

COMMONWEALTH OF MASSACHUSETTS**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

RANDOLPH S. BLAKE,

Appellant

v.

SPRINGFIELD FIRE DEPARTMENT,

Respondent

Docket Number:

G2-23-063

Appearance for Appellant:

Randolph S. Blake, *Pro Se*

Appearance for Respondent:

Maurice M. Cahillane, Esq.
Egan, Flanagan & Cohen, LLP
67 Market Street
P.O. Box 9035
Springfield, MA 01103

Commissioner:

Angela C. McConney

SUMMARY OF DECISION

The Civil Service Commission upheld the Springfield Fire Department's decision to bypass the Appellant for Fire Captain based on his disciplinary history.

DECISION

On May 14, 2023, the Appellant, Lieutenant Randolph S. Blake (Lt. Blake or Appellant), filed a timely appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 31, § 2(b).¹ The appeal challenged the April 28, 2023 decision of the Springfield Fire Department

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. §§ 1.01, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

(SPD or Department) to bypass him for the position of Fire Captain. As reasons therefor, the City stated that Lt. Blake's ability to use good judgment and enforce the policies of the Springfield Fire Department had been undermined by his disciplinary history.

The Commission held a remote pre-hearing conference on June 13, 2023, and I held an evidentiary hearing on September 22, 2023 at the State Office Building located at 436 Dwight Street, Springfield, Massachusetts.

On September 12, 2023, Lt. Blake submitted proposed exhibits, a proposed exhibit list and a participant list. On his participant list, Lt. Blake noted that he was requesting authorization from the Commission to issue subpoenas to Ms. Talia Gee (a former Assistant City Solicitor) and Lt. Kelly Jones of the Springfield Fire Department. 801 C.M.R. § 1.01 (10)(g). Neither person was involved in the instant promotional bypass matter, but they were involved in some of Lt. Blake's previous disciplines (including a 2018 disciplinary matter upheld by an arbitrator in the City's favor). I denied Lt. Blake's request for subpoenas of Lt. Jones and former Assistant City Solicitor Gee as the only purpose of their testimony would be to re-litigate the disciplinary appeal that was being heard separately by the Commission.

At the September 22, 2023 evidentiary hearing, the City called its first witness, Commissioner Bernard Calvi. After the City concluded its direct testimony, Lt. Blake began his cross-examination.

During cross-examination, Lt. Blake asked Commissioner Calvi to effectively render a legal opinion related to the applicability of *Otero v. Lowell*, No. 2016-3429L (Suff. Sup. Ct, Mar. 18, 2019). After Commissioner Calvi stated that he had not read the *Otero* decision, I asked the Appellant to move on to the next question to no avail. The Appellant refused to accept my ruling,

insisting that Commissioner Calvi answer the question to the Appellant's satisfaction.² I again asked him to move on to the next question, to no avail. Consistent with my duties as a hearing officer under 801 C.M.R. § 1.01 (10)(d)2.1, I called a ten-minute recess, reconvened and again asked the Appellant to move on to the next question. Lt. Blake refused to move on to another question, effectively opting not to proceed with the hearing. I adjourned the hearing.

The hearing was recorded digitally, and copies provided to the parties.³ On September 27, 2023, I issued a Procedural Order, giving the parties the opportunity to submit post-hearing briefs. On October 30, 2023, the parties filed proposed decisions, whereupon the administrative record closed.

² At the June 13, 2023 Prehearing Conference Lt. Blake, citing *Otero*, argued that the Department was prohibited from using prior discipline as a reason for bypass, because they had failed to cite this as a reason for the bypass for the *Temporary Fire Captain* position months earlier (Docket No. G2-23-021). Commission Chair Bowman explained why the facts in *Otero* did not apply in this matter. Specifically, Chair Bowman explained that here, there were two separate bypass decisions related to two separate positions, one for temporary Fire Captain and then, months later, a separate vacancy for permanent Fire Captain. Chair Bowman went on to explain that here, unlike the facts in *Otero*, the Department had indeed provided the Appellant with timely notification of the bypass reasons for the permanent position, for which the Appellant then filed an appeal before the Commission. Put another way, the Appellant was given timely notice of the reason for bypass (i.e. – prior discipline) and then filed a timely appeal with the Commission, contesting whether his prior discipline was a valid reason for bypass for the permanent position. In short, the SFD had met the notification requirements contained in the PARs referenced by the Appellant and, as such, the Department was not prohibited from defending those reasons before the Commission.

³ Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

FINDINGS OF FACT

I admitted into evidence eleven exhibits from the City (R. Exhibits 1 – 11), and sixteen exhibits from the Appellant (A. Exhibits 1 – 16). I admitted the Springfield Fire Department's July 2021 written warning to Lt. Blake as R. Exhibit 12. I admitted Lt. Blake's appeal form as A. Exhibit 17.

Based on the documents submitted and the testimony of the following witnesses:

Called by the Appellant:

- Lt. Randolph S. Blake, Appellant⁴

Called by the Respondent:

- Chief Bernard Calvi, Springfield Fire Department

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

1. The Appellant, Lt. Randolph S. Blake (Lt. Blake), has been employed in the Springfield Fire Department (Department or SFD) since 1989,⁵ and has served as a Lieutenant since 2010. *Blake v. Springfield Fire Dep't*, 37 MCSR -- (June 13, 2024).

Prior Discipline

2. Lt. Blake has a previous history of discipline. He was elected as the Professional Fire Fighters of Massachusetts (PFFM) Local 648 union president in December 2013. In December 2014, pursuant to the collective bargaining agreement that allows for wages to be paid while attending monthly PFFM meetings, Lt. Blake was granted paid leave to attend a union

⁴ As discussed above, the Appellant did not testify at the hearing.

⁵ The Appellant was "laid off" at one point for an undisclosed amount of time and rejoined the SFD in April of 1997. *Blake v. Springfield Fire Dep't*, 37 MCSR -- (June 13, 2024).

meeting, When the Department later learned that the meeting did not take place, it suspended Lt. Blake for one day on February 19, 2015. *Blake v. Springfield Fire Dep't*, 28 MCSR 313 (2015). (R. Exhibit 4)

3. The Commission upheld the City's decision upon appeal. *Blake v. Springfield Fire Dep't*, 28 MCSR 313 (2015). (Administrative notice)

4. On January 29, 2018, the Department suspended Lt. Blake for two days for harassment, conduct unbecoming a firefighter and witness intimidation of a fellow lieutenant, Lt. Kelly Jones. (R. Exhibit 3)

5. Lt. Jones, employed by the Department for 29 years (20 years as a firefighter and 9 years as a lieutenant), was scheduled to testify in a Section 41 hearing against former District Chief Marc Savage. Lt. Blake sought to discourage Lt. Jones from appearing at the hearing. He sent Lt. Jones numerous text messages. While off-duty, Lt. Blake visited Lt. Jones at work and harassed him for over two hours, in a further attempt to discourage him from testifying. (R. Exhibit 3)

6. Lt. Blake did not appeal this second discipline to the Commission. (Administrative notice)

7. Lt. Blake also received a written warning in July 2021 for violation of Department Policy and Procedures 102.06; Rules of Conduct Articles 16 §§21C, 21E, 24B⁶ after sending

⁶ Policy and Procedures 102.06. Purpose: This policy is intended to ensure that all employees of the Springfield Fire Department will enjoy a safe work environment free from unreasonable interference, intimidation, hostility, hazing or offensive behavior on the part of officers, supervisors, coworkers or visitors.

Rules of Conduct Articles 16 §21C. Be courteous and respectful at all times.

Rules of Conduct Articles 16 §21E. Be polite and civil to each other.

Rules of Conduct Articles 16 §24B. All members shall be held accountable for conduct unbecoming a firefighter whether on or off duty.

