

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293

MATTHEW R. AMARAL,
Appellant

CASE NO. G1-18-144

v.

MASSACHUSETTS DEPARTMENT
OF CORRECTION,
Respondent

Appearance for Appellant:

Matthew R. Amaral, Pro Se

Appearance for Respondent:

Norman Chalupka, Jr., Esq.
Joseph S. Santoro, Labor Relations Advisor
Department of Correction
P.O. Box 946 – Industries Drive
Norfolk, MA 02056

Commissioner:

Paul M. Stein

DECISION

The Appellant, Matthew Amaral, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), to contest his bypass for appointment as a Correction Officer I (CO-I) with the Massachusetts Department of Correction (DOC).¹ A pre-hearing conference was held at the Commission's Boston office on September 4, 2018, and a full hearing was held at that location on November 9, 2018, which was digitally recorded.² Sixteen (16) exhibits (*Exhs. 1 through 3, 4A-4H, 5 through 16*) were received in evidence. Neither party chose to file a proposed Post-Hearing Decision. For the reasons stated below, Mr. Amaral's appeal is allowed.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- Eugene T. Jalette, DOC Supervising Identification Agent
- Michael C. Abril, DOC Correction Officer I, Background Investigator

Called by the Appellant:

- Matthew R. Amaral, 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 these facts:

1. The Appellant, Matthew R. Amaral, is a 2007 high school graduate who resides in Fall River MA. He took and passed the civil service examination for CO-I on March 19, 2016.

(Stipulated Facts)

2. Mr. Amaral's name appeared in the 69th place on Certification #05164 issued by the Massachusetts Human Resources Division (HRD) to the DOC on or about January 19, 2018, from which DOC eventually hired 156 applicants, of which 7 were ranked below Mr. Ortiz on the Certification. *(Stipulated Facts)*

3. Mr. Amaral signed the Certification willing to accept employment and completed the DOC's standard form (rev. 0/2117) of Application for Employment. *(Exhs. 14 & 15)*

4. The DOC conducted its standard "law enforcement CJIS" check of Mr. Amaral's criminal record and driving history which disclosed the following initial information:

Criminal History

8/9/07 – Assault & Battery w/Dangerous Weapon – CWOFF/Dismissed 1/6/2009

2/9/11 – Assault & Battery – Dismissed 3/29/2011

7/18/11 – Negligent MV Operating/Racing – CWOFF/Dismissed 8/28/2013

1/5/12 – Negligent MV Operation – CWOFF/Dismissed 8/28/2013

8/29/12 – Uninsured/Unregistered MV/Plate Obscured – CWOFF/Dismissed 8/228/2013

Driving History

7/18/07 – Speeding – Responsible

4/4/08 – Municipal By Law Violation – Responsible

12/1/08 – No Inspection Sticker – Responsible

3/31/09 – Lane Violation (NP)/Seat Belt Violation – Responsible
8/3/09 – Speeding – Responsible
8/15/09 – No. Plate Display/Speeding – Responsible
7/13/10 – Speeding – Responsible
9/2/10 – Illegal Operation – Responsible
7/15/11 – Operating Recklessly/Driving to Endanger – CWOP (see Criminal History 7/18/11)
10/6/11 – Operating Recklessly/Driving to Endanger – CWOE (see Criminal History 1/5/12)
5/19/12 – No Inspection Sticker – Responsible
7/6/12 – Unregistered/Uninsured/Improper Equip – CWOE (see Criminal History 8/29/12)
3/27/13 – Improper Equip/Display Plate – Responsible
5/30/13 – Failure to Stop – Responsible
6/20/13 – Suspension 3 Surchargeable Events
8/6/13 – NSC Class Completed
8/7/13 – License Reinstated
3/24/14 – No Transparent Window – NR
5/15/15 – Speeding – Responsible
2/23/17 – Surchargeable Accident³

(Exhs. 4, 4A through 4H)

5. CO-I Michael C. Abril was assigned to conduct Mr. Amaral's background investigation. He obtained court records and police incident reports regarding the criminal cases brought against Mr. Amaral, which he attached to his background investigation report. These documents include, among other details, the following information about those matters:

