

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503
Boston, MA 02108
617-979-1900

DAMIAN A. BENITEZ,
Appellant

G1-21-177

v.

CITY OF BROCKTON,
Respondent

Appearance for Appellant:

Damian A. Benitez, *Pro Se*

Appearance for Respondent:

Karen A. Fisher, Esq.
Assistant City Solicitor
City of Brockton Law Department
43 School Street
Brockton, MA 02301

Commissioner:

Paul M. Stein

Summary of Decision

The Appointing Authority had reasonable justification to bypass a candidate for appointment as a firefighter who provided implausible, inconsistent, and incomplete responses about his residency history during the application process.

DECISION

On September 22, 2021, the Appellant, Damian A. Benitez, acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from the decision of the mayor of the City of Brockton (Brockton) to bypass him for appointment as a full-time permanent firefighter for the Brockton Fire Department (BFD).¹ A pre-hearing conference was held via videoconference (Webex) on November 2, 2021, and a full hearing, which was recorded,² was

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 The Commission sent the parties a copy of the recording. 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

held on January 18, 2022 via video conference (Webex). Both parties filed Proposed Decisions. For the reasons set forth below, Mr. Benitez's appeal is denied.

FINDINGS OF FACT

Twelve exhibits were introduced into evidence (App. Exhs. 1 & 2; Resp. Exhs. 1 through 7 and Resp. PH Exhs.8 through 10). Based on the documents submitted and the testimony of the following witnesses:

Called by Brockton

- Jeffrey Marchetti, BFD Deputy Fire Chief

Called by the Appellant:

- Damian Benitez, Appellant
- Laynie Echevarria, Appellant's spouse

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 the following facts:

1. The Appellant, Damian A. Benitez, is a life-long Massachusetts resident, born and raised in Boston. He is a 2004 high-school graduate who began a career as a barber in 2006. Since 2013, he has been the sole proprietor of a barbershop in Walcott Square, Boston. (*Resp.Exh.2; Resp.PH Exh.10; Testimony of Appellant*)

2. Mr. Benitez began living in Brockton when his family moved to a home on Sherman Street, approximately 20 years ago. In or about October 2017, he purchased a condominium on Court Street in Brockton, where he lived with his fiancée (now his spouse) until approximately June 2019. (*Resp.Exh.2; Resp.Exh.10; Testimony of Appellant & Echevarria*)

court with a 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.

3. On March 24, 2018, Mr. Benitez took and passed the civil service examination for firefighter administered by the Massachusetts Human Resources Division (HRD). His name was placed on the eligible list established on September 1, 2018. He sought and received residency preference in Brockton, which required him to reside in Brockton continuously for one year prior to the examination (March 24, 2017 to March 24, 2018.) (*Administrative Notice [HRD Packet, Benitez v. City of Brockton, CSC Docket No.G21-19-245]*)

4. In or about June 2019, Mr. Benitez's fiancée purchased a single-family residence in Franklin, MA. She then moved, with her minor daughter, back to her parents' home in Randolph until renovations to the Franklin property were completed. She moved to Franklin as her permanent residence in late August or September 2019. (*Testimony of Echevarria*)

5. Also, in or about June 2019, Mr. Benitez moved back to live with his mother at Sherman Street, Brockton and rented his condominium on Court Street in Brockton, intending to use the rental income for financial assistance to help his fiancée pay her mortgage on the Franklin property. (*Testimony of Appellant*)

6. On August 13, 2019, HRD issued Certification #06541 authorizing Brockton to hire additional firefighters. As Mr. Benitez had been a Brockton resident for the requisite period (March 2017 to March 2018) prior to taking the March 2018 civil service examination, his name duly appeared on Certification #06541 within the so-called "2n+1" group of candidates claiming residency preference and eligible for appointment. He initially received a conditional offer of employment but, eventually, he was bypassed for appointment based on his failure to meet the BFD's newly adopted policy prohibiting the appointment of candidates with certain visible body art (tattoos). (*App.Exhs.1 & 2; Administrative Notice [HRD Packet, Benitez v. City of Brockton, CSC Docket No.G21-19-245]*)

7. Following an appeal of his bypass to the Commission, Brockton and Mr. Benitez reached an agreement that he would be reconsidered for appointment in the next hiring cycle, provided he had removed the body art that precluded his appointment in 2019. The parties submitted a Joint Motion for Relief (pursuant to Chapter 310 of the Acts of 1993) to that effect, which the Commission approved on January 20, 2020. (*App.Exh.2*)

