**THE COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

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

**LISA L. ALBAND**,
*Appellant*

*v.*

**DEPARTMENT OF CORRECTION**,
*Respondent*

**CASE NO. G1-09-307**

| | |
|---|---|
| Appellant (Pro Se) | Lisa L. Alband |
| Representative for the Respondent: | Jeffrey S. Bolger<br>Director of Employee Relations<br>Department of Correction<br>P.O. Box 946<br>Norfolk, MA 02056 |
| Commissioner: | Paul M. Stein |

## DECISION

The Appellant, Lisa L. Alband, appealed to the Civil Service Commission (Commission), pursuant to Mass. G.L.c.31, §2(b), from the decision of the Massachusetts Department of Correction (DOC) to bypass her for appointment to the position of Correction Officer I (CO I). The appeal was timely filed. A full hearing was held on October 27, 2009 at the offices of the Commission. Fifteen exhibits were introduced in evidence and seven additional exhibits marked for identification. The DOC called two witnesses and the Appellant called one witness and testified on her behalf. The witnesses were not sequestered. The hearing was digitally recorded. The Commission requested additional information from DOC which was received and marked in evidence. Both parties subsequently submitted proposed decisions.

**FINDINGS OF FACT**

Based upon the exhibits; the testimony of the Appellant, the Appellant's neighbor Nonie Liebman, DOC Background Investigator Sheila Arpano and DOC Director of Personnel Alexandra McInnis; and inferences reasonably drawn from that evidence as I find credible, I make the findings of fact set forth below.

1. The Appellant Lisa L. Alband, is a resident of Gardner, Massachusetts. She is divorced from Andrew Alband, her most recent husband, who works for DOC at the Souza Barnowski Correction Center. She has also gone by several other names (from prior marriages) as well as Lisa Abbott (maiden name). She is a decorated United States Army veteran with 20 years of active duty service, primarily as a Personnel Administration Specialist, including service overseas in Bosnia and Saudi Arabia. She achieved the rank of Staff Sergeant (E-6) and received an Honorable Discharge on July 10, 2007. On October 1, 2008, she was hired by the Wackenhut Corporation as an Upscale Security Officer, a position she held at the time of the hearing before the Commission. She completed her Associates Degree in 2009 and subsequently enrolled in courses toward a Bachelor of Science degree in Criminal Justice. (*Exhs. 7, 9 thru 11, 13, 18 thru 21; Testimony of Appellant*)

2. In March 2008, Ms. Alband took and passed an open competitive examination for the position of CO I. She received a score of 73% on that examination. (*Exh.7 & Post-Hearing Exh.22; Testimony of Appellant*)

3. In July 2008, Ms. Alband submitted an Application for Employment for the October 2008 DOC CO I Academy. Her application reported two prior misdemeanor convictions: a September 2005 conviction for "DUI" in Winchendon, MA and an April 2004 conviction for "Operator Unlicensed" in Gardner MA. (*Exh. 21; Testimony of Appellant & McGinnis*)

4. As part of the DOC's customary screening process for the CO I position, DOC procured a "CJIS Report", which contains a comprehensive record of Criminal Offender Record Information (CORI) as well as a Driver History. Although the CJIS report disclosed a misdemeanor charge, two prior domestic abuse restraining orders, and multiple driving infractions, none of these blemishes disqualified her, per se. Accordingly, Ms. Alband's application moved forward for a more thorough Pre-Employment Background Investigation. Her file was assigned to Shelia Arpano, a DOC Correction Program Officer (CPO D), a career DOC employee with nearly 30 years of service, who has been performing DOC background investigations since approximately 2006.

5. Ms. Arpano performed an in-depth investigation of Ms. Alband's criminal record (as reported in her application and the CJIS report), made personal visits to Fort Devens to interview former supervisors, as well conducted a home interview of Ms. Alband and interviews of former neighbors and professional references, culminating in a report of that investigation on or about August 28, 2008. (*Exh. 7; Testimony of Arparno & McGinnis*)

6. The background investigation report on Ms. Alband noted her distinguished military career, her on-going pursuit of a college degree, as well as positive support from several of her professional references. The report also noted the following negative information:

- A 8/26/08 interview with the Gardner Police Department disclosed a 4/12/06 incident in which she was stopped for failure to stay in marked lanes and failure to stop. She was also cited for violating her license restrictions (prohibiting her from driving after 7pm in the evening) and, because her children were in the car, she also was charged with 51A "child abuse" and her car was towed. The police records attached to this report stated that

