The Commonwealth of Massachusetts

DEREK AMARAL,
Appellant

v.

DEPARTMENT OF CORRECTION,
Respondent

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

Case No.: G1-09-326

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on January 7, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated November 13, 2009. The Commission did not receive comments from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed.*

SCRIVERNOR'S ERRORS
Finding of Fact #3, Paragraph 4, amend date of "January 28, 1998" to "January 29, 1998";
Finding of Fact #3, Paragraph 8, delete "DR" and replace with the words "Continued Without a Finding";
Finding of Fact #3, Paragraph 10, line 3, insert the word "Guilty" after the word "and."

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein, and Taylor, [Marquis, absent] Commissioners) on January 7, 2010.

A true record. Attest.

Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 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:
Derek Amaral (*pro se*)
Jeffrey Bolger (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)

THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
ACTING CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
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November 13, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Derek Amaral v. Department of Correction
DALA Docket No. CS-09-687, G1-09-326

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

Judithann Burke

Judithann Burke
Administrative Magistrate

Enclosure

cc: Derek Amaral
Jeffrey Bolger

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

Derek Amaral,
Appellant

v. Docket Nos. G1-09-326, CS-09-687

Department of Correction,
Appointing Authority

Appearance for Appellant:

Pro Se
[redacted]

Appearance for Appointing Authority:

Jeffrey Bolger
Department of Correction
P.O. Box 946
Norfolk, MA 02056

Administrative Magistrate:

Judithann Burke

SUMMARY OF DECISION

The Department of Correction demonstrated reasonable justification for bypassing the Appellant based on his lengthy arrest and default history and poor driving record.

RECOMMENDED DECISION

Derek Amaral is seeking review of the action of the Department of Correction (DOC) which he claims wrongfully bypassed him for appointment to the position of Correction Officer in the DOC. (Exhibits 1& 2). The Human Resources Division has delegated Civil Service functions to the DOC, and therefore, is not a party to this case.

He appealed in a timely fashion pursuant to the provisions G. L.c. 31, § 2(b). (Exhibit 8). A hearing was held on October 19, 2009 at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA.

The Appellant testified and argued in his own behalf. The Appointing Authority rested on the documents in the case record. Twelve (12) exhibits were marked at the hearing. One (1) audiotape was made of the proceedings.

FINDINGS OF FACT

1. The Appellant, Derek Amaral, 30 y.o.a., applied to the Department of Correction (DOC) for appointment to the position of Correction Officer I (CO I) on October 27, 2008. (Exhibit 3).

2. The DOC commenced its normal hiring procedures. This included a complete background and criminal record check of all candidates.

3. The DOC's criminal history revealed adult arrests, court appearances and dispositions for the time period from 1997 through 2001. These included:

> December 11, 1997 arraignment – Larceny by Check, 2 counts – restitution paid in installments through April 27, 1999, Fall River District Court- DISMISSED
>
> December 31,1997 arraignment- Operating After Suspension of his driver's License- March 31, 1999 Fall River District Court CMTD
>
> January 28, 1998 arraignment-Larceny by Check- restitution paid through June 1, 1999 New Bedford District Court, DISMISSED
>
> March 4, 1998 arraignment-Operating After Suspension of his driver's License June 29, 1999 Fall River District Court CONTINUED WITHOUT A FINDING
>
> June 30, 1998 arraignment- Larceny by Check-restitution paid though May 19, 1999 Fall River District Court DISMISSED

October 13, 1998 arraignment Operating After Suspension of his driver's License- March 29, 2000 Brockton District Court CONTINUED WITHOUT A FINDING and court costs paid

October 16, 1998 arraignment Attaching Wrong Motor Vehicle Plates and Compulsory Insurance Violation - April 2, 2001 New Bedford District Court DR VWF PD DISMISSED

January 20, 2000 arraignment Attaching Wrong Motor Vehicle Plates, Compulsory Insurance Violation and Operating After Suspension April 24, 2002 Wareham District Court CONTINUED WITHOUT A FINDING and court costs paid

March 5, 2001 arraignment Attaching Wrong Motor Vehicle Plates, Compulsory Insurance Violation and Operating After Suspension - May 15, 2003 Fall River District Court CONTINUED WITHOUT A FINDING and $125 FINE

July 19, 2001 arraignment Disorderly Person and Throwing Glass on a Public Way - August 31, 2001 DISMISSED and court costs paid

(Exhibits 5 and 10-12).

