

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

CHRISTOPHER BENEVENTO,
Appellant

v.

G1-11-69

SPRINGFIELD FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Christopher Benevento
Pro Se

Appearance for Respondent:

Peter Fenton, Esq.
Springfield Labor Department
30 Court Street
Springfield, MA 01103

Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

The Appellant, Christopher Benevento (hereinafter “Mr. Benevento” or “Appellant”), pursuant to G.L. c. 31, § 2(b), seeks review of the decision of the Respondent, the Springfield Fire Department (hereinafter “SFD”) to bypass him for an original appointment to the position of firefighter.

The appeal was timely filed with the Civil Service Commission (hereinafter “Commission”) on March 1, 2011. A pre-hearing conference was held on March 23, 2011 at the Springfield State Building. Action on the case was withheld pending an investigation under G.L.

¹ The Commission acknowledges the assistance of Law Clerk Beverly J. Baker, Esq., in the drafting of this decision.

c. 31, § 2(a), regarding the overall review and selection process of Springfield firefighter candidates in 2010 and 2011. Commission's Investigation of the 2010/2011 Review and Selection of Firefighters in the City of Springfield, Findings/Conclusions/Orders 24 MCSR 627 (2011) (hereinafter "Investigation"). On April 11, 2012, a full hearing in the instant case was held at the Springfield State Building. At the full hearing, I took administrative notice of the Investigation. Mr. Benevento testified at the full hearing on his own behalf and the City called one witness: Jerrold E. Prendergast, Deputy Chief at SFD (hereinafter "Deputy Prendergast"). Mr. Benevento declined to offer any documents into evidence, while SFD submitted five exhibits that were accepted into evidence. Neither party submitted a proposed decision, although Mr. Benevento, *pro se*, submitted a brief response via email. For the reasons stated herein, the appeal is allowed.

Based on the arguments made at the hearing, the testimony of the witnesses, and taking administrative notice of all matters filed in the case, including the Investigation, as well as pertinent statutes, regulations, case law, policies and rules, a preponderance of the evidence establishes:

1. At the time of the hearing, Mr. Benevento was forty-nine years old. He is single and resides in Springfield. Mr. Benevento has worked for the City of Springfield since 1993; he was originally employed as a hospital aide at the Springfield Municipal Hospital. Following a transfer, Mr. Benevento began working as a school custodian, a position which he has held for approximately the last sixteen years. (Testimony of Mr. Benevento; Ex. 2)

2. Mr. Benevento enlisted in the United States Navy for approximately three and a half years at some point following his graduation from Putnam Technical High School in 1980. He received an honorable discharge. (Testimony of Mr. Benevento; Ex. 2)
3. Mr. Benevento's criminal background check revealed that he was convicted of two felonies for the receipt of stolen property that were adjudicated in 1985. He was sentenced to probation for both offenses. (Ex. 3)
4. Throughout the many years following Mr. Benevento's convictions, a timespan of nearly three decades, Mr. Benevento has kept a clean criminal record. He has made significant efforts to improve his life in order to better provide for his daughter, whom he raised as a single father. Mr. Benevento has owned his own home since 2008. As a school custodian, Mr. Benevento holds keys to the building and is trusted to work around expensive equipment. (Testimony of Mr. Benevento)
5. In 2008, the Human Resources Division (hereinafter "HRD") administered an examination for the position of Springfield firefighter. Individuals who took and passed the examination, including Mr. Benevento, were placed on an eligible list of candidates established by HRD in December 2008. The eligible list was valid until November 30, 2010. (Investigation)
6. On or about May 20, 2010, Mr. Benevento completed SFD's Recruit Candidate Information Form. In response to the question "[h]ave you ever been convicted of a felony?" on page one of the form, Mr. Benevento checked the box marked "no." Mr. Benevento also checked the "no" box in response to the question "[h]ave you been convicted of a misdemeanor other than a first misdemeanor conviction for drunkenness,

simple assault, speeding, minor traffic violations, affray, or disturbance of the peace within the last five years?”² (Ex. 2)