Commissioner Bernard Calvi a memo with the subject line *Unfit Environment/Improper Investigations*. The commissioner found that the memo was “disrespect, patently false and offensive”, and advised Lt. Blake that every member of the Department was expected “to operate in a highly self-disciplined manner and is responsible to regulate their own conduct in a positive, productive and mature way.” Commissioner Calvi further advised Lt. Blake that continuing to exhibit disrespectful and offensive behavior would lead to additional disciplinary action, up to and including termination. (R. Exhibit 12)

8. On August 1, 2022, Commissioner Calvi suspended Lt. Blake for four days for violating Article 16 §22I, Article 16 §24B, Article 16 §28B, Article 16 §28C, and Article 17 §2 of the Department Rules and Regulations. After Lt. Jones reported an illegal burning of a cut down tree in his neighbor’s yard, Lt. Blake was dispatched to the location. After extinguishing the “tame” fire, Lt. Blake conducted his own investigation of Lt. Jones’ 911 call. Due to his lack of seniority, Lt. Blake could not conduct a thorough investigation and was unable to access the 911 recording. Nonetheless, Lt. Blake preferred charges against Lt. Jones, the object of Lt. Blake’s 2018 instances of harassment and witness intimidation. Lt. Blake did not attend the Section 41 hearing, but the hearing officer recommended that the City uphold the Department’s charges. (R. Exhibit 2)

9. After Lt. Blake appealed, the Commission upheld the City’s decision. *Blake v. Springfield Fire Dep’t*, 37 MCSR -- (June 13, 2024).
Temporary Fire Captain Bypass (2022)

10. Lt. Blake took the examination for the position of Fire Captain on November 21, 2020. The state’s Human Resources Division (HRD) established the eligible list for Fire Captain on March 1, 2021, with Lt. Blake ranked 6th. (Administrative notice)

11. On December 21, 2022, Lt. Blake was bypassed for promotional appointment to the position of Temporary Fire Captain. As reason for bypass, the City cited that the Appellant's "leg was in a cast and [he] did not suggest any reasonable accommodations that would allow [him] to perform the essential functions of this temporary position." The Appellant appealed, and the Commission docketed the promotional bypass as Docket No. G2-23-021. (Administrative notice)

12. At the April 11, 2023 prehearing conference, Lt. Blake did not contest that he was unable to perform the job duties of the position of Fire Captain. On April 12, 2023, he withdrew his appeal. (Administrative notice)

Promotional Bypass for Fire Captain (2023)

13. As noted above, Lt. Blake took the 2020 Fire Captain promotional examination and received a score of 81. On March 1, 2021, the state's Human Resources Division (HRD) established an eligible list for SFD Fire Captain. (Stipulations)

14. On February 8, 2023, the Department created Certification No. SPRO-23-0004 from which it subsequently promoted two candidates willing to accept appointment to the position of permanent Fire Captain. (Stipulations)

15. On the certification, Lt. Roland J. Hicks was ranked first, Lt. Blake was ranked second and Lt. Kevin Rankins was ranked third among those willing to accept promotional appointment. (Stipulations)

16. The Department interview panel was comprised of six fire service professionals - including one individual from outside the department, two Human Resources professionals and the City's Diversity Officer. The panel considered the position of Captain to be a position of upper middle management. (Testimony of Calvi)