8. Pursuant to the Commission's January 20, 2020 Decision, Mr. Benitez was granted the following relief:

- A. The Commission authorizes HRD and/or the City of Brockton to take such action as may be necessary or appropriate to list the name of the Appellant Damian A. Benitez at the top of the current and all future eligible lists and certifications for appointment of Firefighter in the City of Brockton until he is appointed or bypassed.
- B. In any future consideration of the Appellant for appointment as a Firefighter in the City of Brockton, provided that the Appellant had completed the steps necessary to remove the condition which resulted in his bypass, Brockton shall not bypass the Appellant based on any other facts or circumstances in his background of which it had knowledge prior to notifying him of his bypass in October 2019.
- C. Nothing in this decision shall preclude the City of Brockton from requiring the Appellant to complete or update such application forms and submit to such further testing and examinations as are required of all candidates.

9. Mr. Benitez and his fiancée were married in December 2019. She gave birth to their son in July 2020 who, thereafter, at all times lived in Franklin. (*Resp.Exh.2; Testimony of Appellant & Echevarria*)

10. Due to his wife's pregnancy, as well as the consequences of the COVID-19 pandemic, at some time in 2020, Mr. Benitez, who had been spending two or three nights in Franklin, began spending more time there, frequently as many as four or five nights a week. (*Testimony of Echevarria*)

11. Mr. Benitez took and passed another civil service examination for firefighter, originally scheduled for February 24, 2020 (but delayed until March 21, 2020 due to the COVID-19 State of

Emergency). His name appeared twice on the eligible list established on March 15, 2021: (a) in first place pursuant to the Commission’s January 20, 2020 Decision and (b) tied with eight other Brockton residents in 14th place based on his score on the examination and his claim to residency preference. (*Stipulated Facts; Resp.Exh.1; Administrative Notice [HRD Packet dated 10/18/2021]*)

12. On June 8, 2021, HRD issued Certification #07860 authorizing Brockton to appoint additional firefighters (initially 12, later increased to 14). (*Stipulated Facts; Resp.Exh.1; Administrative Notice [HRD Packet dated 10/18/2021]*)

13. On or about June 22, 2021, Mr. Benitez returned a completed application packet to the BFD along with certain additional required documents. (*Resp.Exhs.2 & 10*)

14. The information provided in the June 2021 application packet submitted by Mr. Benitez included, in relevant part, the following:

- He listed his current residence was in Brockton, MA.

C. Residences:

Current Address: _____
Brockton, MA _____

Permanent Address: N/A _____
(Only if different)

Mailing Address: N/A _____
(Only if different from current address)

- In response to a question: “List chronologically all residences in the past five (5) years starting with your present address. Include addresses while attending school if away from home and all military addresses”, Mr. Benitez provided three addresses:

unit #103

Address	Move in date	Move out date	Name of person who knew you at this address	Rent or own	Contact information for reference (address, phone and email)
[REDACTED] Brockton, MA	June/2019	Current	Maria Benitez	Rent	Maria Benitez Brockton, MA 02302
146 Court St. Brockton, MA 02302	Oct/2017	June/2019	Laynie Echevarria	Own	Laynie Echevarria Franklin, MA 02038
[REDACTED] Brockton, MA 02302	Jan/2015	Oct/2017	Maria Benitez	Rent	Maria Benitez Brockton, MA 02302
N/A					

() check here if additional space on back of this page is used to complete this question.

- In response to a question: "list all persons currently residing with you" he provided:

Name	Date of Birth
Maria Benitez	[REDACTED]
N/A	
N/A	
N/A	

He identified his spouse as Laynie Echevarria with whom he lived from October 2017 to June 2019 in a condominium he owned on Court Street and who currently lived, in Franklin, MA with two children.

Current Spouse/Significant Other: Please complete the following:

Laynie Echevarria [REDACTED] Franklin, MA [REDACTED]

4. Children

Name	Age	Date of birth	Place of birth	Address
[REDACTED]	9 years	[REDACTED]	Boston, MA	Franklin, MA [REDACTED]
[REDACTED]	10 months	[REDACTED]	Boston, MA	Franklin, MA [REDACTED]

- His Master Barber License (expiring 12/2019) listed his residence as Court Street, Brockton. His Barbershop License (expiring 6/30/2020) listed the Wolcott Square, Boston, MA address. His Massachusetts Driver's License (expiring 2025) listed his residence as Sherman Street, Brockton, MA.
- A Jeep Wrangler and a Jeep Compass were registered in his name in January and February 2020, respectively, at Sherman Street, Brockton, MA.