7. Zachary Prendergast, the son of Deputy Prendergast, was among the candidates whose name appeared on the eligible list. (Investigation)
8. The Appointing Authority for SFD at the time of Mr. Benevento’s bypass was Springfield Fire Commissioner Gary Cassanelli (hereinafter Commissioner Cassanelli). (Investigation)
9. On February 24, 2010, HRD received a requisition dated February 19, 2010 from SFD for six permanent full-time firefighters. (Investigation)
10. Commissioner Cassanelli testified at the Investigation that Deputy Prendergast notified him “early on” that Deputy Prendergast’s son was among the candidates on the eligible list. Commissioner Cassanelli further testified that he told Deputy Prendergast that he would need to recuse himself from the selection process if his son became a “viable candidate.” Commissioner Cassanelli testified that his definition of “viable candidate” was someone who was among the first “ $2n + 1$ ” candidates that could be considered for appointment. Since Commissioner Cassanelli did not consider Zachary Prendergast a viable candidate early in the process, he saw no need for Deputy Prendergast to recuse himself at that point. (Investigation)
11. On April 26, 2010, Deputy Prendergast, following numerous email exchanges with HRD, sent a letter to HRD requesting that SFD Certification No. 206437 be increased from six vacancies to twenty as a result of the approval of fourteen additional hires. (Investigation)

² At the hearing, Mr. Benevento alleged that while the offense was a felony at the time, the law has since changed and the offense would no longer be considered a felony. However, neither party submitted evidence in support of this assertion.

12. On April 28, 2010, HRD issued seventy-four additional names to SFD for consideration. The name of Zachary Prendergast appeared on this Certification of names. He is among the fourteen tied minority candidates who signed the Certification as willing to accept employment. (Investigation)
13. Deputy Prendergast testified at the Investigation that, based on his review, his son was still not among the “ $2n + 1$ ” candidates that could be considered for appointment at the time when fifty-eight (58) applicants signed the April 28, 2010 additional Certification. Thus, he saw no need to recuse himself from the selection process at that time. (Investigation)
14. On or about May 17, 2010, multiple emails were sent between Deputy Prendergast and HRD. As part of this email exchange, HRD forwarded Deputy Prendergast a copy of Section 9 of the Personnel Administration Rules (hereinafter “PAR”) and Deputy Prendergast asked HRD about removing a candidate from the Certification under PAR.03. Deputy Prendergast specifically referenced Mr. Benevento’s name. In response, HRD informed Deputy Prendergast that such requests must be made in writing providing valid reasons for the request. (Investigation)
15. On August 17, 2010, Deputy Prendergast sent an email to HRD inquiring about the PAR.09 removal requests of Mr. Benevento and another candidate. HRD responded by saying that it had not received the requests and asked for the letters. There is no evidence in the record that SFD ever sent a PAR.09 removal request to HRD regarding Mr. Benevento. (Investigation)

16. In a letter dated September 1, 2010 and addressed to Luz Henriquez at HRD, then-Fire Commissioner Cassanelli requested the bypass of Mr. Benevento based on his two felony convictions. In this letter, Commissioner Cassanelli states:

As a matter of policy the Springfield Fire Department has, without exception, continued to not hire anyone with a felony conviction for the position of firefighter. It is my opinion that this policy and the trust that the public expects from its firefighters when we enter their homes and businesses, would make Mr. Benevento ineligible for consideration for the position of firefighter.