Ms. Alband was found guilty on the three above-mentioned moving violations. (*Exhs. 5 & 7; Testimony of Arpano*)

- A police report furnished by the Winchendon Police Department for an incident in which Ms. Alband was implicated for drunk driving, negligent operation and leaving the scene of an accident. Ms. Alband was ordered to a 180-day alcohol treatment program. (*Exh. 6 & 7; Testimony of Arpano*)
- Report of a speeding violation in Sterling on 3/23/2007 resulting in a license suspension. (*Exh.7; Testimony of Arpano*)
- Report from Bradley Gosselin, US Army supervisor, who said "applicant came to work for him following difficulty at her previous work site" and "when the applicant started under his supervision she was capable, however, her performance deteriorated and she was ***put in*** the Bedford Veteran's Hospital for alcohol abuse. . . Officer Gosselin believes the treatment to have been successful. She left his supervision in 2004 and went to the supervision of Mr. Dunn, who stated he could not recommend the applicant to be armed for a Correction Officer's position." (*Exh.7; Testimony of Arpano*) (***emphasis added***)
- Report that "applicant recently moved into a new apartment . . . Two of her former neighbors were not willing to provide their names, they stated the applicant had a drinking problem, she is moody when under the influence and they didn't want any problems. Another former neighbor, Wendell Spivui [sic], stated he knew little about her, but "reported she had alcohol issues" and "he could not recommend her for a Correction Officers position." (*Exh.7; Testimony of Arpano*)

7. I found Ms. Arpano a credible witness, sincere and conscientious about her work. She acknowledged that it would not be appropriate to rely on the negative reports from anonymous

neighbors. She also credibly explained (essentially apologized for) her statement that Ms. Alband was "put in" the VA hospital as a poor choice of words on her part. She meant merely to distinguish that Ms. Alband received "inpatient" (as opposed to "outpatient") treatment and did not meant to imply that she thought Ms. Alband had been involuntarily admitted. In fact, she acknowledged from her experience that she knew Ms. Alband would have had to seek treatment on her own. I do not credit all of Ms. Arpano's subjective characterizations ("minimized her OUI", describing her newly occupied apartment as "sparsely furnished"). However, nothing in Ms. Arpano's testimony or written report leads me to believe she harbored any bias against Ms. Alband, that she consciously slanted the facts she reported, or that she omitted any favorable information she had come to learn. (*Exh.7; Testimony of Arpano*)

8. On September 1, 2008, after receipt and review of Ms. Arpano's report, DOC Director of Personnel McGinnis endorsed Ms. Arpano's report "NO", indicating she had decided that Ms. Alband was not suitable for appointment at that time. On or about October 20, 2008, after the completion of all hiring for the October 2008 Academy had been finalized, Ms. Alband was informed that she had not been selected for appointment. Ms. Alband did not appeal that decision. (*Testimony of Appellant & McGinnis*)

9. On October 27, 2008, Ms. Alband's name appeared on Certification #4080024, issued in anticipation of another class to be hired for a newly planned March 2009 Academy (which, for financial reasons, DOC ended up delaying until July 2009). On October 28, 2008, Ms. Alband signed the new certification and a new Background Information Request and Waiver, in order to be reconsidered for appointment to the 2009 class. (*Testimony of Appellant & McGinnis*)

10. On October 28, 2008, DOC obtained an updated CJIS report on Ms. Alband, which was not materially different from the earlier July 2008 report. DOC did not request an updated

Employment Application and did not conduct an updated Pre-Employment Background Investigation, but relied on the July 2008 application and August 2008 Background Investigation. On November 4, 2008, Ms. Alband's Background Information Request form was endorsed "No per Lexi [Alexandra McGinnis]". (*Exh. 10; Testimony of McInn*is)

11. On July 8, 2009, upon completion of the hiring process for the July Academy, Ms. McGinnis issued a form letter that informed Ms. Alband she was not considered for appointment for the reason: "Background Investigation – Prior – Unsatisfactory background check." (*Exh. 4*)

12. After Ms. Alband wrote to DOC and requested "the specific reasons(s) that I have been bypassed for years", on July 14, 2008, Ms. McGinnis replied:

> "The final phase of the Correction Officer screening process is a full background check. Our investigators speak with all prior employers and references. Due to the nature of the position you are applying for, information obtained by our investigators is taken very seriously.
>
> Upon final review of your full background investigation, it was noted that there were negative reports from local police contacts. The Department of Correction is a law enforcement agency, as such, it is imperative that our employees have a positive relationship with local police departments. Additionally, it was noted that we received negative references from a prior employer."

