

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 979-1900

RAMON A. CAMILO,
Appellant

v.

G1-21-103

CITY OF LAWRENCE,
Respondent

Appearance for Appellant:

Pro Se
Ramon A. Camilo

Appearance for Respondent:

Jennifer King, Esq.
Valerio Dominello & Hillman LLC
One University Avenue
Suite 300B
Westwood, MA 02090

Commissioner:

Christopher C. Bowman
Cynthia A. Ittleman

SUMMARY OF DECISION

The Civil Service Commission allowed the Appellant's bypass appeal and ordered that he receive one additional consideration for appointment as a permanent, full-time police officer based on the City's failure to conduct a thorough review of his candidacy. Specifically, the City failed to provide the Appellant with a copy of his CORI records and did not give the Appellant an opportunity to address the information contained in those records before deciding to bypass him for appointment. In fact, the City never conducted *any* interview with the Appellant, either as part of the background investigation or overall review process before bypassing him for appointment.

DECISION

On June 3, 2021, the Appellant, Ramon Camilo (Appellant), pursuant to G.L. c. 31, § 2(b), filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the City of Lawrence (City) to bypass him for appointment as a permanent full-time police officer with the City's Police Department (Department). On June 29, 2021, I conducted a remote pre-hearing conference. On September 13, 2021 and October 1, 2021, Commissioner Cynthia A. Ittleman conducted a remote full hearing.¹ The hearing was recorded via Webex, and both parties were provided with a link to the recording of the hearing. Commissioner Ittleman retired in March 2022 and the appeal was reassigned to me. I have carefully reviewed the hearing recording and the parties' exhibits and submissions. For the reasons stated herein, the appeal is allowed.

FINDINGS OF FACT:

Eight exhibits were offered into evidence at the hearing (Resp. Exhibits 1-7 and App Ex. 1). Both parties filed post-hearing briefs. Based on these exhibits and the testimony of the following witnesses:

Called by the City:

- Daniel Rivera, Former Mayor, City of Lawrence;
- Captain Michael Mangan, Lawrence Police Department;

¹ The Standard Adjudatory Rules of Practice and Procedure, 801 CMR § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

Called by the Appellant:

- Ramon Camilo, Appellant;

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. Known as the “Immigrant City”, Lawrence, Massachusetts, with a population of approximately 76,000, is located twenty-five miles north of Boston and 5 miles south of New Hampshire. The City is governed by a mayor and nine-member City Council. The Mayor and all Council members are elected on a non-partisan basis. City Councilors are elected for a two-year term, and the Mayor is elected for a four-year term. (<https://www.cityoflawrence.com/501/About-the-City>). The Mayor serves as the Appointing Authority for all police appointments. (Testimony of Mayor Rivera)
2. The Appellant, a 31-year-old Hispanic male, moved to Lawrence from the Dominican Republic in 2003. He is fluent in English and Spanish. He graduated from Lawrence High School and obtained an associate’s degree from a technical institute where he received a perfect attendance award. (Resp. Exs. 4&5; Testimony of Appellant)
3. The Appellant has been employed by a life sciences company since 2018. His current supervisor describes him as “ ... a great worker and employee, especially now as we are in the business of lab equipment during COVID. He is highly dependable ... I cannot say enough good things. I couldn’t get by without him.” (Resp. Ex. 5)
4. A co-worker at the same company described the Appellant as “ ... a very good father, family man and worker. He is very responsible and is never late or sick. He goes above and beyond.