2007 Charge of Assault & Battery (Age 17)

After being verbally taunted by a neighbor while working in his yard, who then took a fighting stance and said to Mr. Amaral "let's go", Mr. Amaral approached the neighbor, yelling that he would "kick his ass" and, indeed, then struck the neighbor in the buttocks with his "shod foot". The neighbor punched back (another neighbor who witnessed the incident called it a "karate hold"), which caused Mr. Amaral to fall down. Mr. Amaral's mother appeared, gave Mr. Amaral a "metal tube" with which the neighbor said Mr. Amaral took a swing at him but missed. (Mr. Amaral admits holding the "metal tube" but denies swinging it.) After the men separated and returned home, Mr. Amaral's mother then committed an obscene gesture directed to the neighbor. The Fall River police responded, interviewed Mr. Amaral, the neighbor he tangled with and the neighbor who witnessed the incident. Mr. Amaral was charged with a count of Assault & Battery w/Dangerous Weapon (shod foot) and a second count of Assault w/Dangerous Weapon ("metal tube"). Mr. Amaral admitted to sufficient facts (no guilty plea) and apologized for his conduct. A CWOE was entered and the charges were dismissed on January 6, 2009. *(Exhs.5 & 9)*

³ At the Commission hearing, Mr. Amaral testified that he acknowledged, at the scene, his responsibility for causing this accident, which involved a minor "fender bender" that, to his surprise, turned out to exceed the threshold for being surcharged. *(Testimony of Appellant)*

February 2011 Charge of Charge Assault & Battery (Age 21)

Mr. Amaral in his bedroom studying for a motorcycle permit exam when his brother Michal (with whom he shared the room) came home in a “bad mood” and asked Mr. Amaral to study in the living room so Michael could go to bed. When Mr. Amaral declined to leave, the two brothers engaged in a verbal shouting match until their mother intervened. Another brother witnesses the incident. Fall River police responded, interviewed all the parties and took Matthew into custody, charging him with two counts of domestic assault and battery. A month later, on March 29, 2012, both charges were dismissed at the request of the Commonwealth. (*Exhs. 6 & 10*)

July 2011 Charge of Negligent MV Operation/Racing (Age 22)

Fall River police had received numerous complaints about “drag racing” and had set up surveillance in the area when they caught Mr. Amaral and another operator engaged in the act. Both operators were arrested and charged with illegal drag racing and negligent MV operation. The DOC did not produce the court records for this matter, but the CJIS summary indicates that a CWOFF was entered and the charges dismissed on August 28, 2013. (*Exhs. 4B & 11*)⁴

2012 Charge of Negligent MV Operation (Age 22)

In October 2011, Mr. Amaral was stopped by Fall River police while operating his motorcycle in an erratic manner, swerving around vehicles and speeding. He had no inspection sticker and was operating without corrective lenses as required. He received written warnings for these latter infractions and was issued a summons on a charge of reckless operation. Mr. Amaral admitted to sufficient facts (no guilty plea), a CWOFF was entered and the charge eventually dismissed on August 28, 2013. (*Exhs. 8 & 12*)

2012 Charge of Uninsured/Unregistered MV Violations (Age 23)

No police report was produced for this incident. The criminal docket indicates three charges: (1) concealing number plate; (2) uninsured MV; and (3) unregistered MV. Mr. Amaral was found not responsible on the first charge, admitted to sufficient facts (no guilty plea) on the other two charges, a CWOFF was entered and those two charges dismissed on August 28, 2013. (*Exh. 7*)

(*Exh. 3; Testimony of Abril*)

6. As part of the background investigation, CO Abril conducted an on-site interview of the millwork company where Mr. Amaral has worked since 2007 and currently holds the position of an Assistant Supervisor. CO Abril learned that Mr. Amaral was considered an “overall mature person” who has never been disciplined and had a “meticulous attention to detail.” The employer recommended him for hire as a CO. (*Exh. 3; Testimony of Abril*)

⁴ The CWOFF was extended due to the subsequent two charges brought against Mr. Amaral during the year following his CWOFF and all three open cases were simultaneously dismissed in 2013, after Mr. Amaral remained “clean” for a full year after the final 2012 incident. (*Exhs. 4B, 7 & 8; Testimony of Appellant & Jalette*)

