

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**JOHN BLAIS,**  
*Appellant*

v.

**CITY OF METHUEN,**  
*Respondent*

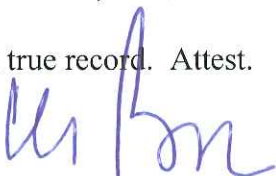
**Case No.: G1-12-10**

**DECISION**

The Civil Service Commission (Commission) voted at an executive session on January 10, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated November 8, 2012. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on January 10, 2013.

A true record. Attest.



\_\_\_\_\_  
Christopher C. Bowman  
Chairman

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 to:

Scott F. Gleason, Esq. (for Appellant)  
Anne L. Randazzo, Esq. (for Respondent)  
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-626-7200  
FAX: 617-626-7220  
WEBSITE: [www.mass.gov/dala](http://www.mass.gov/dala)

November 8, 2012

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

***Re: John Blais v. City of Methuen***  
***CSC Docket No. G1-12-10***  
***DALA Docket No. CS-12-305***

RECEIVED  
2012 NOV -8 P 2:00  
COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

  
Richard C. Heidlage  
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Scott F. Gleason, Esq.  
Anne L. Randazzo, Esq.

**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

**Division of Administrative Law Appeals**

**John Blais,**  
Appellant

v.

Docket No. G1-12-10  
DALA No. CS-12-305

**City of Methuen,**  
Respondent

**Appearance for Petitioner:**

Scott F. Gleason, Esq.  
Gleason Law Offices  
163 Merrimack Street  
Haverhill, MA 01830

**Appearance for Respondent:**

Anne L. Randazzo, Esq.  
City of Methuen City Solicitor's Office  
41 Pleasant Street, Suite 311  
Methuen, MA 01844

**Administrative Magistrate:**

**Maria A. Imparato, Esq.**

**SUMMARY OF RECOMMENDED DECISION**

The Appointing Authority has met its burden of demonstrating reasonable justification for the bypass of the Appellant for original appointment as a Methuen firefighter based on an OUI conviction in 2009. The Appellant has not demonstrated that the reason for his bypass is untrue, applies equally to the selected candidate and the bypassed candidate, is incapable of substantiation or is a pretext for other, impermissible reasons.

**RECOMMENDED DECISION**

John Blais filed a timely appeal under M.G.L. c. 31, s. 2(b) of the decision of the City of Methuen (City) to bypass him for original appointment to the position of firefighter.

I held a hearing on June 18, 2012 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA.<sup>1</sup>

I admitted documents into evidence. (Exs. 1 – 5.) The Appellant appended to his rebuttal brief a cover letter of February 24, 2012 from the Commonwealth Human Resources Division (HRD) to the Civil Service Commission enclosing documents related to this appeal. The documents were not submitted at hearing and are therefore marked “A” for identification.

Methuen Fire Chief Steven Buote and Methuen Police Department Sergeant Stephen C. Smith testified on behalf of the City. John Blais testified on his own behalf, as did Edward P. Burke, a firefighter for the City of Lawrence and the uncle of Mr. Blais. The hearing was digitally recorded. The record closed on August 27, 2012 with the filing of post-hearing briefs, and rebuttal briefs by both parties.

### FINDINGS OF FACT

1. In August 2011, John Blais was on the list of reserve firefighters in the City of Methuen. In August 2011, the City informed Methuen Fire Chief Steven Buote that the City wanted to hire six permanent firefighters. The City Human Resources Department sent out notification to nine or ten people on the list to come in and sign the list if they were interested. Mr. Blais signed the list indicating that he would accept the position if hired. (Testimony, Buote.)
2. As a result of indicating his interest in the position, Mr. Blais was given an application to fill out. (Testimony, Buote; Ex. 1.)

---

<sup>1</sup> On June 30, 2012, the Division of Administrative Law Appeals moved to One Congress Street, 11<sup>th</sup> floor, Boston, MA 02114.

3. Chief Buote spoke with Mr. Blais when Mr. Blais filed his completed application on or about September 12, 2011. Chief Buote reviewed the application and cover letter and made sure that all required documents were included. (Testimony, Buote.)
4. As part of the application process, Mr. Blais signed a Criminal Offender Record Information (CORI) release. The Methuen Police Chief then assigned Sergeant Stephen C. Smith to perform a background check on Mr. Blais for the Fire Department. Chief Buote asked the Police Department to look at the driving record of each applicant for the previous seven years. (Testimony, Buote, Smith.)
5. Sgt. Smith's background check revealed that Mr. Blais was convicted of driving under the influence in Florida on August 5, 2009. His driver's license was suspended until August 2010. Mr. Blais reported this incident on his application. (Exs. 1, 4.)
6. Sgt. Smith's background check included interviews with the neighbors of Mr. Blais. Three neighbors reported loud parties at his house. (Ex. 5.)
7. Edward P. Burke, a Lawrence firefighter and Mr. Blais's uncle, lived with Mr. Blais in Andover from the fall of 2009 to the fall of 2011. Mr. Burke was drinking heavily at that time and would come home late at night bringing the party with him, which generated noise complaints. Mr. Blais was not involved in the loud parties. (Testimony, Burke.)
8. Sgt. Smith did not check with any of Mr. Blais's references. Another detective spoke with Mr. Blais's current employer (who identified himself as Mr. Blais's best friend), who gave Mr. Blais a good reference. (Testimony, Smith; Exs. 2, 5.)
9. Chief Buote decided to bypass Mr. Blais for appointment based on his drunk driving conviction in 2009, and the negative comments made by Mr. Blais's neighbors. The drunk driving conviction was the Chief's primary reason for bypass. (Testimony, Buote.)