(*Exhs. 1 thru 3; Testimony of Appellant & McGinnis*)

13. Based on the information supplied by DOC, a total of 627 applicants signed the October 27, 2008 Certification #4080024 willing to accept appointment to the 2009 class of CO I recruits. Of these candidates, DOC hired 159 individuals. A total of 48 applicants were ranked higher than or tied with Ms. Alband (veteran with a score of 73 or higher) and fourteen candidates from this veteran group were hired. (*Post-Hearing Exhibit 22*)

14. Ms. McInnis testified before the Commission. She explained that she decided to reject Ms. Alband's October 2008 application based on the July/August 2008 application and background investigation, without updating the information, because of the short interval between the two hiring processes. She said Ms. Alband's August 2008 background investigation

and the updated CJIS Report, led her to believe Ms. Alband continued to be an unsuitable candidate for the position of CO I at that time. Ms. McGinnis testified that no candidate who was hired for the 2009 class had a negative background investigation report comparable to Ms. Alband. (*Exhs. 5-7 & 10; Testimony of McGinnis*)

15. I find Ms. McGinnis' beliefs to be sincere. Ms. McGinnis acknowledged that Ms. Alband's CJIS record, alone, did not disqualify her. Although she was not certain, she agreed it was likely that other successful candidates (and definitely some DOC employees) may have "more than" an OUI on their record. She explained, however, that, the particulars and age of an offense, was a significant factor in DOC's consideration, with offenses older than five years generally viewed as too stale to be given weight. She also explained that the totality of the circumstances was another important factor and, in Ms. Alband's case, the combination of her pattern of behavior reported in the 2005 and 2006 criminal incidents, together with the unfavorable recommendations of her Army supervisors (which references she "weighed more heavily"), persuaded her that Ms. Alband was not fully prepared to be hired and given the responsibility of a full-time correction officer. (*Testimony of McGinnis*)

16. Ms. Alband made a positive impression on this Commissioner during the pro se presentation of her case to the Commission. The questions she put to Ms. Arpano and Ms. McGinnis were, for the most part, deft, respectful, and on point. For example, she testified that she had carried a "SECRET" clearance in the Army, that all Army personnel are required to keep up their firearms proficiency, and that she carried a firearm daily during her overseas duty, which does cast some doubt on the conclusion of her former Army supervisor who told Ms. Arpano that he didn't think she should be an armed correction officer. Ms. Alband also pointed out that statements to Ms. Arpano by her former neighbor, Wendell Spivey (whose misspelled name was

one of several errors she noted in Ms. Arpano's report), revealed he really knew little about her so that, when Mr. Spivey said he "couldn't" recommend her for a job as a CO, he meant it was because his sources of information were third-hand, that he personally knew too little about her competence to make a recommendation, and, thus, his statement fairly could not be used as a disqualifier. She also noted that, in the interval between her two applications, she had made several positive changes, including finishing her Associates Degree, landing a new job as a security officer in October 2008, which she had performed well, and making new friends, none of which DOC learned because it never sought to update her application or background investigation. (*Testimony of Appellant, Arpano, McGinnis*)

17. Nonie Liebman, Ms. Alband's friend and neighbor since 2007, testified that Ms. Alband has a good work ethic and is a full-time student. She further testified that she has never seen Ms. Alband under the influence of drugs or alcohol. She also testified that the Appellant is reliable and helps other veterans in the community. (*Testimony of Liebman*)

18. Ms. Alband offered a copy of a CORI report that had been issued to the Army in 2007, which showed only one criminal incident, the 2005 OUI (which had been continued without a finding and dismissed) but showed nothing about the subsequent 2006 Gardner incident, for which the Gardner police report (and CJIS report) indicate guilty findings on these charges. I am unable to reconcile these reports. Since the 2007 CORI was not presented to DOC until the Commission hearing, however, I cannot credit the report as the basis to question DOC's reliance on the CJIS report in making its bypass decision in the present case. (*Exhs.10 & 11*)