He is incredible with people ... he is the one we send to talk to people and de-escalate situations where we have tough situations or difficult customers.” (Resp. Ex. 5)

5. A Lawrence Police Lieutenant stated that “ ... he rarely gives personal references, however he has come to know [the Appellant] like a member of his family and believes him to be a man of high caliber [and] integrity to the point he allows him to watch his children ... he believes he will be a credit to the Lawrence Police Department and an invaluable resource to the City of Lawrence and its residents.” (Resp. Ex. 5)
6. A Lawrence Police Detective stated that the Appellant “ ... would go through the training with a positive attitude and be a positive influence for the youth and citizens of Lawrence.” (Resp. Ex. 5)
7. The Appellant “self-sponsored” in the Lawrence Police Academy, with the endorsement of the Lawrence Police Chief and was more than halfway through the Academy at the time of the hearing before the Commission. The Appellant has been featured in numerous social media posts on the City’s website highlighting the activities of police cadets. He was issued a license to carry (LTC) a firearm by the Lawrence Police Chief. (Testimony of Appellant)

Prior Hiring Cycle

8. The Appellant was considered for appointment as a Lawrence police officer in a prior (2018) hiring cycle. (Resp. Ex. 7)
9. In July 2018, the Appellant completed a Police Applicant Questionnaire Form (Application). Question 7 on the 2018 application ask candidates to: “Fill in your employment activities, beginning with the present and working backward ten (10) years. Include: all full-time work, all paid work, active military duty, self-employment, volunteer, internships.” The Appellant

had worked at a Radio Shack store in Salem, New Hampshire from March 2010 to December 2011 (Testimony of Appellant) and he did not include this employment in his responses to Question 7. (Resp. Ex. 7)

10. Question 13 of the 2018 application asks candidates to list any employer from which they were: discharged; quit after being told that you would be fired; left by mutual agreement; left by mutual agreement based on performance issues; or left for other reasons under unfavorable circumstances. The Appellant had been terminated from the Radio Shack store mentioned above (Testimony of Appellant) and did not include this in his response to Question 13. (Resp. Ex. 7)

11. Page 18 of the 2018 application asks a series of questions under the heading “Police Record”.

The questions, and the Appellant’s responses are as follows:

POLICE RECORD

(Do not include anything that occurred before your seventeenth (17th) birthday)

An applicant for employment with a sealed record on file with the Commissioner of Probation may answer “no record” with respect to an inquiry herein relative to prior arrest, criminal court appearances or convictions. In addition, any applicant for employment may answer “no record” with respect to prior arrest, court appearances and adjudication’s in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the Superior Court for criminal prosecution. (See MGL c276, s100a, 100c)

- A. Have you ever been arrested? Yes No
- B. Have you ever been convicted of any felony offense? Yes No
- C. Have you ever been convicted of any offense(s) related to drugs? Yes No
- D. Are there currently any felony or drug charges pending against you? Yes No

If you answered “Yes” to A, B, C or D above, explain your answer(s) in the space provided below.

Current Hiring Cycle

12. On March 23, 2019, the Appellant took the civil service examination for police officer and received a score of 86. (Stipulated Fact)
13. In September 2019, the state's Human Resources Division (HRD) established an eligible list for Lawrence Police Officer. (Stipulated Fact)
14. On July 17, 2020, HRD issued Certification No. 07226 to the City. The Appellant was ranked ninth among those willing to accept appointment and the City ultimately appointed 26 candidates, 14 of whom were ranked below the Appellant. (Stipulated Facts)
15. On July 21, 2020, the Appellant submitted an application for employment (2020 application) with the City's Police Department. (Resp. Ex. 4)
16. Question 7 of the 2020 application form asks candidates to disclose their employment activities in the last ten (10) years. Again, the Appellant did not list his Radio Shack employment. In Question 24, the continuation space to add further responses, the Appellant wrote the following:

“I was employed by Radio Shack from 3/2010 to 12/2011. I was terminated after I was accused of larceny. Unknowingly, I accepted payment from a client who used a fraudulent credit card at the time of his purchase. Though I was never arrested, I was brought into the Salem NH Police Department and interviewed. I was then arraigned and after receiving what I would in hindsight describe as bad advise [sic] from a state appointed attorney I pleaded guilty to a crime I did not commit under the promise that the problem would simply go away without adverse effects to my name, character or record.”