(Ex. 6) However, it does not appear that HRD ever received this letter. (Investigation)

17. There are twelve "PAR.09 removal letters" from SFD to HRD that are also dated September 1, 2010. It appears that these letters were not received by HRD until on or about October 19, 2010. None of these twelve letters reference Mr. Benevento. (Investigation)

18. Between October 8, 2010 and November 15, 2010, eighteen candidates signed conditional offers of employment with SFD. (Investigation)

19. Deputy Prendergast testified at the Investigation that sometime in "late November" [2010], two candidates who had been given conditional offers of employment contacted him via telephone to inform him that they were withdrawing from consideration. Deputy Prendergast testified at the Investigation that upon receiving these phone calls, he notified Commissioner Cassanelli that: (1) SFD would need to consider fourteen additional candidates, all tied in the next position of the Certification, in order to fill the two positions now available; and (2) his son was among the tied candidates to be considered. (Investigation)

20. Commissioner Cassanelli testified at the Investigation that the process was supposed to go forward with Deputy Prendergast doing only what he could do objectively and then turning it over to him [Commissioner Cassanelli] for a final decision. (Investigation)
21. Deputy Prendergast was involved in the background checks for the candidates, including his son, Zachary Prendergast. (Investigation; Testimony of Deputy Prendergast)
22. On November 30, 2010, the last day before the eligible list would expire, then-Commissioner Cassanelli appointed two additional candidates, including Zachary Prendergast. (Investigation)
23. On or about December 22, 2010, Deputy Prendergast mailed a letter to Mr. Benevento stating simply that Mr. Benevento had been bypassed for the reasons indicated in the enclosed copy of the September 1, 2010 letter from Commissioner Cassanelli to HRD. However, Mr. Benevento never received these letters. (Ex. 6; Testimony of Mr. Benevento; Testimony of Deputy Prendergast)
24. Mr. Benevento filed the instant appeal on March 1, 2011. (Administrative Notice)
25. Previously, on April 1, 2000, Mr. Benevento filed an appeal with the Commission seeking review of the City's decision to bypass him for appointment to the position of firefighter. SFD cited Mr. Benevento's criminal background³ as the reason for his bypass at that time. During the hearing in the previous appeal, which took place on July 25, 2001, then-Fire Chief Cassanelli testified that during his years of service as Fire Chief, he could not recall one instance that anyone with a felony conviction was hired by SFD. Mr. Benevento's appeal was ultimately denied by the Commission in August 2001. (Ex. 1)

³ There are some discrepancies between Mr. Benevento's criminal history, as stated in the 2001 bypass decision, and Mr. Benevento's CORI report, submitted in the instant appeal.

26. There is an unwritten policy in effect at SFD not to hire candidates with felony convictions for the position of firefighter. This policy has been in place and applied since at least the year 2000. (Ex. 1; Testimony of Deputy Prendergast).

DISCUSSION

Applicable Civil Service Statutes and Rules

The authority to bypass a candidate for original appointment to a permanent civil service position is set forth in G.L. c. 31, § 27, which states, in pertinent part:

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

Pursuant to PAR.03(3), an applicant's "failure to prove qualifications established by the administrator may be grounds for removal from an eligible list, after an investigation by the administration which includes prior notice to the applicant and the opportunity to respond."

PAR 9 states, in pertinent part:

If an appointing authority concludes the appointment of a person whose name has been certified to it would be detrimental to the public interest, it may submit to the administrator a written statement giving in detail the specific reasons substantiating such a conclusion. The administrator shall review each such statement, and if he agrees, he shall remove the name of such person from the certification and shall not again certify the name of such person to such appointing authority for appointment to such position.

PAR.09(2).

Upon an appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241 (2006). Reasonable justification is established when such an action is "done upon adequate reasons sufficiently supported by credible evidence, when

weighed by an unprejudiced mind, guided by common sense and correct rules of law.” *Comm’rs of Civil Serv. v. Municipal Ct.*, 359 Mass. 211, 214 (1971) (quoting *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 485 (1928)). An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. See *City of Beverly v. Civil Serv. Comm’n*, 78 Mass.App.Ct. 182, 189 (2010).

“In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” *City of Beverly*, 78 Mass.App.Ct. at 187 (quoting *City of Leominster v. Stratton*, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006). “[T]he commission does not act without regard to the previous decision of the town, but rather decides whether ‘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.’” *Id.* at 824 (quoting *Watertown v. Arria*, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983)). As a result, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown.” *City of Beverly*, 78 Mass.App.Ct. at 188.