- Lease payments for the 2016 Jeep from December 2016 through February 2019 were addressed to Mr. Benitez and his mother at Court Street, Brockton, MA.
- He produced records showing payment of motor vehicle excise taxes on a 2015 Jeep to Brockton for 2016 and 2020, sent to the Sherman Street, Brockton address.
- Addresses reported on his credit reports included Sherman Street, Brockton (listed on one report as “current” address); Franklin, MA (listed on one report as a “former” address”); Court Street, Brockton (also listed on one report as a “former” address); and various former addresses in Boston, MA
- He produced individual tax returns for 2016, listing his residence and business address as Sherman Street, Brockton, MA
- His 2017 and 2018 individual tax returns for 2017 listed his residence and business address as Court Street, Brockton MA.
- In 2019, he filed jointly (with his spouse), listing their residence and his business address as 146 Court Street, Brockton, MA and claiming a minor daughter as a dependent. They also claimed rental income from the Court Street property (but not the Franklin property) for the entire year and no personal use.
- In 2020, he filed jointly (with his spouse), listing their residence and his business address as Court Street, Brockton, MA, and claiming a minor son as a dependent. He reported rental income from the Court Street property but not the Franklin property.

(Resp.Exhs.2 & 10)

15. As part of his application, Mr. Benitez executed the Residency Hiring Preference form, certifying that he had resided in Brockton “for the entire twelve-month period immediately preceding the date of the [2020] written test”. *(Resp.Exh.2)*

16. Under the direction of BFD Deputy Chief Marchetti, each applicant undergoes a background investigation conducted by the Deputy Chief or one of two other superior officers assigned to assist him. The background investigation of Mr. Benitez was one of the applications investigated by Deputy Chief Marchetti himself. *(Testimony of Dep. Chief Marchetti)*

17. When an applicant claims a Brockton residency preference, the background investigator pays particular attention to examining the veracity of the applicant’s residency as stated in the application, including verification of the statements in the application, review of motor vehicle records, tax returns, and neighborhood checks. *(Resp.Exhs.2, 8, 9 & 10; Testimony of Marchetti)*

18. On or about July 7, 2021, the BFD received a Driver History Report from the Registry of Motor Vehicles which contained an “Address History” that showed a current residence at Sherman Street, Brockton (since January 6, 2020) and a mailing address in Franklin (beginning on June 7, 2020). Prior address history included a Sherman Street, Brockton residence from May 2015 to June 2018 and a Court Street, Brockton residence from June 2018 to January 2020. (*Resp.Exh.9*)

19. Over a two-week period in August 2021, Dep. Chief Marchetti conducted 14 neighborhood interviews. He spoke with Mr. Benitez’s mother and sister and three other persons living on Sherman Street in Brockton who knew Mr. Benitez, two neighbors in Franklin who know him, and six others who knew him mostly through his barbershop in Boston. Dep. Chief Marchetti received positive feedback about Mr. Benitez as “friendly”, a “good kid”, and “like a brother”. (*Resp.Exh.9; Testimony of Dep. Chief Marchetti*)

20. Of the five neighbors on Sherman Street in Brockton, only Mr. Benitez’s sister (who said she stayed at Sherman Street “off and on with her boyfriend”) reported that Mr. Benitez lived at Sherman Street “to her understanding.” Mr. Benitez’s mother said that Mr. Benitez “[g]oes back and forth between Brockton and Franklin. Main home is with her [in Brockton].” (*Resp.Exh.8; Testimony of Dep. Chief Marchetti*)

21. One of the other Sherman Street neighbors in Brockton reported that she “knows of Damian through [his mother] Maria, who is a close friend, and ‘states Damian lived with his mother then moved into the condo and then moved into the house [in Franklin] with his wife’ and ‘does not currently live at [# redacted] Sherman Street [in Brockton].’” (*Resp.Exh.8; Testimony of Dep Chief Marchetti*)

22. Another Sherman Street neighbor in Brockton reported that Mr. Benitez’s mother and her son lived at Sherman Street and “Damian and his wife bought a condo and then bought a house.