19. Ms. Alband also offered numerous letters from her military colleagues and friends to vouch for her good character, as well as an updated resume, showing her recent positive employment experience. Since none of the individuals appeared to testify, and most based their

opinions on facts subsequent to the bypass decision in this case, these documents were marked for identification and cannot be given weight for their truth. They do serve to signal, however, along with other evidence presented to the Commission, that Ms. Alband may well have put behind her some of the problems that led DOC to bypass her in 2008. (*Exhs. 8-ID, 12-ID, 14-ID thru 17-ID; Testimony of Appellant).*

**CONCLUSION**

This appeal involves a bypass of the Appellant for original appointment to a permanent civil service position. This process is governed by G.L.c.31, Section 27, which provides:

> "If an appointing authority makes an original or promotional appointment from certification of any qualified person other than the qualified person whose name appears highest [on the certification], and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator [HRD] a written statement of his reasons for appointing the person whose name was not highest."

Rule PAR.08(3) of the Personnel Administration Rules, promulgated by HRD to implement this statutory requirement, provides:

> "A bypass will not be permitted unless HRD had received a "complete statement . . .that shall indicate all reasons for selection or bypass. . . . No reasons . . . that have not been disclosed to [HRD] shall later be admissible as reason for selection or bypass in any proceedings before [HRD] or the Civil Service Commission. The certification process will not proceed, and no appointments or promotions will be approved, unless and until [HRD] approves reasons for selection or bypass." [1]

These requirements mean that, normally, candidates will be selected according to their relative placement on the certification list, which creates a rank ordering based on their scores on the competitive qualifying examination administered by HRD for the position, along with certain statutory preferences. See Sabourin v. Town of Natick, 18 MCSR 79 (2005) ("A civil service

[1] Over time, HRD has delegated many of its statutory and regulatory responsibility in the hiring and promotion of civil service employees to be directly performed by the Appointing Authority. DOC is one of the appointing authorities to whom HRD has made such a delegation. (Testimony of McGinnis) The delegation of responsibility to DOC, however, does not change the substantive statutory and regulatory requirements for selection of candidates, and a statement of the specific reasons for bypassing lower ranked candidates is still a necessary part of the process.

test score is the primary tool in determining relative ability, knowledge and skills and in taking a personnel action grounded in basic merit principles.")

In order to deviate from this paradigm, an appointing authority must show specific reasons, consistent with basic merit principles, that affirmatively justify picking a lower ranked candidate. G.L.c. 31, §1, §27. See, e.g., Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), *citing* Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991). See also Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65 (2001) ("The [Civil Service] commission properly placed the burden on the police department to establish a reasonable justification for the bypasses [citation] and properly weighed those justifications against the fundamental purpose of the civil service system [citation] to insure decision-making in accordance with basic merit principles. . . . the commission acted well within its discretion."); MacHenry v. Civil Service Comm'n 40 Mass.App.Ct. 632, 635 (1995), rev.den., 423 Mass. 1106 (1996) (noting that personnel administrator [then, DPA, now HRD] (and Commission oversight thereof) in bypass cases is to "review, and not merely formally to receive bypass reasons" and evaluate them "in accordance with [all] basic merit principles").

All candidates are entitled to be adequately, fairly and equivalently considered. Evidence of undue political influence is one relevant factor, but it is not the only measure of unjustified decision-making by an appointing authority. The Commission has construed its obligation to prohibit the bypass of an appellant where it finds that "the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons." Borelli v. MBTA, 1 MCSR 6

(1988). See Tuohey v. Massachusetts Bay Transp. Auth., 19 MCSR 53 (2006) ("An Appointing Authority must proffer objectively legitimate reasons for the bypass")

The task of the Commission on hearing a bypass appeal is "to determine . . . whether the appointing authority sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification for the action taken by the appointing authority. . . . Reasonable justification in this context 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.' " E.g., Brackett v. Civil Service Comm'n, 447 Mass. 233, 543 (2006) and cases cited. In performing its function, "the commission does not view a snapshot of what was before the appointing authority . . . the commission hears evidence and finds facts anew. . . . [after conducting] 'a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer' . . .For the commission, the question is . . .'whether, *on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision*.' " Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003) (affirming Commission's decision to reject appointing authority's proof of appellant's failed polygraph test and prior domestic abuse orders and crediting appellant's exculpatory testimony rebutting that evidence) (*emphasis added*). cf. Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (inconsequential differences in facts found were insufficient to find appointing authority's justification unreasonable); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (same). See generally Villare v. Town of North

Reading, 8 MCSR 44, reconsid'd, 8 MCSR 53 (1995) (discussing need for de novo fact finding before a "disinterested" Commissioner in context of procedural due process); Bielawksi v. Personnel Admin'r, 422 Mass. 459, 466 (1996) (same)