“In making that analysis, the commission must focus on the fundamental purposes of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions” *City of Cambridge v. Civil Serv. Comm’n*, 43 Mass.App.Ct. 300, 304, *rev. den.*, 426 Mass. 1102 (1997) (citing *Murray v. Second Dist. Court of E. Middlesex*, 389 Mass. 508, 514 (1983); *Kelleher v. Personnel Adm’r. of the Dept. of*

Personnel Admin., 421 Mass. 382, 387 (1995); *Police Comm’r. of Bos. v. Civil Serv. Comm’n.*, 22 Mass.App.Ct. 364, 370, *rev. den.*, 398 Mass. 1103 (1986)). “When there are, in connection with personnel decisions, 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*, 43 Mass.App.Ct. at 304. “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *Id.* (citing *Sch. Comm’n. of Salem v. Civil Serv. Comm’n.*, 348 Mass. 696, 698-99 (1965); *Debnam v. Belmont*, 388 Mass. 632, 635 (1983); *Comm’r. of Health & Hosps. of Bos. v. Civil Serv. Comm’n.*, 23 Mass.App.Ct. 410, 413 (1987)).

The Respondent’s Argument

SFD argues that Mr. Benevento’s bypass was a valid exercise of discretion made in accordance with a longstanding policy not to consider applicants with felony convictions. While SFD concedes to errors in the hiring process, it maintains that Mr. Benevento was not negatively affected by any such errors. SFD asserts that Deputy Prendergast’s son was in the second pool of candidates and, as a result, was not being considered at the time of the Appellant’s disqualification.

The Appellant’s Argument

Mr. Benevento argues that SFD did not follow the rules of the appointment process. Specifically, Mr. Benevento points to Deputy Prendergast’s involvement in the review and selection process. Mr. Benevento also claims that he did not receive proper notification of his bypass. In addition, Mr. Benevento submits that SFD placed undue weight on his felony

convictions adjudicated in 1985 and did not take into account the success he has experienced in improving himself since that time, providing a better life for himself and his daughter.

Analysis

The Commission's Investigation of this appointment process revealed that Deputy Chief Prendergast's participation compromised SFD's ability to ensure open consideration of all candidates for the position of firefighter.⁴ SFD concedes that there were mistakes made in the appointment process. Nonetheless, it appears that SFD would have reached the same conclusion with respect to Mr. Benevento in the absence of such mistakes. Specifically, SFD cited Mr. Benevento's criminal history, which includes felonies, as the reason for bypassing him and produced evidence that it has a long-standing policy in place not to consider for the position of firefighter applicants with felonies in their criminal backgrounds. Therefore, the real issue here is whether SFD can rely solely on a "no felony conviction" policy in order to justify the decision to bypass a candidate for appointment to the position of firefighter⁵. It cannot.

There is no question that a firefighter must be honest, trustworthy, and dependable in order to properly perform the duties required of a public safety official generally. *E.g., Matthews v. City of Bos.*, 22 MCSR 450, 452 (2009). As such, a candidate's criminal background is a serious and legitimate concern for an appointing authority. "The Commission has long held that an applicant's arrest record, even in the absence of a conviction, is entitled to some weight by the appointing authority in making its decision." *Labriola v. Town of Stoneham*, 25 MCSR 36, 38

⁴ Documents produced in the Investigation indicated that Zachary Prendergast was the only candidate who did not answer the question on the employment application form that asked if the applicant had used illegal drugs. There was no documentation produced in the Investigation to show that Deputy Prendergast, who conducted the background investigations of the applicants, including his son, followed up on this question and/or reported his son's failure to answer this question to the Fire Commissioner before Zachary Prendergast was appointed. (Investigation Documents) As the Investigation determines further, although SFD eliminated a candidate based on his or her driving record, Deputy Prendergast made a subjective judgment call that his son's recent speeding ticket did not eliminate him from consideration. (Investigation)

⁵ This issue is also presented in *Laguerre v. Springfield Fire Dep't*, G1-11-153, in a decision being issued the same day as this decision.