(Resp. Ex. 4)

17. Question 13 of the 2020 application, similar to the 2018 application, asks candidates to disclose if they have been discharged from employment in the last ten years. The Appellant

indicated that he had been discharged from Radio Shack in December 2011 because he was “accused [sic] of larceny after accepting payment at the point of sale from a customer who used a fraudulently obtained credit card.” (*Resp. Ex. 4*)

18. Page 18 of the 2020 application, similar to the 2018 application, asks candidates about certain criminal record matters. The Appellant wrote:

“Unknowingly, I accepted payment from a client who used a fraudulent credit card at the time of his purchase. Though I was never arrested, I was brought into the Salem NH Police Department and interviewed. I was then arraigned and after receiving what I would in hindsight describe as bad advise [sic] from a state appointed attorney I pleaded guilty to a crime I did not commit under the promise that the problem would simply go away without adverse effects to my name, character or record.”

(*Resp. Ex. 4*)

Department Background Investigation

19. In August 2020, Lieutenant Daniel Fleming assigned Captain Michael Mangan to conduct a background investigation into the Appellant as part of the application process. (Testimony of Captain Mangan; *Resp. Ex. 5*)

20. Captain Mangan reviewed the Appellant’s application materials, including his 2018 application. He also checked with references and conducted a home visit. (Testimony of Captain Mangan; *Resp. Ex. 5*)

21. Captain Mangan called the Appellant at one point to discuss issues with credit information listed on the application. (Testimony of Captain Mangan)

22. Captain Mangan also ran a Board of Probation (BOP) search on the Appellant, which showed that the Appellant was convicted of theft by deception in New Hampshire. (*Resp. Ex. 5*)

23. Captain Mangan obtained the criminal docket sheet, police and other reports regarding this alleged unlawful conduct. The Salem Police Officer's application for an arrest warrant stated:

“On 12/09/2011 I spoke with the regional loss prevention [Redacted] conducted an interview on the 8th of December 2011, with Ramon Camilo ... where Camilo gave a written statement stating he knew it was wrong to take money from the company and do fraudulent refunds to the sum of \$10,000.00. Camilo in his statement, stated that over a three to four month period he was so incline[d] to complete over 60 transactions knowing that the money did no[t] belong to him and in fact that the money belonged to his company (Radio Shack) and had no right to that money. []

Camilo came into the station on 12/09/2011, for interview. He was advised of his rights and signed the form stating he understood his rights and stated that he is a collage (sic) graduate.

Camilo stated that he knew what he did was wrong, but was under a lot of pressure [] to [] pay his bills. Camilo stated that he has never been in trouble with the police and is very sorry for what he has done and is willing to do whatever it takes to make things right.”

(Resp. Ex. 6)

24. The Court found probable cause to issue an arrest warrant for the Appellant for the crime of theft by deception in violation of N.H. Rev. Stat. § 637:4. (Resp. Ex. 6)

25. The Appellant was arraigned on February 6, 2012 and pled guilty to theft by deception on May 9, 2012. As a result of the guilty plea, the Appellant received a 12-month suspended sentence with good behavior; paid \$1,860 in court fines; and was ordered not to enter Radio Shack for two (2) years. (Resp. Ex. 6)

26. Captain Mangan attempted to contact the regional loss prevention manager of the now-closed Radio Shack and the police officer who completed the above-referenced report regarding the

incident, but he learned from the Salem Police Department that both of these persons had passed away. (Testimony of Captain Mangan)

27. Captain Mangan submitted a background investigation memo to Lieutenant Fleming and Chief Roy Vasque (Chief Vasque) detailing his findings of the Appellant's background. (Resp. Ex. 7)

28. The City never provided the Appellant with a copy of the CORI record that the Lawrence Police Department obtained and upon which it relied, in part, to bypass him. (Testimony of Captain Mangan)

29. The City never provided the Appellant with an opportunity to respond to the information in the CORI or any other information in the criminal docket prior to bypassing him for appointment. (Testimony of Captain Mangan)

30. The City did not conduct interviews of any candidates before deciding which candidates to appoint or bypass. (Testimony of Mayor Rivera)

