

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ERIC D. ANTUNEZ,
Appellant

v.

G1-19-083

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Eric D. Antunez

Appearance for Respondent:

Joseph Santoro
Department of Correction
Industries Drive: P.O. Box 946
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION

On April 3, 2019, the Appellant, Eric Antunez (Mr. Antunez), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Massachusetts Department of Correction (DOC) to bypass him for original appointment as a permanent, full-time Correction Officer I (CO I). I held a pre-hearing conference on April 30, 2019 at the offices of the Commission and I held a full hearing at the same location on June 14, 2019.¹ The hearing was digitally recorded.² Prior to the full hearing, DOC submitted a Motion

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

² If there is 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 he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

to Dismiss, stating that the Appellant is “not able to satisfy and maintain the eligibility requirements for obtaining a license to carry a firearm which is a requirement to prior to appointment as a Correction Officer.” As this was not a stated reason for bypass, the motion is denied.

FINDINGS OF FACT:

Eleven (11) exhibits were entered into evidence at the hearing. Based on those exhibits, the stipulated facts, the testimony of:

Called by DOC:

- Eugene T. Jalette, Supervising Identification Agent;
- Danielle R. Connor, Correction Officer II (CO II), Background Investigator;

Called by the Appellant:

- Eric Antunez, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Mr. Antunez is thirty-two (32) years old, married and has two (2) children. He resides in Tewksbury, MA and has an Associate’s degree in law enforcement. (Testimony of Mr. Antunez & Exhibit 3)
2. Mr. Antunez served in the United States Marines from 2005 to 2013 and has served in the Army Reserves since 2013. He was deployed to Iraq in 2007 / 2008 where he performed basic combat duties and he was deployed to Afghanistan in 2011 / 2012 where he performed security / search duties. He achieved the rank of Corporal E4 in the Marines, before being honorably discharged and currently serves in the rank of E5 Sergeant in the Army Reserves.

He has received numerous awards and commendations, including good conduct medals while in the military. (Testimony of Mr. Antunez & Exhibit 3)

3. According to his commanding officer in the Army Reserves, Mr. Antunez is hard working, dependable, gets along with his co-workers, is punctual and does not abuse sick time.

(Exhibit 3)

4. While serving in the Marine Corps in North Carolina in 2005, Mr. Antunez sought permission for leave after being informed that his mother was very ill. When told that the process to obtain authorization would take two (2) days, Mr. Antunez left without authorization. Although he learned upon returning home that his mother's medical condition was not as serious as he had been lead to believe, he did not return to his base for twenty-seven (27) days. Mr. Antunez received non-judicial punishment for this unauthorized leave.

(Testimony of Mr. Antunez)

5. In 2009, Mr. Antunez, while participating in a firearms training exercise for the Marines, was unaware that his firearm was loaded with live ammunition. Believing that his firearm was loaded with "blank" bullets, he fired the firearm into the air. He was disciplined for this error. (Testimony of Mr. Antunez)

6. For approximately seven (7) years, from 2009 to 2016, Mr. Antunez was employed at a security company in Columbus, Ohio. During his seven (7)-year tenure, he had one (1) minor disagreement with a supervisor regarding whether he (Mr. Antunez) could sit down next to a metal detector when no persons were passing through. As a result, he was transferred to another assignment. (Testimony of Mr. Antunez)

7. For approximately seven (7) months, from 2017 to 2018, Mr. Antunez was employed as a correctional officer in Indiana. He received a written warning for taking a day off when he did not have any earned time off available to him. (Testimony of Mr. Antunez)
8. In November 2015, while living in Ohio, Mr. Antunez was arrested for aggravated menacing. A female friend of Mr. Antunez's girlfriend at the time stayed overnight at their home after reporting to them that she was being abused by her boyfriend. (Testimony of Mr. Antunez)
9. Mr. Antunez and his girlfriend drove the female friend home the next day. (Testimony of Mr. Antunez)
10. According to Mr. Antunez's written statement to DOC:

“When I arrived, her boyfriend came outside drinking an alcoholic beverage with dried blood on his fist and under his nose, yelling profanities and accusing me of being with his girlfriend. He started approaching my vehicle on the street. I observed him reaching in his pocket for his knife, at the time I un-holstered my weapon, directed it down in his direction and advised him to back away. We were separated by his brother, I holstered my weapon, got back in my vehicle and went to the dead end of the street. I then called police on myself and told them what had occurred.” (Exhibit 12)
11. During his testimony before the Commission, Mr. Antunez clarified that he did not actually see a knife, but, rather, the outline of what he believed to be a knife. Mr. Antunez further clarified that he pointed the gun at the man's chest. (Testimony of Mr. Antunez)
12. On April 14, 2018, Mr. Antunez took the civil service examination for CO I and received a score in the 80s. (Stipulated Fact)
13. On October 22, 2018, Mr. Antunez's name appeared ranked 27th on Certification No. 05868, from which DOC ultimately appointed one-hundred sixty (160) candidates as CO Is, one-hundred forty-four (144) of whom were ranked below Mr. Antunez. (Stipulated Facts)

14. DOC bypassed Mr. Antunez for multiple reasons, including, but not limited to: his discipline in the military; the two (2) incidents at his former employers; and the above-referenced incident involving a firearm in Ohio. (Exhibit 2)
15. A DOC background investigator met with Mr. Antunez and provided him with the opportunity to respond to the issues raised in the background investigation, including the opportunity to file a written statement with DOC, which he did. (Exhibit 12)
16. The DOC Commissioner and Human Resources Director met with the person responsible for overseeing background investigations to review the background investigations of all candidates, including Mr. Antunez. The DOC Commissioner and Human Resources Director reviewed the positive and negative aspects of the background investigation of Mr. Antunez and decided to bypass him for appointment as a CO I. (Testimony of Jalette)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but 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.” Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

Analysis

By a preponderance of the evidence, DOC has shown that it had reasonable justification for bypassing Mr. Antunez for appointment as a CO I.

First, there is no evidence that the decision to bypass Mr. Antunez was due to political considerations, favoritism or bias. The background investigator gathered the facts in an objective manner and prepared an unbiased summary of her findings that was reviewed by the DOC Commissioner and Human Resource Director. In addition to potential concerns, the

summary included numerous positive attributes of Mr. Antunez for DOC to weigh in the decision-making process.

Second, the above-referenced review was sufficiently thorough. The background investigator did not simply conduct a document review, but, rather, personally spoke with former employers, military officials, neighbors, references and Mr. Antunez himself before completing her report. Further, she gave Mr. Antunez the opportunity to submit a written statement addressing any negative issues raised in the background investigation. Also, instead of delegating the decision-making process to subordinates, the DOC Commissioner and Human Resources Director personally reviewed the background investigation of Mr. Antunez, which included both positive and negative information for consideration.

Third, the reasons for bypass were legitimate and reasonable, including DOC's concerns related to the relatively recent 2015 incident in Ohio. Based solely on Mr. Antunez's testimony regarding how that event unfolded, DOC was reasonably justified to question his ability to exercise good judgment when confronted with a stressful situation. Mr. Antunez, at a minimum, dangerously *escalated* a situation, a legitimate concern for DOC officials who rely on front-line correction officers to *defuse* and *de-escalate* stressful situations as part of their daily job duties and responsibilities.

As discussed at the conclusion of the full hearing, nothing in this decision should be viewed as permanently disqualifying Mr. Antunez for appointment as a correction officer. Mr. Antunez has (many) positive attributes, including, but not limited to, his honorable military service which includes tours of duty in both Iraq and Afghanistan. He offered candid, forthright testimony at the hearing and poignantly described his sincere desire to pursue a career in law enforcement.

With the appropriate passage of time, Mr. Antunez, assuming he ranks high enough to be considered for appointment, warrants a second look by DOC.

Conclusion

Mr. Antunez's appeal under Docket No. G1-19-083 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Stein and Tivnan, Commissioners [Ittleman – Absent]) on August 1, 2019.

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:
Eric Antunez (Appellant)
Joseph Santoro (for Respondent)