(2012) (citing *Thames v. Bos. Police Dep't.*, 17 MCSR 125, 127 (2004); *Soares v. Brockton Police Dep't.*, 14 MCSR 109, 110 (2001); *Brooks v. Bos. Police Dep't.*, 12 MCSR 19, 20 (1999); *Frangie v. Bos. Police Dep't.*, 7 MCSR 252, 253 (1994)). While the Commission recognizes that an appointing authority has considerable discretion in selecting a candidate for appointment, the appointing authority must still meet its burden of proving there was “reasonable justification” for its action. *Cambridge v. Civil Serv. Comm’n.*, 43 Mass.App.Ct. 300, 304, *rev. den.*, 426 Mass. 1102 (1997). As stated above, reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” *Comm’rs. of Civil Serv. v. Municipal Ct.*, 359 Mass. 211, 214 (1971) (quoting *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 485 (1928)).

In accordance with these principles, the Commission cannot accept the disqualification of an applicant based *solely* on a criminal record that is so stale, as a valid exercise of discretion, especially when the candidate thereafter lived as an upstanding citizen, in a productive and responsible manner, as Mr. Benevento has done. There is no question that Mr. Benevento has made substantial positive changes in his life since his convictions many years ago and has been a reliable employee over the course of his many years of employment with the City of Springfield since then.

There are various statutory provisions relating to candidates for employment and criminal conduct. Specifically, G.L. c. 31, § 50 states, in pertinent part: “[n]o person habitually using intoxicating liquors to excess shall be appointed to or employed or retained in any civil service position, nor shall any person be appointed to or employed in any such position within *one year* after his conviction of *any crime*....” (Emphasis added). Thus, someone convicted of a crime

may be employed in a civil service position after one year. In addition, the statute sets forth exceptions that allow an appointing authority to employ, in its discretion, a person convicted of certain offenses within the one-year period. Another statute relating to candidates for employment and criminal conduct is G.L. c. 41, § 96A, which prohibits any person who has been convicted of a felony from being appointed as a *police officer* of a city, town, or district. There is no such statutory prohibition in place with respect to firefighters⁶. (Emphasis added). Had the legislature intended to bar an individual ever convicted of a felony from being appointed as a firefighter, it could have done so; it did not. By maintaining an automatic and unending disqualification in this regard, the SFD, in effect, creates its own legislation barring certain candidates from further consideration. Further, such a disqualification is inconsistent with civil service law's principles of basic merit principles and fair treatment.

SFD's policy, as applied, automatically disqualifies any candidate with a felony on his or her record, regardless of how long ago the offense occurred and without giving any weight to the nature of the offense or the candidate's subsequent good conduct. While a policy that disqualifies a candidate with a felony conviction that occurred within a *reasonable* number of years may provide sound and sufficient reason for bypassing a candidate, it cannot be, without more, an automatic and permanent disqualification. Rather, appointing authorities are to evaluate an applicant's criminal history in a manner that provides a reasonable review of the criminal history. *See Beverly, supra*. Further, the amount of time that has passed since the misconduct occurred, the nature of the offense, and evidence of the candidate's subsequent record are factors that should be taken into account. *See e.g., Langston v. Cambridge Police*

⁶ It should be noted that G.L. c. 31, § 58 does establish some requirements pertaining to firefighters, such as the prerequisite that candidates be at least nineteen years of age at the time of the examination and, in certain civil service communities, a maximum age restriction of thirty-two.

Dep't., 7 MCSR 178, 179 (1994); *Dowd v. Lowell Fire Dep't.*, 14 MCSR 31, 32 (2001); *Ellis v. Dedham*, 17 MCSR 30, 31 (2004).

SFD declined to even interview Mr. Benevento prior to making the bypass decision. As a result, the review and selection process began and ended with SFD's application of an automatic rule that barred any individual with a felony conviction from appointment regardless of the date or nature of the crime or the Appellant's accomplishments since that time. This prohibition precluded a reasonably thorough review and consideration of Mr. Benevento's suitability for appointment.

