

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**CIVIL SERVICE COMMISSION**  
One Ashburton Place – Room 503  
Boston, MA 02108  
617-979-1900

**MARCOS E. BELLIARD-GONZALEZ**

Appellant

v.

**Case Number: G1- 20 - 058**

**CITY OF LAWRENCE**

Respondent

Appearance for the Appellant:

Marcos E. Belliard-Gonzalez, *Pro Se*

Appearance for the Respondent:

Wendy Chu, Esq.  
Valerio Dominello & Hillman, LLC  
One University Avenue, Suite 300B  
Westwood, MA 02090

Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Marcos E. Belliard-Gonzalez, appealed, pursuant to the provisions of G.L. c. 31, § 2(b), to contest the decision of the City of Lawrence (“City”) to bypass him for original appointment to the position of permanent full-time Police Officer with the Lawrence Police Department (“LPD”) <sup>1</sup>. A pre-hearing conference was held on May 11, 2020, at the Armand Mercier Community Center in Lowell, and a full hearing was held on June 11, 2018, via videoconference (Webex), which was audio/video recorded with a link to the recording provided to the parties.<sup>2</sup> The City filed a Proposed Decision but the Appellant did not. For the reasons set forth below, Mr. Belliard-Gonzalez’s appeal is denied.

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<sup>1</sup> 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.

<sup>2</sup> 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 the stenographic or other 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.

## **FINDINGS OF FACT**

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

*Called by the City:*

- Frank Bonet, Personnel Director, City of Lawrence
- Dean Murphy, Detective, LPD
- Charles Diciara, Patrol Officer, Waltham Police Department (via affidavit)<sup>3</sup>

*Called by Mr. Belliard-Gonzalez:*

- Marcos Belliard-Gonzalez, 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 took and passed the civil service examination for Police Officer on March 23, 2019, and his name was placed on the eligible list established by the Human Resources Division (“HRD”). (*Ex. 1; Admin Record – HRD letter of May 5, 2020; Stipulated Facts*)

2. In the Fall of 2019, the City submitted a Requisition Form 13 to HRD for a certification from which it may appoint ten permanent full-time Police Officers. (*Admin Record – HRD letter of May 5, 2020*)

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<sup>3</sup> At the conclusion of the hearing, I left the record open and requested the City provide the Commission with documents regarding the Appellant’s firearms qualification scores while attending the Northern Essex Community College Police Academy in 2018. Upon receipt and review of these records, I determined that witness testimony would be necessary to explain certain entries on these records. The City was directed to make reasonable efforts to secure testimony from Officer Diciara or another lead instructor, which could be submitted through an affidavit. The City submitted an affidavit from Officer Diciara on September 4, 2020. The affidavit and the Appellant’s firearms qualification scores were entered into the record as Exhibit 12. The record was then closed on September 15, 2020. The Appellant did not dispute any aspect of Officer Diciara’s affidavit prior to the close of the record.

3. On September 16, 2019, HRD issued Certification/Referral No. 06573 to the City.  
*(Admin Record – HRD letter of May 5, 2020)*

4. The Appellant’s name appeared in a tie-group in the 11<sup>th</sup> position on Certification 06573. *(Admin Record – HRD letter of May 5, 2020)*

5. At least one candidate whose name appeared below the Appellant on Certification 06573 was hired by the City as a permanent full-time Police Officer. *(Admin Record – HRD letter of May 5, 2020; Testimony of Bonet)*

6. The City submitted three letters to HRD setting forth its reasons for bypassing the Appellant. These letters are dated November 27, 2019, January 3, 2020, and February 5, 2020. *(Exhs. 2A, 2B, and 2C, respectively; Testimony of Bonet)*

7. The reasons for bypass set forth in said letters to HRD address the following concerns of the City: (a) Appellant’s failure to complete the Northern Essex Community College Police Academy (the “Police Academy) in 2018 after Appellant had been given a conditional offer of employment as a permanent full-time Police Officer for the City during a prior hiring round (Certification 05008), coupled with the City’s consistent practice of not offering employment again to a candidate who had previously failed to complete the Police Academy given the expenditure of significant resources to appoint and enroll a candidate in the Police Academy and (b) the Appellant’s failure to file a timely report about a shoulder injury allegedly sustained while at the Police Academy in 2018. *(Exhs. 2A, 2B, and 2C)*