7. CO Abril also met with three professional references, all of whom praised Mr. Amaral highly, commenting that he was a person who was dependable, trustworthy and handled stress well and would be a good fit as a Correction Officer. CO Abril also verified that Mr. Amaral held an active Class C License to Carry Firearms. (*Exh. 3; Testimony of Abril*)

8. On March 29, 2018, CO Abril conducted a home visit with Mr. Amaral in the home he shared with his mother, who was also present. During this visit, CO Abril asked Mr. Amaral about two of the cases on his criminal record: (1) his involvement in the 2007 assault and battery incident and (2) the 2011 arrest for drag racing. As to the 2007 incident, Mr. Amaral stated: “I was just a dumb kid that got caught up in a dispute with my neighbor that got blown way out of proportion and ended up with me doing something extremely stupid.” In response to the question about his 2011 drag racing, Mr. Amaral said: “I was a stupid 21-year-old who got caught up doing something extremely immature that I totally regret.” CO Abril thanked Mr. Amaral “for his honesty in answering my questions regarding his prior arrest record.” (*Exh. 3; Testimony of Appellant & Abril*)⁵

9. CO Abril submitted his background investigation report on March 30, 2018, concluding that Mr. Amaral’s background included both positive and negative aspects:

Positive Employment Aspects

Steady employment history (has kept and succeeded in the same job for 11 years)
Well-liked and respected by employer as well as references
Considered to be a hard worker as well as skilled
Described as loyal and always willing to help others
Currently possess’[s] a valid Massachusetts License to Carry Firearms

Negative Employment Aspects

Multiple arrests on record
Multiple negative infractions on driving record

(*Exh. 3; Testimony of Abril*)

⁵ CO Abril’s report does not show that any questions were asked about the three other criminal matters or his driving record. (*Exh. 3; Testimony of Appellant & Abril*)

10. By letter dated April 13,2018, Mr. Amaral received a “conditional offer of employment” subject to review of his background investigation and drug, medical and psychological testing. *(Exh.13)*⁶

11. After Mr. Amaral’s application was presented to DOC Commissioner Turco and a committee of senior DOC management, Mr. Ortiz was informed, by letter dated July 9, 2018, that he was not selected for appointment due to a “Failed background investigation based on the following police reports: 2/08/11 Fall River Police Department; 8/08/07 Fall River Police Department. Additionally, the candidate has a poor driving history to include a misdemeanor arrest for racing in 2011 and a continued pattern of poor driver history up to 2/23/2017 as listed in his driver history report (KQ).” Mr. Jalette was present for the DOC management review, but had limited personal memory of what information about Mr. Amaral (both the positive and negative aspects) was discussed, other than a belief that there was a consensus that Mr. Amaral showed a pattern of being unable to follow rules. *(Exh.2; Testimony of Jalette)*

12. At the Commission hearing, Mr. Amaral submitted a Petition to Seal Records under G.L.c.276, §100C that he filed on August 17, 2018, after his bypass,which contained a sworn statement that reads, in part:

“I desire to help others, and believe in rehabilitation and reform. I would like to apply for a position as a correction officer, but the obstacles created by having a record has put a halt to the process, in achieving a career path. In order to further my career, and buy a home, It would be encouraging to have my record expunged, so when lender and employers do a thorough background check.”

“Having a career in the Correctional field, I aspire to help inmates rehabilitate themselves, encourage them to improve once released. Motivate them to attend programs. I have a firm faith that people like myself can change, and individuals, likewise, may exceed [sic] in all walks of life. Everyone, ought to keep in mind the everyone can make a difference.”

(Exh.16; Testimony of Appellant)

⁶ The Commission has noted that DOC’s practice to extend a “conditional offer of employment” prior to completion of the background investigation makes problematic a subsequent disqualification for non-medical reasons. Here, however, nothing suggests that Mr. Amaral’s medical history could have played any role in the bypass decision.

13. After hearing on September 26, 2018, the Fall River District Court (Finnerty, J.) allowed the petition as to all five criminal matters in which Mr. Amaral had been charged. (*Exh. 16; Testimony of Appellant*)

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)

Basic merit principles in hiring and promotion calls for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates 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. In order to deviate from that formula, an appointing authority must provide specific, written reasons – positive or negative, or both, consistent with basic merit principles, to affirmatively justify 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 had 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. 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, 543 (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”)

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The commission --

“. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, 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.”

