

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

CIVIL SERVICE COMMISSION  
One Ashburton Place, Room 503  
Boston, MA 02108

DYLAN BOGART,  
Appellant

v.

G1-19-145

CITY OF LYNN,  
Respondent

Appearance for Appellant:

Mark S. Horrigan, Esq.  
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330 Lynnway, Suite 111  
Lynn, MA 01901

Appearance for Respondent:

John P. Slattery, Esq.  
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Commissioner:

Christopher C. Bowman

**DECISION**

On July 12, 2019, the Appellant, Dylan Bogart (Mr. Bogart), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Lynn (City) to bypass him for appointment to the position of permanent, full-time firefighter in the City's Fire Department. On September 10, 2019, I held a pre-hearing conference at the offices of the Commission in Boston. I held a full hearing at the same location on November 6, 2019.<sup>1</sup> The full hearing was digitally recorded and both parties received a CD

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

of the proceeding.<sup>2</sup> On December 11<sup>th</sup> and 13<sup>th</sup> 2019, the parties submitted post-hearing briefs in the form of proposed decisions.

**FINDINGS OF FACT:**

Twenty-six (Exhibits 1-5 & Exhibits A-U) were entered into evidence at the hearing; Six post-hearing exhibits (Exhibits PH1 – PH6) were entered after the full hearing at my request.

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

*Called by the City:*

- Lt. Michal Smith, Lynn Fire Department;
- Officer Michael McEachern, Lynn Police Department
- Fire Chief Stephen Archer, Lynn Fire Department;
- Drew Russo, Personnel Director, City of Lynn;

*Called by Mr. Bogart:*

- Dylan Bogart, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences from the evidence, I find the following:

1. The City of Lynn, located in Essex County, has a population of approximately 94,000.  
<https://www.census.gov/quickfacts/lynncitymassachusetts>
2. The City’s Mayor serves as the Appointing Authority for the Fire Department. (Exhibit 4)
3. At the time he was bypassed, Mr. Bogart was twenty-eight years old. He is married; resides in Lynn; and served as a United States Army Infantryman from 2013-2016 and was honorably discharged. He has been a driver for a local non-profit that serves children since 2017. (Testimony of Appellant and Exhibit E)

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<sup>2</sup> If there is 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 he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

4. On March 24, 2018, Mr. Bogart took the civil service examination for firefighter and received a score of 97 or 98. His name appeared on an eligible list for firefighter that was established by the state's Human Resources Division (HRD) on November 1, 2018.

(Stipulated Facts)

5. On December 13, 2018 and May 30, 2019, HRD issued Certification No. 05971 to the City from which the City appointed one candidate to the position of firefighter. The selected candidate was ranked below Mr. Bogart. (Stipulated Facts)

6. Among the reasons for bypass were the following positive reasons associated with the selected candidate.

- i. Good prior work performance;
- ii. Accomplishments or skills in past job performance;
- iii. Personal characteristics observed during interview, background investigation and references, including self-control, community relations, and the ability to get along with others;
- iv. Commitment (i.e. – volunteer activity);
- v. Education, training and special skills.

(Exhibit 4)

7. The City's Fire Chief elaborated on the above, writing that the selected candidate:

“Came across as honest and believable during the oral interview. He has a good employment record and is an EMT-Basic. He has a good credit history and driving record. He has a bachelor of science degree ... He answered all questions fully during interview He provided a complete and thorough employment application. and responded appropriately to the hypothetical questions. He demonstrated the appropriate level of maturity and reliability.” (emphasis added)

(Exhibit 5)

8. Mr. Bogart received all positive references (i.e. - from neighbors, employers etc.) (Exhibit H)

9. As referenced above, Mr. Bogart served as an infantryman in the United States Army and was honorably discharged. (Exhibit H)
10. Also, as referenced above, Mr. Bogart has been employed as a driver for a local non-profit serving the City's youth population.(Exhibit H)
11. Unlike the selected candidate, Mr. Bogart is not a certified EMT. (Exhibit H)
12. Unlike the selected candidate, Mr. Bogart has not obtained a college degree. He has not performed well in many college classes that he has completed. (Exhibit H)
13. Unlike the selected candidate, Mr. Bogart does not have a superior credit history. (Exhibit H)
14. Unlike the selected candidate, Mr. Bogart did not answer all questions on the employment application. (Exhibit H)
15. Unlike the selected candidate, Mr. Bogart did not provide clear and consistent answers to all of the questions on the employment application. (Exhibit H)
16. Unlike the selected candidate, Mr. Bogart did not perform well during an oral interview. Some of the answers he provided were vague and inconsistent. (Testimony of Lt. Smith)

### *Legal Standard*

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel

administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 1.

The role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge at 304. Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions (City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 824-826 (2006) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. Beverly.

The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown (Beverly citing Cambridge at 305, and cases cited). However, when the reasons for bypass relate to alleged misconduct, the appointing authority is entitled to such discretion “only if it demonstrates that the misconduct occurred by a preponderance of the evidence.” (emphasis in original) (Boston Police Dep’t v. Civ. Serv. Comm’n & Michael Gannon, 483 Mass. 461 (2019) citing Cambridge at 305.

### *Analysis*

I have carefully reviewed the entire record, including all of the exhibits and testimony. There are many positive aspects to Mr. Bogart's application, including his distinguished military service; his consistently positive references and his employment for a local non-profit.

Based on the witness testimony, it is clear that the City's primary concern here was Mr. Bogart's inconsistent answers regarding substantive questions posed in the application and during an interview. The documents, as well as the credible testimony of the City's witnesses, support this conclusion. Even Mr. Bogart, during his testimony before the Commission, candidly acknowledged that he has provided inconsistent responses on various applications for employment and interviews regarding multiple, substantive issues. Further, parts of Mr. Bogart's testimony left *me* confused regarding these issues.

At best, Mr. Bogart was unable to provide -- either verbally or in writing -- clear, detailed, and consistent answers to certain questions regarding issues that are germane to his background investigation. That contrasted sharply with the selected candidate, who provided clear, complete and accurate responses to the questions posed to him on the written application and verbal interview. While this justified the City's decision to bypass Mr. Bogart in favor of the selected candidate during this hiring cycle, it should not be viewed as a permanent disqualification against appointing Mr. Bogart in the future, should he be able to provide more accurate and supportable answers to the City's questions.

For all of the above reasons, the Appellant's appeal under Docket No. G2-19-145 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 12, 2020.

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. 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:  
Mark Horrigan, Esq. (for Appellant)  
John P. Slattery, Esq. (for Respondent)