The "preponderance of the evidence test" requires the Commission to conclude that an appointing authority established through substantial, credible evidence presented to the Commission that the reasons assigned for the bypass of an appellant were "more probably than not sound and sufficient." Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321, 577 N.E.2d 325, 329 (1991); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427, 430 (1928) (*emphasis added*) The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001)

An appointing authority may rely on information it has obtained through an impartial and reasonably thorough independent review, including allegations of misconduct obtained from third-party sources, as the basis for bypassing a candidate. See City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 189 (2010). There must be a "credible basis for the allegations" that present a "legitimate doubt" about a candidate's suitability, but the appointing authority is not required "to prove to the commission's satisfaction that the applicant in fact engaged in the serious alleged misconduct. . . ." Id., 78 Mass.App.Ct. at 189-90. Especially when it comes to hiring an applicant for a sensitive public safety position, "the commission owes substantial deference to the appointing authority's exercise of judgment in determining whether there was 'reasonable justification' shown . . .Absent proof that the [appointing authority] acted

unreasonably . . . the commission is bound to defer to the [appointing authority's] exercise of its judgment" that "it was unwilling to bear the risk" of hiring the candidate for such a sensitive position. Id., 78 Mass.App.Ct. at 190-91. See also Town of Reading v. Civil Service Comm'n, 78 Mass.App.Ct. 1106 (2010) (Rule 1:28 opinion); Burlington v. McCarthy, 60 Mass.App.Ct. 914,(2004) (rescript opinion); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303-305 (1997); Massachusetts Dep't of Corrections v. Anderson, Suffolk Sup. Ct. No. 2009SUCV0290 (Memorandum of Decision dated 2/10/10), reversing Anderson v. Department of Correction, 21 MCSR 647, 688 (2008).

It is the purview of the hearing officer to determine the credibility of the testimony presented through the witnesses who appear before the Commission. "[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance." E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep't of Social Services, 439 Mass. 766, 787 (2003); (In cases where live witnesses giving different versions do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing)

When reviewing the Commission's decision, a court cannot "substitute [its] judgment for that of the commission" but is "limited to determining whether the commission's decision was supported by substantial evidence" and must "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it. . . . This standard of review is highly deferential to the agency on questions of

fact and reasonable inferences drawn therefrom.' " Brackett v. Civil Service Comm'n, 447 Mass. 233, 242-42 (2006) and cases cited.

Applying the applicable standards in the circumstances of the present case, the DOC's decision to bypass Ms. Alband for original appointment to a position of CO I, has been reasonably justified and supported by substantial credible evidence. This conclusion is based on the proof that there was sufficient reason to believe that Ms. Alband did engage in several acts of questionable behavior within three years prior to her application for appointment, and that DOC had received negative employment references from her US Army supervisors. Her negative behavior and poor references are not so stale that it cannot be said they have no reasonable bearing on the DOC's assessment of her fitness for the job of CO I. Although Ms. Alband also presented credible evidence of mitigating and changed circumstances that now might warrant a different conclusion, it is not within the purview of the Commission to "substitute its judgment" as to the weight that should be given to the positive and negative attributes of her candidacy at the time she was evaluated in 2008 by the DOC.

First, the DOC is reasonably justified to rely on the record of Ms. Alband's relatively recent behavior that resulted in a variety of criminal charges against her in September 2005 and April 2006. In this case, the DOC has not relied solely on the criminal record, but conducted a thorough investigation of these incidents and produced a credible, percipient police report from two different police departments, regarding each incident. While there is some ambiguity as to the disposition of the charges (the 2005 OUI charges were dismissed after a CWOF and the 2006 charges reportedly resulted in a guilty finding on one or more of those charges), this ambiguity does not detract from the credible evidence that gave DOC a reasonable basis to believe that Ms. Alband did engage in unacceptable ***behavior*** on these two relatively recent occasions. The

Commission has consistently upheld the bypass of candidates who have exhibited such a pattern of risky behavior. See, e.g., Monagle v. City of Medford, 23 MCSR 267 (2010) (history of aggressive behavior toward law enforcement officers); Preece v. Department of Correction, 20 MCSR 152 (2007) (DOC relied on CORI record even though appellant was exonerated on all criminal charges); Lavaud v. Boston Police Dep't, 17 MCSR 125 (2004) (Commission upheld bypass due to appellant's long record of arrests although the charges were later dismissed)[2]

