

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

IDA CANDREVA

Appellant

v.

G1-06-185

BOSTON POLICE DEPARTMENT

Respondent

Appellant's Attorney:

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Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, s. 2(b), Appellant, Ida Candreva, (hereafter "Ida" or "Appellant"), is appealing the decision of the state's Human Resources Division ("HRD") to accept the reasons of the Respondent, Boston Police Department (hereafter, "Department", "BPD" or "Appointing Authority") to bypass her for original appointment to the position of Boston police officer. The appeal was timely filed. A full hearing was held on

November 7, 2007, February 8, 2008, and April 15, 2008 at the offices of the Civil Service Commission. As no written notice was received from either party, the hearing was declared private. The witnesses were sequestered. Six audiotapes were made of the hearing.

FINDINGS OF FACT

During the hearing, a total of twenty-nine exhibits, the HRD document packet and a stipulation were entered into evidence by the Appellant and Appointing Authority. Based upon the documents entered into evidence and the testimony of:

For the Appointing Authority:

Robin Hunt, Director, Human Resources, Boston Police Department
Roberta Mullan, Director, Occupational Health Services Unit, Boston Police Department
Zelma Greenstein, Nurse Practitioner, Boston Police Department

For the Appellant:

Phillip O'Brien, Suffolk County DA's Office
Detective Joseph Gallant, Boston Police Department
Sergeant Detective Richard Ross, Boston Police Department
Ida Candreva

I make the following findings of facts:

1. In 2005, the Appellant took an open examination for the position of police officer.

On December 14, 2005, her name appeared on Certification No. 251240, a special certification for Cape Verdean speakers for the position of police officer for the Boston Police Department. It appears that nine (9) candidates were selected, eight (8) of whom, who's names appeared lower on the certification than the Appellant's. Approximately twenty-four (24) candidates were bypassed to reach the ninth candidate selected. (HRD document packet, Stipulation, Ex. 2)

2. The reasons proffered by the Department for the bypass was that the Appellant failed to provide the Department's Occupational Health Services Unit with full disclosure regarding her health history. By failing to do so, the Appellant attempted to mislead the Unit and presented herself in a more favorable light medically, in order to gain employment. The reason for bypass was ultimately an "untruthfulness" or lack of "integrity" issue which is a serious matter in the hiring of a police officer. (HRD document packet, Stipulation, Exs. 2 & 3, testimony of Mullan and Hunt)
3. At the time of her application to be a BPD police officer, the Appellant was a civilian employee on the BPD payroll, working as a domestic violence victim advocate and social worker. She had been previously employed by the Suffolk County District Attorney from April, 2003 to May, 2004 as a victim/witness advocate assisting victims of domestic abuse. Appellant has lived in the City of Boston for her entire life, is a college graduate, currently a second year law school student, and is active participant in her community. (Ex. 13 and testimony of Appellant, Ross and O'Brien)
4. The Appellant is fluent in Spanish and Italian. She is an active participant in her community. She serves on the Board of Directors of Zumix, a non profit youth outreach organization. She also works with the Boston Foundation, a philanthropic group which obtains grants for city youth groups, and volunteers at the Boston Area Rape Crisis Center. She was the youth representative from East Boston for the Mayor's Youth Counsel. She is currently a Transit (MBTA) police officer. (Ex. 13 and testimony of Appellant)

5. The Appellant testified on her career goals and her extensive work experience in law enforcement having served as a Victim's Advocate for the Suffolk County District Attorney's Office and more recently, as a Domestic Violence Victim Advocate/Social Worker for the Boston Police Department. Appellant's memos of recommendation, admitted as exhibits, speak to her truthfulness, and integrity, dedication, ability, fairness and work ethic. The testimony of Suffolk County Assistant District Attorney Philip O'Brien clearly established her dedication to law enforcement and her unquestioned integrity and honesty. O'Brien has known the Appellant since 2003 and worked with her at East Boston District Court. He interacted with and observed her on a daily basis. He observed her interacting with professional staff including clerks and judges and the public. He was well aware of her reputation for truth and veracity in that community. He stated conclusively that her reputation for truth and veracity was beyond reproach. He has heard nothing but the highest praise for her truthfulness, professionalism and honesty in that community and that mimics his own beliefs. (Exhibits 19-29, Testimony of Appellant and O'Brien)
6. Detective Joseph Gallant, with the BPD since 1989, has known the Appellant since 2001. He worked with the Appellant for 3-4 years on a daily basis. They worked as a team on Domestic Violence cases and became friends. Their families eventually socialized together at each other's houses. He described Ida as very able, consciencous, a self-starter, highly motivated and highly intelligent. She was held in the highest regard by police, court and district attorney staff. She had to assist victims and witnesses and sometimes had testify herself in court. He never

- heard anything but the highest praise for her truthfulness and integrity. Her reputation for truth and veracity in the Dorchester and Roxbury District Court communities was of the highest order. (Testimony of Gallant)
7. Richard Ross, a veteran Boston Police Sergeant Detective of over thirty years, who has worked previously doing recruit investigation and in the Internal Affairs Department. He testified that he was Ida's supervisor in Area A of the Boston Police Department. They worked together five days a week. Sergeant Detective Ross testified that he never had any concern about her truthfulness and that there was never an instance in which he felt that she was anything but honest, compassionate and dependable. During his testimony he seemed truly disturbed that such serious allegations were made and that Ida is not now serving as a Boston Police Officer. In her extensive employment/educational history there is not one instance in which Appellant's honesty and truthfulness have ever been questioned. Her honesty and ethics are uniformly praised. She was given the highest degree of responsibility and worked daily with the most sensitive matters before the Courts of the Commonwealth. Sergeant Detective Ross' testimony is also corroborated by the Affidavit of Captain Bernard O'Rourke, Commander of Area A where Ida served. It is further corroborated by the testimony of Detective Gallant who also directly supervised the Appellant for the BPD. (Exhibit 29, Testimony of Ross, O'Brien, Appellant and Gallant)
8. The witnesses: Assistant District Attorney O'Brien, Sergeant Detective Ross and Detective Gallant were straight forward in their testimony, did not embellish or conjecture but answered only on what they had observed or had a solid foundation