31. In or around August 2020, a discussion took place among then-Mayor Rivera, Chief Vasque, several Lieutenants, and the City's Personnel Director to discuss the candidates from Certification No. 07226, so Mayor Rivera could decide which candidates should be hired and which candidates should be bypassed. (Testimony of Mayor Rivera)

32. In a letter dated September 2, 2020, the Mayor notified HRD of the proposed reasons for bypassing the Appellant stating in part:

“ ... as part of the required background check conducted by the LPD in connection with certified list #05615, it was found that Mr. Camilo was arrested on December 18, 2011 in Salem, New Hampshire and charged with (a) theft by deception and (b) theft - fraudulent retail transaction. The disposition was a guilty plea in

May 2012 and Mr. Camilo was issued a 12 month suspended sentence in a house of corrections and \$1,000 fine. On a previous application, Mr. Camilo indicated that he was never previously arrested. As such, the City sent Civil Service a request to bypass Mr. Camilo for untruthfulness/honesty issues in connection with certified list #05615, which Civil Service approved.

Based on his history of untruthfulness in the application process, the City seeks approval not to select Mr. Camilo, once again, for a police officer position under certification number #07226.”

(Resp. Ex. 3)

33. On May 28, 2021, HRD approved the reasons for bypassing the Appellant.
(Stipulated Fact)

34. On June 3, 2021, the Appellant filed a timely appeal with the Commission.
(Stipulated Fact)

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 (1997). “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. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge, supra, at 304.

In order to deviate from the rank order of preferred hiring and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles. G.L. c. 31, §§ 1 and 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a “reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and was “reasonably justified”. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688 (2012), citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006). And cases cited; Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

Analysis

The Commission is again faced with a situation where an Appellant’s criminal record from many years ago (10 years in this case) is relied upon by an Appointing Authority to justify bypassing them for appointment. This is not new ground for the Commission. For example, in Kodhimaj v. Dep’t of Correction, 32 MCSR 377 (2019), the Commission recognized that the criminal records law provides criminal justice agencies with virtually unbridled access to a candidate’s criminal records, including sealed and juvenile records. The Commission, however, also clearly limited in Kodjimah how this information properly can be used when vetting candidates for appointment to a public safety civil service position. To ensure clarity – and consistency – the relevant guidance from Kodhimaj is repeated here.

Section 20 of G.L. c. 31 states in relevant part that:

“No applicant shall be required to furnish any information in such application with regard to: any act of waywardness or delinquency or any offense committed before the applicant reached the age of 18 years; any arrest for a misdemeanor or felony which did not result in a court appearance, unless court action is pending; any complaint which was dismissed for lack of prosecution or which resulted in a finding or verdict of not guilty; or any arrest for or disposition of any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violation, affray, or disturbance of the peace if disposition thereof occurred five years or more prior to the filing of the application.”

Section 4 of G.L. c. 151B states that it shall be an unlawful practice:

“9. For an employer, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 3 or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within 3 years immediately preceding the date of such application for employment or such request for information, or (iv) a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276. [emphasis added]

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.

Nothing contained herein shall be construed to affect the application of section thirty-four of chapter ninety-four C, or of chapter two hundred and seventy-six relative to the sealing of records.

9 1/2. For an employer to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any criminal

convictions on an applicant's application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or (ii) the employer or an affiliate of such employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.”

Here, the City, in violation of G.L. c. 151B, § 4, impermissibly asked the Appellant (and all other applicants) whether he had “ever been arrested?”. They erred again when they used the Appellant’s answer to that statement (from a prior hiring cycle) to conclude that he had made a false statement, the central reason for bypassing him in the current hiring cycle.

The City then ignored other provisions of the law regarding the manner in which they relied upon the criminal record information regarding the Appellant.