8. On February 11, 2020, HRD notified the Appellant and the City of its acceptance of the City’s reasons for the bypass. *(Stipulated Facts)*

9. At the City's prior Police Officer hiring round in 2017, the Appellant was given a conditional offer of employment and commenced the Police Academy on April 2, 2018. Completion of the Police Academy is a condition of employment with the LPD. (*Testimony of Bonet and Murphy; Exhs. 2A, 2B, 2C; Dichiaro Affidavit - Ex. 12*)

10. All police recruits must demonstrate proficiency in the use of firearms by passing a firearms qualification test as a prerequisite for satisfactory completion of the Police Academy. Prior to taking the firearms qualification test in June 2018, the Appellant and other student officers received sixteen hours of classroom training on topics such as types and nomenclature of pistols and how to break down and clean them, as well as forty hours of shooting practice at the firing range. After initially failing the firearms qualification test on June 13, 2018, the Appellant was provided with three hours of remedial training; he then failed the firearms qualification test two times on June 14<sup>th</sup>, and three times on June 15<sup>th</sup>, for a total of six failed attempts to qualify in the use of firearms. Despite the standard firearms training and remedial training, the Appellant was never able to qualify in the use of firearms. As a result, the Appellant was dismissed from the Police Academy on June 18, 2018. (*Exhs. 4 and 12; Testimony of Murphy*)

11. As a result of the Appellant's dismissal from the Police Academy, the City terminated his employment with the City effective June 18, 2018. (*Exh. 9*)

12. The City, which has substantial financial challenges, incurs expenses of over \$26,000.00 to hire a Police Officer candidate and send him or her to the Police Academy; these expenses, which include but are not limited to background checks, recruit salaries, uniforms, and equipment, are not recouped in the event of a candidate's failure to complete the Academy. (*Testimony of Bonet*)

13. The City had an “on-boarding” meeting with the Appellant and other selected candidates prior to their attendance at the Police Academy in April 2018. The Appellant and the others were instructed, among other things, on workers compensation matters and the importance of reporting promptly any injuries sustained while at the Academy. *(Testimony of Bonet)*

14. While at the Police Academy, the Appellant was specifically and repeatedly instructed by Academy staff to report any changes to his medical condition including any injuries sustained at the Academy. It is also standard practice at the Academy for instructors to ask the students if they have any issues or injuries at the end of each day at the firing range and to document any injuries. *(Testimony of Murphy; Dichiara Affidavit - Exh. 12)*

15. In May 2018 while at the Police Academy, the Appellant sustained an injury to his leg which he promptly reported and for which a workers compensation claim was processed. This was the only injury reported by the Appellant while he was at the Academy. *(Testimony of Bonet and Murphy; Exhs. 6A and 6B)*

16. The Appellant testified that he sustained an injury to his shoulder at the 2018 Police Academy during defensive tactics training. He also testified that he did not file any report with the City or Academy staff about that injury when it occurred. *(Testimony of Appellant)*

17. The Appellant acknowledged in his testimony that he was directed by Detective Murphy to promptly report any changes in his medical status, but that he did not do so with respect to the shoulder injury because of what he perceived to be peer pressure against reporting what might merely be soreness. *(Testimony of Appellant)*

18. No workers compensation claim relating to an injured shoulder has been approved for payment to the Appellant by the City's workers compensation carrier. (*Testimony of Bonet; Exh. 8*)

19. The Appellant did not offer the City, nor did he explain in his Commission testimony, any basis to infer that his lack of proficiency with a firearm had improved since his dismissal from the Police Academy. (*Testimony of Appellant*)

### **LEGAL STANDARD**

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 call for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established; those lists rank candidates according to their exam scores, along with certain statutory credits and preferences, and 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 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, 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 discretion in selecting public employees of skill and integrity. "[T]he commission owes substantial deference to the appointing authority's exercise of judgment in determining whether, on the facts found by the Commission, there was "reasonable justification" shown. Such deference is especially appropriate with respect to the hiring of police officers. 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*)

In light of the high standards to which police officers appropriately are held, appointing authorities are given significant latitude in screening candidates. City of Beverly v. Civil Service Commission, 78 Mass.App.Ct. 182, 188 (2010) However, the governing statute, G.L.c.31,§2(b), also gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action”; it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

### **ANALYSIS**

Based upon applicable legal standards and the evidence presented in this case, the City has demonstrated by a preponderance of the evidence that it had a reasonable justification for bypassing the Appellant for original appointment to the position of permanent full-time Police Officer.