Ms. Alband accurately pointed out that other candidates hired as CO I also may have had a criminal record, and that there were current DOC employees with "more than an OUI" on their records. However, absent special circumstances, not found in this record, e.g., nepotism, unfair patronage or other bias or favoritism, the Commission is not inclined to overturn the good-faith bypass of one high-risk candidate because other DOC employees were hired or retained with allegedly similar records of risky behavior. Moreover, as to current DOC employees, "the standards are materially different" and DOC "should be able to enjoy more freedom in deciding whether to appoint someone as a new [public safety] officer that in disciplining an existing tenured one." City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 191 (2010).

Second, DOC is reasonably justified to rely on the poor employment references from Ms. Alband's US Army supervisors. The DOC investigation into Ms. Alband's Army career was thorough, including personal visits to interview her former supervisors in Massachusetts, and telephone interviews with several other Army personnel out-of-state. Ms. Alband points out that there were many positive comments noted about her performance, but criticizes the investigator

[2] This case does not present occasion to address the open issue as to reliance solely on an applicant's single, stale prior CWOF, without credible, percipient evidence to support a reasonable belief that the alleged underlying risky behavior did occur, which the majority of the Commission has previously found insufficient to justify an appellant's bypass, but which is a question presently pending appeal in the Appeals Court. See Suppa v. Boston Police Dep't, 21 MCSR 614, 685 (2008), vacated sub nom , Boston Police Dep't v. Suppa, Suffolk Sup.Ct. 2008SUCV-5237 (2010), appeal pending, A.C. No. 2010-P-0173 (2010). See also Perron v. Department of Correction, 22 MCSR 663, 668 (Stein, Comm'r, Concurring); Fortes v. Department of Correction, 22 MCSR 10n.3 (2009)

for failing to ask about her firearms proficiency, security clearance, etc. Ms. Alband also fairly points to her success in her new job as a security officer with Wackenhut, which DOC did not know about or consider because she started the job (10/1/08) only a month before the bypass decision was made (11/4/08). While these points have some virtue, the Commission cannot micromanage the hiring process and cannot fault DOC for how it chose to handle this generally reasonable and objective investigation to that level of detail or how it weighed the relevant positive and negative information it received. See City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct.182 (2010) and cases cited; Burlington v. McCarthy, 60 Mass.App.Ct. 914 (2004) (rescript opinion). See also Jones v. Boston Police Dep't, 21 MCSR 568 (2008) and cases cited.[3]

Ms. Alband has an impressive work record, including twenty (20) years of selfless service in the uniform of the United States Army and an exemplary military record. She has an Associates Degree and is working on the last year of a Bachelors Degree with a concentration in Criminal Justice. She has also worked and excelled as an upscale security officer for a prestigious corporation for almost a year with an untarnished work history. She clearly holds a sincere desire to serve as a correction officer as a next step in her career path.

While it is not for the Commission to express its opinion as to Ms. Alband's current or further suitability as DOC Correction Officer, should Ms. Alband continue on her present course, it does appear that her on-going efforts at rehabilitation and self-improvement, now more than three years since her bypass in 2008, do deserve to be given serious consideration in any future application for employment.

[3] The negative references from Mr. Spivey and certain other anonymous neighbors, were not stated as the reasons for disqualifying Ms Alband (Exh.3; Testimony of McGinnis), and appear on their face to be based on unsubstantiated and unreliable multi-layer hearsay. Accordingly, the Commission is not required to consider them as justification for the bypass. Similarly, while the CJIS report on Ms. Alband also contained a substantial number of problematic entries on her driving record, most recently a 2007 speeding violation, which might have been considered, her driving record was not identified as one of the specific reasons for bypass, and is not (and was not asserted by the DOC at the hearing) as a justification for bypassing her in this appeal. But see Jones v. Boston Police Department, 21 MCSR 568 (2008); Driscoll v. Boston Police Dep't, 20 MCSR 477 (2007)

Accordingly, for the reasons stated above, the appeal of the Appellant, Lisa Alband, under Docket No. G1-09-307, must be, and hereby is, ***dismissed***.

Paul M. Stein

Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis [ABSENT], McDowell and Stein Commissioners) on February 10, 2011.

A true record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L.c.30A,§14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L c. 31,§44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L.c.30A,§14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Lisa L. Alband [Appellant]
Jeffrey S. Bolger [for Appointing Authority]