The instant case is distinguishable from other Commission and judicial decisions in which criminal charges and convictions formed the basis of bypassing a candidate for a public safety position. For example, in *Suppa v. Bos. Police Dep't.*, a majority of the Commission determined that the candidate's admission to sufficient facts to misdemeanor assault and battery was not a valid reason for bypass. 21 MCSR 614 (2008), *mot. denied*, 21 MSCR 685 (2008), *rev'd*, Civil Action No. 08-5237 (2010), *aff'd*, 79 Mass.App.Ct. 1121 (2011). The Superior Court, in a decision affirmed by the Appeals Court, vacated the Commission's decision. However, the Superior Court's decision was based primarily on issues related specifically to the employment of police officers, G.L. c. 41, § 96A, and whether an admission to sufficient facts was equivalent to a conviction. In addition, the record in *Suppa* shows that the Boston Police Department conducted a reasonably thorough review of the applicant and provided the applicant with the opportunity to address his criminal history in determining how much weight, if any, other positive factors should be given. In contrast, SFD did not conduct any such review, beyond the automatic disqualification based solely on Mr. Benevento's felony convictions.

In *City of Beverly v. Civil Serv. Comm'n.*, the Appeals Court affirmed the Superior Court's judgment which reversed a majority decision of the Commission, stating that the City was not required to prove that the allegations against an applicant related to his prior employment were true. *Beverly*, 78 Mass.App.Ct. 182 (2010). However, in *Beverly*, the City had completed a reasonably thorough review of the applicant and, based partly on the applicant's responses during an interview, was reasonably justified in bypassing the applicant for the position of police officer. Again, Mr. Benevento was not provided with any such review prior to his automatic disqualification under SFD's policy.

A series of other Commission decisions are also distinguishable as they either involved the appointment of police officers and/or the applicant's criminal history did not serve as an automatic disqualifier, but, rather, was given the weight that the appointing authority chose to give it after a reasonably thorough review of the incident and the applicant. *See, e.g., Brooks v. Bos. Police Dep't.*, 14 MCSR 109 (2001); *Lavaud v. Bos. Police Dep't.*, 17 MCSR 125 (2004); *Preece v. Dep't. of Corr.*, 20 MCSR 152 (2007); *Gallo v. City of Lynn*, 23 MCSR 348 (2010); *Cruz v. City of Lowell*, 25 MCSR 255 (2012).

In *Dowd v. Lowell Fire Dep't.*, a majority of the Commission upheld the City's decision to bypass the applicant for the position of firefighter based on his criminal record. 14 MCSR 31 (2001). However, the *Dowd* case is distinguishable. In *Dowd*, the Commission made the following finding of fact that the Fire Chief had a hiring policy,

“ ... not to select candidates with a felony on their criminal record. A candidate with a criminal record will be considered for employment if the record is ten years or older. Misdemeanor crimes such as breaking and entering, larceny, forgery, assault and battery (if it is an open case), unauthorized taking and operating under the influence may be used to bypass a candidate seeking a position as firefighter. These cases are examined on a case by case basis.”

Dowd, p. 32. The finding and/or policy is not clear because, while it appears on one hand that the Lowell Fire Department precluded the hiring of a candidate with a felony conviction, it also appears that the Department could consider a candidate with a felony older than ten years and/or the Department could make a determination regarding a felony or other crime on a case-by-case basis. *Dowd*, at 32, 33. In addition, the Commission noted,

“In his hiring practice, Fire Chief LaCourse tries to balance certain crimes that breach the principles of honesty and trustworthiness that are non-negotiable versus other crimes that can be overlooked past his ten year requirement.”

Dowd, 14 MCSR at 32. This also makes it sound as if Chief LaCourse considered candidates’ criminal records on a case-by-case basis. However, the Commissioner writing for the Commission in *Dowd* noted that the Chief was unfamiliar,

“... with the significance of the different crimes in our criminal system. Throughout his testimony, I witnessed his unfamiliarity with CORI reports and the unease of sorting through what constituted a misdemeanor and a felony.”