They moved out about 2 years ago with their kid . . . She hasn't met the baby yet" but "used to see Damian around before they bought the condo." (*Resp.Exh.8; Testimony of Dep. Chief Marchetti*)³

23. One of the Franklin neighbors reported that Mr. Benitez and his wife "moved in at the same time [around June 2019] and he has lived there the whole time. Not transient. They get together, kids would play. They were becoming close before the pandemic hit. Damian and [the interviewee] take turns helping [another neighbor] across the street." (*Resp.Exh.8; Testimony of Dep. Chief Marchetti*)

24. The other Franklin neighbor reported that Mr. Benitez "moved [to Franklin] about two years ago" and they have "been there the whole time. . . . Not transient. Doesn't come and go . . . He's always taking the baby for walks." The neighbor added: "Hopes he gets the job and is successful. Knows he had a problem with tattoo last time. . . . He is very helpful . . . They snow blow the driveway together." (*Resp.Exh.8; Testimony of Dep. Chief Marchetti*)

25. In addition to speaking with neighbors, Dep. Chief Marchetti drove by the Sherman Street [Brockton] and Franklin properties on approximately five occasions during different times of the day. He never saw Mr. Benitez's Jeep at the Sherman Street property in Brockton but did see it parked at the Franklin property during each such impromptu visit. (*Testimony of Dep. Chief Marchetti*)

26. In his pre-hearing memorandum, Mr. Benitez stated: "I did not list on the application that I alternate addresses because it doesn't give you the option to do so." He wrote that he "knew the

³ The final Sherman Street neighbor interviewed by Dep. Chief Marchetti was highly critical of Mr. Benitez's character, the only person to offer such a negative opinion. Although that neighbor reported that Mr. Benitez "never" lived at Sherman Street, I do not credit that person's report because it is fully discredited by credible evidence of his overall good character and proof that, as some point, he did live with his mother on Sherman Street. -(*Resp.Exh.8*)

Franklin address was going to be brought up [during his in-person interview], like it was in October 2019.” (*Resp.Exh.8*)

27. On August 25, 2021, Mr. Benitez was interviewed by a panel of six BFD members, including the BFD Fire Chief Nardelli, Dep. Chiefs Marchetti and DePesquale, one Fire Captain, one Fire Lieutenant and one Firefighter. The interviews were not recorded but each panel member received a copy of an interview form containing the set of fourteen predetermined questions asked of all candidates and recorded the responses on spaces provided after each question. The interview form also provided space for an overall rating as well as additional comments. (*Resp. Exh.3: Testimony of Dep. Chief Marchetti*)

28. The final predetermined question asked of all candidates was: “Is there anything else that you would like to tell us or may have forgotten to tell us on your application?” After, Mr. Benitez answered this question: “No sir”, Dep. Chief Marchetti then raised the issue of his claim to Brockton residency, noting that it was hard to believe that he was residing in Brockton with his mother while his wife and children lived in Franklin. In response, Mr. Benitez stated that the Franklin house is his “wife’s investment property” and he alternated between both residences but “if I were to get the job, I would move my family back.” He stated that he had no recollection of having changed his mailing address with the Registry of Motor Vehicles to Franklin. (*Resp.Exhs 6 &.8; Testimony of Appellant & Dep. Chief Marchetti*)

29. After completing the interview with Mr. Benitez, the panel reached a consensus that Mr. Benitez did not reside in Brockton during the period of time he claimed in his application and recommended that he be bypassed. (*Resp.Exh.8; Testimony of Dep. Chief Marchetti*)

30. By letter dated September 1, 2021, Brockton Mayor Robert F. Sullivan informed Mr. Benitez that he had been bypassed as unsuitable for a public safety position in the BFD. The

reasons stated for the bypass decision were that he “did not meet the requirements to claim residency preference in the City of Brockton which would have required you to establish residency in the city the entire year prior to the exam date (3/21/2019) – 3/21/2020).” In support of the bypass decision, the letter noted, among other things, that Mr. Benitez’s application claimed that he had resided in Brockton continuously since October 2017 and had omitted any mention of the home in Franklin, although multiple neighbors and other facts confirmed that, in or after June 2019, he had lived primarily in Franklin. (*Resp.Exh.4*)

31. This appeal duly ensued. (*Resp.Exh.5*)

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).

Original appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear 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. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for 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, 243 (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").

The governing statute, G.L. c. 31, 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 that the Commission find that the appointing authority acted "arbitrarily and capriciously." City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). 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." Id. (*emphasis added*). See

also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., Falmouth v. Civil Service Comm’n., 61 Mass. App. Ct. 796, 801 (2004), citing City of Cambridge v. Civil Service Comm’n., 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997); Police Comm’r v. Civil Service Comm’n., 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

An Appointing Authority is well within its rights to bypass an individual for fudging the truth as part of an application for a civil service position. It is reasonable to infer that a person who does so in order to get a job will be inclined to lie on the job. See O’Brien v. Somerville, 25 MCSR 292 (2012). See also Minoie v. Town of Braintree, 27 MCSR 216 (2014); Polin v. Randolph, 23 MCSR 229 (2011).

However, providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” Kerr v. Boston Police Dep’t, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016). Moreover, a bypass letter is available for public inspection upon request, so the consequences to an applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L. c. 31, § 27, ¶ 2. Thus, the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness require that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest

mistakes or good faith mutual misunderstandings. See, e.g., Boyd v. City of New Bedford, 29 MCSR 471 (2016); Morley v. Boston Police Dep't, 29 MCSR 456 (2016); Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history).

ANALYSIS

Brockton established reasonable justification to bypass Mr. Benitez for appointment as a BFD firefighter based on his lack of candor in providing information about his residency in Brockton. Ironically, Mr. Benitez's name was already at the top of the certification as a result of the prior Commission decision, thus making it irrelevant whether he qualified for a residency preference in Brockton. It appears, however, that neither Mr. Benitez nor the City fully understood that when reviewing his current application, with the City seeking to determine whether he qualified for residency preference and Mr. Benitez seeking to prove that he did qualify for the preference. While the issue of residency preference was ultimately irrelevant, Mr. Benitez was still required to provide forthright information regarding his actual residence. He failed to do so.

To be sure, the paper record of Mr. Benitez's history of residential and mailing addresses contains many indicia that, standing alone, might actually support a claim to residency in Brockton for much of the time he claimed on his application – from 2015 through 2021.⁴ However, the weight given to those paper records is outweighed by the direct credible evidence obtained by the BFD from surveillance and neighborhood interviews that confirm Mr. Benitez was currently living

⁴ Not all of the documentary evidence necessarily is consistent with a claim to Brockton residency through June 2021 when Mr. Benitez submitted his application. For, example, Mr. Benitez submitted a change of address to the Registry of Motor Vehicles from Brockton to Franklin in June 2020, something he claimed he “did not recall.” His 2019 and 2020 joint income taxes used a Court Street, Brockton address, while simultaneously claim they were renting out the Court Street property year-round and it was not used for personal use. The tax returns reflect no rental income (or loss) from an “investment property” in Franklin., which is consistent with his wife's assertion that she considered Franklin here “primary residence” since moving there.

in Franklin with his wife and children and had been treating Franklin as his base residence for approximately two years, beginning some time at the end of 2019. Mr. Benitez made no mention of the Franklin property in his application. He purportedly attempted to justify the omission because the application did not give him the option to do so, and yet he left blank one of the available rows for listing his residences, the application clearly indicated that he was required to list “chronologically all residences” in the past five years, and the application further expressly provided for additional sheets to list residences if he had more than four in the past five years. He claimed that he knew the Franklin property was a concern and yet he remained silent until Dep. Chief Marchetti inquired about the issue at the end of his panel interview. He also attempted to diminish the significance of the Franklin property as simply “investment property” owned by his wife, while also claiming that he rented out his Brockton condo after he and his wife moved out so that he could help pay for the mortgage on the Franklin home, a problematic strategy for an alleged income-producing property.

Had Mr. Benitez fully disclosed from the beginning what he claimed were his “alternating” living arrangements, given the many positive qualities and passion that he brings to his effort to become a firefighter, I might have been convinced that he was forthright. However, the preponderance of the evidence persuades me that his omissions were not inadvertent errors or misunderstandings but, rather, an attempt to withhold information when he believed it mattered because he thought it could undermine his residency claim and, therefore, derail his chances for appointment. See O’Brien v. Somerville, 25 MCSR 294 (2102) (appellant bypassed for providing false information that he thought was required to establish residency although he could have established residency legitimately based on his military service).

Finally, I have found no indication that Brockton harbored any animus or bias against Mr. Benitez that influenced his consideration for appointment or the bypass decision. In fact, Mr. Benitez was considered in 2021 based on a settlement between himself and Brockton after his prior bypass so that he would be placed in first position on the next certification. I found Dep. Chief Marchetti to be a credible witness with a solid command of the facts involved in the application process that he supervised and, in particular, his background investigation of Mr. Benitez.

In sum, Mr. Benitez's lack of candor concerning his residency claim demonstrates that Brockton was reasonably justified to bypass him for appointment.

CONCLUSION

For all of the above stated reasons, the appeal of Damian A. Benitez, under Docket No. G1-21-177 is *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Stein & Tivnan, Commissioners) on December 1, 2022.

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 to:

Damian A. Benitez (Appellant)

Karen A. Fisher, Esq. (for Respondent)