City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (*emphasis added*) However, the governing statute, G.L.c.31,§2(b), gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

ANALYSIS

The DOC has not met the necessary standard that it proved that the decision to bypass Mr. Amaral was reasonably justified based upon a preponderance of the evidence of the relevant

facts,. Although DOC is entitled to considerable deference in deciding whom it finds suitable for appointment to the sensitive public safety position of a Correction Officer, that deference is not absolute.

First, DOC's bypass decision relies incidents from Mr. Amaral's criminal record seven or more years ago, and does not prove by a preponderance of the evidence since that time, how these isolated incidents reasonably infer a present unsuitable and disqualifying character trait. Specifically, DOC did not claim that it was the pattern of Mr. Amaral's criminal history that was disqualifying but, rather, singled out two of the incidents that involved fighting: (1) a 2007 fight with a neighbor (which, according to the police report, he did not start and was egged on by his mother) when he was 17 years old; and (2) a 2011 verbal altercation with his brother who came home in a "bad mood" and demanded that Mr. Amaral leave their shared bedroom (charges that were never prosecuted). The DOC did not raise the most recent two subsequent (2012) criminal charges as problematic or claim they were part of the alleged pattern of criminal misconduct. In the intervening seven years since the two cited incidents, there is not the slightest indication that Mr. Amaral has engaged in any aggressive behavior, either physically or verbally. He was completely honest with the background investigator about these incidents and took full responsibility for his mistake. To the contrary, he has held a steady job for the past thirteen years and received the highest praise from his employer and other references as to his good character. DOC was unable to explain whether the DOC management team actually weighed these positive and more recent attributes of his behavior against the evidence of one teenage brawl with a neighbor, for which Mr. Amaral apologized and takes full responsibility, and one fraternal argument, for which there was conflicting evidence of any actual physical violence. The preponderance of the evidence established that Mr. Amaral did not initiate either incident.

Second, the position of a Correction Officer requires, from time to time, that the officer transport inmates in a DOC motor vehicle and DOC is certainly entitled to be comfortable that a candidate is capable of doing so safely and in compliance with all of the rules of the road. DOC's conclusion that Mr. Amaral's driving record does not measure up to that required standard, however, is not supported by a preponderance of the evidence. Mr. Amaral's record as a youthful driver does contain some dozen infractions, culminating in an arrest for drag racing. As a result, he was required to attend a remedial driver's education course. After completing that course in 2013, however, his driving record during the ensuing five years to the present shows a markedly different pattern, involving one (2015) speeding ticket and one (2017) traffic accident (the first in his entire driving career). Even giving the DOC the deference it is due, without further explanation (which DOC was unable to present) there is no reasonable justification to disqualify Mr. Amaral for a "continuing" poor driving record on the history of those two infractions in the five years since completing his remedial driver's education.

Third, after he was bypassed, Mr. Amaral procured a court order sealing all of his criminal records. DOC contends that, as a law enforcement agency, it is entitled to see and to rely upon all criminal records, whether or not they are sealed. Since Mr. Amaral's records were not sealed until after he was bypassed, the legal consequences of doing so need not be addressed in this appeal. I note, however, that, Mr. Amaral's initiative to procure a court order to seal the records does reflect favorably on his sincerity to become a Correction Officer, and, at a minimum, is worthy of notice.

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Matthew Amaral, is allowed.

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS that the Massachusetts Human Resources Division and/or the Department of Correction in its delegated capacity take the following action:

- Place the name of Matthew R. Amaral at the top of any current or future Certification for the position of DOC Correction Officer I until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. Amaral is appointed as a DOC Correction Officer I, he shall receive a retroactive civil service seniority date which is the same date as the first candidate ranked below Mr. Amaral who was appointed from Certification No. 05164. This retroactive civil service seniority date is not intended to provide Mr. Amaral with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By 3-1 vote of the Civil Service Commission (Bowman, Chairman [absent]; Camuso [AYE], Ittleman [NO], Stein [AYE] and Tivnan [AYE], Commissioners) on January 16, 2020.

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)(1), 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:

Matthew Amaral (Appellant)

Joseph Santoro. (for Respondent)

Michelle Heffernan, Esq. (HRD)