Dowd, p. 33. The *Dowd* decision also found that Chief LaCourse had hired a firefighter candidate who had been convicted of a felony seventeen years earlier, albeit mistakenly. In *Dowd*, the applicant had pleaded guilty to three counts of unauthorized taking in New Hampshire in 1996 and he was bypassed in 1997, 1998, and 1999. *Dowd*, 14 MCSR at 32. Thus, in a number of respects, *Dowd* is distinguishable from the instant case involving Mr. Benevento. In the instant case, the crime that was the basis of his bypass was not one, two, or three years old but twenty-seven years old. In addition, unlike in *Dowd*, there is no evidence that the Department made a reasonable review of the convictions or that it considered other appropriate factors in Mr. Benevento’s background after the convictions. With respect to the Commission’s decision in Mr. Benevento’s prior bypass, *Benevento v. Springfield Fire Dep’t*, 14 MCSR 123 (2001), to the extent that the Commission’s decision upheld the Department’s decision to bypass

Mr. Benevento because of his felony conviction, it may have been justified in that it was much closer in time to the conviction. The same cannot be said for such an automatic determination eleven years after the 2001 case that fails to take any other matters into consideration before automatically bypassing the candidate, not the least of which is that the candidate has had a productive life and has committed no further crimes in the intervening twenty-seven years.⁷

CONCLUSION

For the reasons stated herein, SFD did not have reasonable justification to bypass Mr. Benevento based solely on a felony record that is nearly three decades old, without a reasonable review of the criminal matters, and without consideration of other appropriate factors. Therefore, the Appellant's appeal filed under Docket Number G1-11-69 is hereby *allowed*.

Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993 and consistent with the orders from the Investigation, the Commission orders the following:

- The state's Human Resources Division (HRD) shall place the name of Mr. Christopher Benevento at the top of any future certifications for the position of permanent full-time firefighter in the City of Springfield until such time as he is appointed or bypassed.
- Deputy Prendergast shall play no role in the background check and/or interview of Mr. Benevento and, in regard to the next hiring cycle, and candidates for original appointment to the position of firefighter.
- With regard to the next hiring cycle in which Mr. Benevento is considered for appointment: (a) candidate interviews must be conducted by a panel to be selected and arranged by an independent outside individual or firm that has experience in the review and selection of public safety personnel in Massachusetts; (b) neither the outside firm, nor any member of the interview panel, shall have any present or prior contractual, employment, or familial relationship to employees of the Springfield Fire Department or to any of the candidates; (c) the candidates will be provided, reasonably in advance of the interview, a description of the criteria by which their credentials and their interview performance will be evaluated; (d) the evaluation criteria shall be established by the independent individual or firm selected to arrange the interviews and shall contain such procedures and criteria that the outside individual or firm deems appropriate in consideration of a candidate for firefighter, provided that the Fire Commissioner may

⁷ Not the least of the problems involved in automatic, unending disqualification of candidates with criminal records regardless of their date and other factors is that the information about the records over time can be limited. For example, during the full hearing in this case the parties pondered whether what was deemed a felony in the Appellant's record in the 1980s currently constitutes a felony.

contribute by giving his opinion to the independent individual or firm as to any aspect of the interview process, including evaluation criteria, as he deems appropriate; (e) the interview panel shall render a written report of the interviews to the Fire Commissioner; and (f), the written report shall include a specific rating of each candidate's performance in each component or question during the interview, an overall ranking of the candidates,

and a description of any unique positive and/or negative qualities or experience noted about any of the candidates.

Civil Service Commission

Cynthia A. Ittleman, Esq.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell, and Stein, Commissioners) on Nov. 15, 2012.

A true record. Attest:

Commissioner

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.

Notice:

Christopher Benevento (Appellant)
Peter Fenton, Esq. (for the City)
John Marra, Esq. (HRD)