Initially, I conclude that the City conducted an open, fair and impartial appointment process. There was no evidence presented that any improper political influences, motives, or malice towards the Appellant played any role in the bypass decision. With respect to the specific reasons set forth on the bypass letter, the preponderance of the evidence proved the following reasonable justification to bypass the Appellant for the specific reasons set forth below.



### Dismissal from Police Academy

Less than two years prior to the current round of hiring for the LPD under Certification 06573, the Appellant had received from the City a conditional offer of employment as a LPD Police Officer under Certification 05008. In furtherance of that prior conditional offer, the Appellant was assigned to the Police Academy with a start date of April 2, 2018. Completion of the Police Academy is a condition of continued employment with the City, and passing the firearms qualification test is a condition of successful completion of the Academy.

While at the Police Academy in 2018, the Appellant received classroom instruction in the use and care of firearms as well as forty hours of practice at the firing range prior to taking the firearms qualification test. To say that the Appellant's performance on the qualification test was dismal is an understatement, given that he failed all six opportunities he was afforded to pass it, even after undergoing additional remedial training after the first failure. As a result, he was dismissed from the Academy on June 18, 2018, and his employment as a police recruit with the City was also terminated as of that date.

In September 2019, fifteen months after his dismissal from the Police Academy and his employment termination with the City, the Appellant appeared again on the latest certification for an LPD Police Officer position.

In light of the Appellant's poor performance on the firearms qualification test in 2018, the City was reasonably justified to conclude that it was not in the best interests of the City and its taxpayers to take the risk of sending Mr. Belliard-Gonzalez to another Police Academy at a substantial, non-reimbursable costs to the City. No credible evidence was presented to mitigate the City's concerns, such as documentation that the Appellant has

subsequently trained for and was likely to pass a comparable firearms qualification test. I find the City's conclusion entirely reasonable.

#### Failure to Report an Injury

The un rebutted evidence demonstrates that during the prior hiring round and, repeatedly, which in attendance at the Police Academy in 2018, the Appellant was specifically instructed about the necessity of reporting promptly any injuries and changes to his medical condition.

Indeed, the Appellant did so with respect to a leg injury sustained at the Academy in May 2018. Yet, although also claiming that he sustained a shoulder injury during a defensive tactics class at the Academy, and contrary to the repeated instructions given to him and other candidates, he failed to promptly file any reports with respect to that purported injury. Particularly troubling is Appellant's acknowledgement that he did not report the shoulder injury because of perceived peer pressure against reporting what might merely be soreness.

The City was reasonably and justifiably concerned about Appellant's failure to follow explicit instructions and directives about the timely reporting of injuries. Such reporting is important to the City so that it may appropriately process workers compensation claims to the Academy staff, as was done with the Appellant's leg injury, in order to make accommodations to further the safety of an injured student officer, reduce the risk of aggravating his/her injury, and protect other student officers.

In a paramilitary organization such as a police department, the ability to follow instructions and directives is of paramount importance. The City is entitled to expect and require that the Appellant do so. The Appellant knew what he was supposed to do as

demonstrated by his timely filing of a report about a leg injury, but the Appellant failed in this obligation with respect to reporting a shoulder injury.

The City was also reasonably and justifiably concerned about The Appellant's unjustifiable peer pressure rationale for not reporting the shoulder injury. His bowing to peer pressure reflects a level poor judgment that further supports the City's bypass decision.

In sum, the Appellant's unwillingness to comply with the required injury reporting instructions because of peer pressure calls into question whether he can be relied upon to act appropriately when placed into difficult situations as a police officer. The risk of succumbing to that pressure cannot be condoned and provides an alternative reasonable justification to bypass the Appellant.

## **CONCLUSION**

For the reasons stated herein, the appeal of Appellant, Marcos E. Belliard-Gonzalez, under Docket No. G1- 20 - 058 is hereby ***denied***.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on May 6, 2021.

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:  
Marcos E. Belliard-Gonzalez (Appellant)  
Jennifer King, Esq.(for Respondent)\_  
Jennifer Maldonado-Ong, Esq. (for HRD)