the status of the application process until after he received a letter from Chief Fowler stating that he had been removed from the hiring process. This letter was dated August 16, 2022, well past the application deadlines set forth in the July 29<sup>th</sup> email.

There is no evidence that the Appellant was treated any differently than any other candidate. Of the five candidates who had signed, three returned their application package and were interviewed. Two of those candidates were hired. The two candidates (the Appellant and one other) who did not return their application package were not considered for appointment.

The Appellant's inability to pay close attention to detail and inability to follow instructions regarding his failure to submit an employment package to the Department demonstrates that the Town was reasonably justified to bypass him for appointment to the position of reserve police officer. There is nothing in this decision that would preclude the Appellant from being considered for employment by the Salisbury Police Department in the future should he take and pass a future examination and score high enough to be ranked among those eligible for consideration.

*Conclusion*

For all of the above-stated reasons, the appeal of Zouheir Alami, under Docket No. G1-22R-125, is *denied*.

Civil Service Commission

/s/ Shawn C. Dooley

Shawn C. Dooley  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein & Tivnan, Commissioners) on March 7, 2024.

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 to:

Galen Gilbert, Esq. (for Appellant)  
Darren Klein, Esq. (For Respondent)