4. The Appellant's arrest record is also peppered with both arrest and default warrants throughout the four year span of time. (*Id.*).

5. On July 8, 2009, the DOC bypassed the Appellant for appointment to the July 2009 academy due to what it deemed to be an unsatisfactory criminal history check. (Exhibit 2).

6. The Appellant filed an appeal that was received at the Civil Service Commission on August 10, 2009. (Exhibit 1).

CONCLUSION AND RECOMMENDED DECISION

The issue for determination in this appeal is "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action

taken". *City of Cambridge v. Civil Service Commission,* 43 Mass. App. Ct. 300, 304 (1997).

"Reasonable justification" is defined as "adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." *Selectmen of Wakefield v. Judge of First District Court of East Middlesex,* 262 Mass. 477, 482 (1928) and *Commissioners of Civil Service v. Municipal Court of the City of Boston,* 359 Mass. 214 (1971). Pursuant to G. L.c. 31, § 2(b), the Appointing Authority must prove by a preponderance of the evidence that the reasons assigned for the bypass were "more probably than not sound and sufficient." *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991).

After a careful review of all of the testimonial and documentary evidence in this case, I have concluded that the Appointing Authority has met its burden of proving that its reasons for the bypass of the Appellant were "more probably than not sound and sufficient". The Appellant has a lengthy arrest record as an adult going back twelve years. This includes repeated motor vehicle and bad check offenses that call into question his self control, judgment, willingness to take responsibility for his own actions and respect for the laws of the Commonwealth. Although he was a much younger man from 1997 through 2001, he was repeatedly arrested in the same geographic area for the same offenses four straight years. His criminal record also reflects myriad default and arrest warrants, all reflective of his failure to report the police or to the courts and be held accountable. He was half an hour late for his October 19, 2009 hearing without remorse or explanation, and, when pressed, blamed his tardiness on "the traffic."

Yet, the Appellant insists that he is a different man now and that he should not be judged by conduct that occurred more than five years ago. Citing *Christopher Collett v. Department of Correction,* G1-08-53 (2008), he tried to trivialize the multi-page arrest record as insignificant and of no concern to the law enforcement/public safety agency from whom he seeks employment. However, in contrast to the Appellant in *Collett,* supra, the Appellant demonstrated a multi year pattern of disregard for the state's motor vehicle and bad check laws.

Notwithstanding the length of time that has elapsed since his last arrest, the Civil Service Commission's analysis in *Kiricoples v. Salem Police Department,* 10 MSCR 38 (1997) is analogous here:

> [The] Appellant is not an appropriate candidate for [a] public safety position…in view of his disregard of the law and authority, particularly by his continuing to drive his motor vehicle for months after his license was suspended. There is no evidence of the Appointing Authority acting in any arbitrary or capricious manner, nor are the Appointing Authority's reasons to remove [the] Appellant from [appointment] a pretext for other, impermissible reasons. See *Jamil J. Campbell v. Boston Fire Department,* G1-08-46, CS-08-419 (2009), p. 16, citing *Kiricoples*, supra.

In conclusion, the Civil Service Commission cannot substitute its judgment for that of the Appointing Authority. *Cambridge v. Civil Service Commission,* supra at p. 304. I recommend that the Civil Service Commission deny the appeal, affirm the action of the DOC, and uphold the bypass.

Division of Administrative Law Appeals,
BY: Judithann Burke
Judithann Burke
Administrative Magistrate
DATED: November 13, 2009