Section 171A of G.L. c. 6 states in part:

“In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant’s criminal offender record information shall provide the applicant with the criminal history record in the person’s possession, whether obtained from the department *or any other source* **prior to questioning the applicant about his criminal history**. If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time in connection with an adverse decision based on this information.” (emphasis added)

Sharing CORI-related information with a candidate and giving them the opportunity to discuss that information is consistent with Executive Order 495 (2008) (EO 495): “Regarding the Use and Dissemination of Criminal Offender Record Information by the Executive

Department.” In 2009, speaking on behalf of his CORI reform legislation before the Joint Committee on the Judiciary, then-Governor Deval Patrick stated: “The only condition we impose is that the employer give the applicant a chance to discuss the criminal record, both its accuracy and its relevance to the job in question, before the employer makes a hiring decision.” That is not what occurred here. The City did not provide the Appellant with the CORI printout from CJIS, nor did they provide the Appellant with the additional criminal history-related information that they had received (the docket sheet and the arrest reports). This does not constitute the type of fair, impartial and transparent review process that is required under the law.

With this framework in mind, I return to the actual reasons for bypass listed in Mayor Rivera’s letter to HRD. In his bypass letter to HRD, Mayor Rivera wrote:

“ ... as part of the required background check conducted by the LPD in connection with certified list #05615, it was found that Mr. Camilo was arrested on December 18, 2011 in Salem, New Hampshire and charged with (a) theft by deception and (b) theft - fraudulent retail transaction. The disposition was a guilty plea in May 2012 and Mr. Camilo was issued a 12 month suspended sentence in a house of corrections and \$1,000 fine. On a previous application, *Mr. Camilo indicated that he was never previously arrested. As such, the City sent Civil Service a request to bypass Mr. Camilo for untruthfulness/honesty issues in connection with certified list #05615, which Civil Service approved.*

Based on his history of untruthfulness in the application process, the City seeks approval not to select Mr. Camilo, once again, for a police officer position under certification number #07226.”
(emphasis added)

Further, as stated in Section 8.04 of the Personnel Administration Rules (PAR.08(4)):

“No reasons that are known or reasonably discoverable by the appointing authority, and which

have not been disclosed to the [candidate], shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission.”

During the hearing before the Commission, the City sought to expand the reasons for bypass to include the actual, underlying unlawful conduct from 10 years ago and his answer on his failure to reference the Radio Shack employment on the 2018 application. As referenced above, the City limited its reason for bypassing the Appellant to his alleged “history of untruthfulness in the application process” and explicitly tied that alleged untruthfulness solely to the Appellant’s failure to disclose, as part of an impermissible question on a written application, whether he had ever been arrested.

The City failed to conduct a fair, impartial and reasonably thorough review of the Appellant’s candidacy to support the one reason put forth for bypassing him for original appointment as a police officer. Rather, the review process was woefully deficient; inconsistent with the type of review required in a merit-based system; and inconsistent with various other statutes embodying the state’s anti-discrimination and CORI laws.

Conclusion

For all of the above reasons, the Appellant’s appeal under Docket No. G1-21-103 is hereby ***allowed***. To ensure clarity, the relief being provided here does not compel the City to appoint the Appellant as a police officer. Commission decisions too numerous to list in full firmly establish that untruthfulness regarding a material matter (e.g. providing significantly different accounts regarding alleged unlawful conduct) is a valid reason for bypassing a candidate for appointment. Rather, this decision requires the City to provide the Appellant with

one additional consideration for appointment, using a fair, impartial and thorough review process that is consistent with all civil service and other applicable laws.

Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- HRD shall place the name of the Appellant at the top of any current or future certification for the position of permanent full-time police officer in the City of Lawrence until he is appointed or bypassed.
- Once the Appellant has been provided with the relief ordered above, the City shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

Civil Service Commission

Christopher C. Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on October 6, 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)(l), the motion must identify a clerical or mechanical error in the 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:

Raymond Camilo (Appellant)

Jennifer King, Esq. (for Respondent)

Michele Heffernan, Esq. (General Counsel, HRD)

Regina Caggiano (HRD)