17. The interview panel conducted the interviews on April 21, 2023. (Stipulations)
18. In addition to Lt. Blake, the interview panel interviewed Lt. Hicks, Lt. Rankins, Lt. Rimmondi and Lt. Sperlonga. (R. Exhibits 8 and 9)
19. The candidates answered the same five questions, and the interview panelists rated them on the same interview score sheets. (R. Exhibits 5-9)
20. Based solely on the panel interviewers' recorded raw scores, Lt. Blake scored 132, Lt. Rankins scored 120 and Lt. Hicks scored 114. (Stipulations)
21. The Department promoted Lt. Hicks, who was ranked first on the certification, and bypassed Lt. Blake, who was ranked second on the certification, when it promoted third-ranked Lt. Rankins. (Stipulations)
22. According to the interviewers' notes, Lt. Rankins had a managerial background, a Masters degree in Fine Arts, and taught classes. All of the interviewers noted that his education/progress would help the Department and the public, and some mentioned his ability to deescalate situations or the perception that he was calm and a good listener and had "muscle memory" for situations. Lt. Rankins also had no discipline in his personnel file. (R. Exhibit 7; Testimony of Calvi.)
23. In an April 28, 2023 notification enclosing his appeal rights, Commissioner Calvi informed Lt. Blake of the promotional bypass, stating that his "... ability to use good judgement and enforce SFD policies is undermined by your being disciplined on so many occasions." Commissioner Calvi cited the one-day suspension in 2015 "for falsification of payroll records" (upheld by the Commission in *Blake v. Springfield Fire Dep't*, 28 MCSR 313 (2015)); the two-day suspension in 2018 for harassment and witness intimidation (upheld by an arbitrator); the 2021 written warning issued for unprofessional conduct; and the 2022 four-day suspension for

retaliation, then before this Commission on appeal. (*Blake v. Springfield Fire Dep't*, 37 MCSR -- (June 13, 2024). (R. Exhibit 1)

24. Commissioner Calvi further wrote that Lt. Blake's disciplinary history "causes significant concerns regarding a pattern of well-documented disciplinary actions taken against you in your role as a Fire Lieutenant and disqualifies you for promotion to Fire Captain." (R. Exhibit 1)

25. Lt. Blake appealed on May 14, 2023. In addition to citing *Otero v. Lowell*, he argued that the City could not use the 2022 discipline as a bypass reason because the matter was currently before the Commission on appeal. The Commission upheld the City's discipline on May 30, 2024. *Blake v. Springfield Fire Dep't*, 37 MCSR -- (June 13, 2024). (A. Exhibit 17)

26. Because the Appellant did not sit for the most recent promotional examination for Fire Captain, his name will not appear on any newly-established eligible list unless he is awarded relief in the instant appeal. (Administrative notice)

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", assuring fair treatment of all . . . employees in all aspects of personnel administration," 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).

Promotional 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, “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). The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” *Watertown v. Arria*, 16 Mass. App. Ct. 331, 332 (1983). “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” and upon “failure of proof by the [appointing authority], the commission has the power to reverse the [bypass] decision.”)

The governing statute, G.L. c. 31, § 2(b) 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.* *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). Even if the appointing authority did not meet the burden of proof for bypass on every reason given, its discretion must be upheld if any reason is sufficient, standing alone, to justify the bypass. There is no requirement that the appointing authority prove every reason. *Porter v. Town of Reading*, 21 MCSR 43, 44-45 (2008); *Driscoll v. Boston Police Dep’t*, 30 MSCR 477, 482 (2007).

ANALYSIS

Notwithstanding the fact that Lt. Blake was ranked first by panelists who interviewed each of the candidates, the Department has established by a preponderance of the evidence that it had reasonable justification to bypass Lt. Blake for promotional appointment to the position of Fire Captain due to his extensive disciplinary history.

Prior discipline has frequently been cited as reasonable justification for bypass. *Carton v. Town of Watertown*, 25 MSCR 403 (2012) (multiple prior warnings to appellant); *Kennedy v. City of Pittsfield*, 22 MCSR 729 (2009) (prior suspension and warnings); *Bedinelli v. Springfield Police Department*, 33 MCSR 234 (2020) (prior suspensions and reprimands).

Lt. Blake's disciplinary history does not suggest leadership skills. The Department issued Lt. Blake a one-day suspension in 2015 "for falsification of payroll records" (upheld by the Commission in *Blake v. Springfield Fire Dep't*, 28 MCSR 313 (2015)); a two-day suspension in 2018 for harassment and witness intimidation (upheld by an arbitrator); a written warning in 2021 for unprofessional conduct; and a 2022 four-day suspension for retaliation against the party in the 2018 discipline. The 2022 four-day suspension before the Commission at the time of the promotional bypass was decided in the Department's favor. *Blake v. Springfield Fire Dep't*, 37 MCSR -- (June 13, 2024).