10. Chief Buote first met Mr. Blais in or about June 2011 at a retirement party at the Lawrence Fire Department. After that event, Chief Buote received recommendations to hire Mr. Blais from several people, including Firefighter Burke. When Chief Buote reviewed Mr. Blais's application, he recalled who Mr. Blais was because of those recommendations. (Testimony, Buote.)
11. By letter of November 7, 2011, Chief Buote notified Mr. Blais that he would not be offered employment at that time "due to information supplied to me following a complete background investigation," but that his name would remain on the reserve list for future consideration. (Ex. 3.)
12. Chief Buote has been Chief for three years. No Methuen firefighter has been charged with or convicted of an OUI during that time. (Testimony, Buote.)
13. Chief Buote and Sgt. Smith treated all candidates for appointment in the same manner. (Testimony, Buote; Smith.)
14. By letter of February 24, 2012 to the Civil Service Commission, HRD indicated, "As you are aware, since September 2009, HRD has delegated the civil service appointment approval process to the City of Methuen." ("A.")

### CONCLUSION AND RECOMMENDATION

The Civil Service Commission, under M.G.L. c. 31, s. 2(b), is required "to find whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303 (1997). Justified 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." *Id.*, at 304. If

the Commission finds by a preponderance of the evidence that there was just cause for an action against the Appellant, the Commission shall affirm the action of the Appointing Authority.

*Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004). 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, 334 (1983).

If a city is unwilling to bear the risk of hiring a specific candidate, “[a]bsent proof that the city acted unreasonably ... the commission is bound to defer to the city’s exercise of its judgment.” *City of Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 190-191 (2010).

In order to prevail in a bypass case, the Appellant must demonstrate that the reasons offered by the Appointing Authority were untrue, apply equally to the selected candidate and the bypassed candidate, are incapable of substantiation, or are a pretext for other, impermissible reasons. *Borelli v. MBTA*, G-1160, 1 MCSR 6.

I conclude that the City had reasonable justification for bypassing John Blais for original appointment as a firefighter based on an OUI conviction in 2009, apparently after Mr. Blais appeared on the reserve list. In view of the fact that firefighters drive the fire apparatus, and in view of the fact that Mr. Blais chose to drink and drive knowing his name was on the reserve list, it was not unreasonable to bypass him for appointment. The City is apparently unwilling to bear the risk of hiring this candidate, and there is no proof that the City acted unreasonably. I conclude that the Commission is therefore bound to defer to the City’s exercise of its judgment.

The Appellant argues that the City failed to perform a complete background check by failing to contact all of the Appellant's references. I conclude that this argument is without merit because all applicants were treated in the same manner. In any event, it is not clear that good references from friends and relatives could overcome the 2009 OUI conviction.

The Appellant argues that the City failed to submit written reasons for the bypass to the HRD Administrator as required by M.G.L. c. 31, s. 27. The Respondent asserts that as a delegated community, the City is not required to do so, citing an HRD Directive of August 7, 2009. A copy of the HRD Directive was not submitted by the City, and I was unable to find the directive on the HRD website. However, "A" for identification indicates that as of September 2009, HRD has delegated the civil service appointment approval process to the City. I conclude that the Appellant's argument is without merit.

The Appellant argues that he was held to a higher standard than other applicants, but has failed to offer facts in support of the allegation. The Appellant argues that the Petitioner was improperly bypassed in favor of Eric Manzi, a relative of the Mayor of Methuen who was involved in a hiring scandal in 2009. There were no facts elicited at hearing to explain or support the allegation of improperly bypassing the Appellant in favor of Mr. Manzi.

The Appellant has not demonstrated that the reasons offered by the City for bypassing the Appellant were untrue, apply equally to the selected candidate and the bypassed candidate, are incapable of substantiation, or are a pretext for other, impermissible reasons.

The City of Methuen has shown, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant for original appointment to the position of firefighter. The Commission lacks the authority "to substitute its judgment about a valid



exercise of discretion based on merit and policy considerations by an appointing authority[.]”

*Burlington v. McCarthy*, 60 Mass. App. Ct. 914 (2004).

I recommend that the Appellant’s appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imparato

Maria A. Imparato  
Administrative Magistrate

DATED: NOV 8 - 2012