Lt. Blake's disciplinary history – excluding the 2022 discipline – shows an individual capable of falsehood and being paid for work not performed, harassment of a peer and witness intimidation, and unprofessional conduct. This conduct is risky in a paramilitary organization such as the Department, where the ability to follow orders may determine life or death of a firefighter. The pattern of behavior also shows a lack of good judgement and leadership skills. It is unlikely that Lt. Blake can serve in an upper middle management position and enforce Department policies when he himself fails to follow them.

In contrast, Lt. Rankins had no disciplinary history.

Otero v. Lowell does not control in this matter

In *Otero*, the appointing authority provided the employee with the reasons for bypass after he filed an appeal with the Commission, in violation of Personnel Administration Rule 8.4.⁷ The remedy for an appointing authority's failure to provide the written statement of reasons for a bypass is inadmissibility for any reasons not so disclosed, unless discovered later. *See Otero v. Lowell*, 32 MCSR 289 (2019).

Lt. Blake argues that the Commission should allow his appeal because the City is prohibited from proffering reasons for the 2023 promotion bypass for the Fire Captain position that it failed to include as part of the reasons for the 2022 bypass of the Temporary Fire Captain position in 2022. Lt. Blake further argues that the City may not use the 2023 discipline as a bypass reason because the matter was before the Commission on appeal. If we follow the line of Lt. Blake's argument, it would result in the City having no bypass reasons for the 2023 promotional bypass of the Appellant, rendering him eligible for placement first on the next certification list for promotion to the position of Fire Captain.

It is true that the Department cited one reason for the 2022 bypass, Lt. Blake's injury and casted leg, after noting that he had not suggested any reasonable accommodations that would

⁷ **PAR.08 Civil Service Requisition and Certification**

(4) Upon determining that any candidate on a certification is to be bypassed, as defined in Personnel Administration Rule .02, an appointing authority shall, immediately upon making such determination, send to the Personnel Administrator, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reason or reasons for selecting another person or persons, lower in score or preference category. Such statement shall indicate all positive reasons for selection and/or negative reasons for bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. *No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission.* (Emphasis added)

allow him to perform the essential job duties of the position. Lt. Blake agreed that he could not perform the essential job duties of the position and so withdrew his appeal before the Commission.

For the 2023 promotional bypass, the Department cited the 2015, 2018 and 2021 disciplines, and it is indisputable that those disciplines were already in existence at the time of the 2022 promotional bypass.

However, Lt. Blake's reliance on *Otero* and PAR 8.4 is misplaced. The positions of Temporary Fire Captain and Fire Captain are two separate positions within the SFD. The Department timely provided Lt. Blake with the respective reasons for bypass within each notice of bypass, unlike the circumstance of the petitioner in *Otero*.

PAR 8.4 prohibits an appointing authority from relying on bypass reasons other than those cited in the notice of bypass for a particular position. It does not prevent an appointing authority from using other bypass reasons for a different bypass matter.

I find that Lt. Blake's promotional bypass was not based on political concerns, favoritism, or bias but for appropriate and legitimate reasons to maintain the decorum, respect, and integrity of the chain of command within the Springfield Fire Department.

CONCLUSION

The appeal filed under Docket No. G2-23-063 is hereby *denied*. The ability to use good judgement and enforce Department policies, in the significantly supervisory role of Fire Captain, is undermined by Lt. Blake having been disciplined on so many occasions.

I find that the Department has proven by a preponderance of the evidence that it had reasonable justification to bypass Randolph S. Blake for promotion to the position of Fire Captain.

Civil Service Commission

/s/ Angela C. McConney

Angela C. McConney

Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on June 27, 2024.

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 C.M.R. § 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Randolph S. Blake (Appellant)

Maurice M. Cahillane, Esq. (for Respondent)