- for opinion. They were professional, direct and responsive in their demeanor and testimony. I find them each to be reliable and credible witnesses. I find their testimony to be reliable and probative on the issue of the Appellant's honesty and good character. (Testimony of O'Brien, Ross and Gallant)
9. Both Detective Gallant and Sergeant Detective Ross also testified to their observations of Ida's physical abilities. They observed that she was physically fit and never observed her to have any physical limitations. They were aware of her work out program with the department's training officer in preparation for the physical endurance test. Detective Gallant even participated in a daily "walking program" together with Ida. (Testimony of Ross and Gallant)
10. Robin Hunt, the Director of the Department's Human Resources Unit, testified that the Department considers each candidate on their own merit, on a case by case basis. In order to become a Police Officer, the Department considers a candidate's entire background, including but not limited to the applicant's criminal history, RMV driver history, military history, employment history, and residency. (Testimony of Hunt)
11. Hunt was asked to describe the hiring process and she testified that: "Each Recruit Class starts with a conversation internally with City Hall, as to what the number is and the amount of recruits we will look to pursue. We make our decisions as to making a selective certification, if any, we are going to request. We set somewhat of a target date for the class to enter the Academy, which is somewhat of a fluid date. And once all of the administrative paperwork is ironed out, we make a

requisition of the list from civil service. They send out post cards. Then have folks come in and sign the civil service list.” (Testimony of Hunt)

12. Hunt testified that the results of the Appellant’s background investigation were discussed by the Department’s hiring committee during an initial “roundtable” discussion. After members of the initial roundtable discussion reviewed the Appellant’s background history, Ida was extended a conditional offer of employment by memo dated January 3, 2006, contingent upon passing the medical examination and psychological screening component of the medical examination. The memo informed the Appellant that the Department reserved the right to rescind the conditional offer of employment should information become available that her appointment as a Police Officer would not be in the public interest. (Ex. 1 and testimony of Hunt)
13. Prior to the medical screening, and as part of the medical process, all applicants are required to fill out a lengthy questionnaire or “Health History form” provided by the Department relative to the applicant’s health history. This questionnaire presents a series of numbered “yes” or “no” questions to the applicant. At the end of the questionnaire, the applicant is provided an opportunity to explain any “yes” answers he/she has given. Once the questionnaire has been answered, the applicant undergoes a physical examination and interview-evaluation with a nurse-practitioner, here Zelma Greenstein. The physical examination and interview-evaluation in this matter occurred on Sunday, January 22, 2006. During that evaluation, the nurse-practitioner goes over the health questionnaire with the applicant, especially those questions that the applicant has answered “yes” to. The

nurse practitioner writes notes and explanations on any matter on which she has inquired. Following the evaluation and recommendation by the nurse practitioner, the nurse practitioner “signs-off” on the medical evaluation. The applicant’s medical file is then sent on to be “signed-off” on by the Department’s Medical Director, Dr. Arnold. It is very rare in the medical-screening process for Dr. Arnold to actually conduct a follow-up examination or for Dr. Arnold to request further medical information on an applicant. An examination or request for information by Dr. Arnold is only done at Greenstein’s request. The nurse-practitioner’s recommendation is invariably followed by Dr. Arnold, who then signs-off on the case medically. (Testimony of Hunt, Mullan and Greenstein)

14. On or about April 10, 2004, the Appellant filled out a Department Health History form or medical questionnaire for a BPD Social Worker/ Domestic Violence position. On or about January 17, 2006, the Appellant filled out a Department Health History form or medical questionnaire for this Police Officer position. Both Health History forms are similar and seek extensive medical background information on the applicant and the applicant’s family. (Exhibits 4 & 5 and Testimony of Greenstein and Appellant)
15. The 2004 and the 2006 questionnaires are similar. The 2004 questionnaire asks about the occurrence of 23 specific family medical circumstances including: alcoholism, drug abuse, syphilis, birth defects and emotional problems. It also poses 205 numbered questions to be checked either “Yes or No” with an explanation for each yes answer. Some of those questions cover a very broad subject matter, time frame and areas of confidentiality. The 2004 questionnaire

had 205 numbered medical questions. The 2006 questionnaire had 262 numbered medical questions. The 2006 questionnaire also had an additional page which contained, seventy-five, (75) additional, redundantly numbered, redundant medical questions, calling for a circle of “yes or no” in answering. Some questions are generally or specifically redundant and others call for a subjective self-appraisal. Some examples are: #39 – Depression or excessive worry?, #45 – Emotional problems?, # – Excessive fatigue?, #58 – Flatulence – gas distension?, #71 – Head injury?, #72 – Headaches?, #83 – Insomnia?, #84 – Intestinal trouble?, #102 Morning stiffness?, #108 Night sweats?, #109 Nose bleeds?, #110 – Numbness-weakness-fatigue?, #138 – Sexual difficulties?, #150 Teeth of gum problems?, #151 Throat problems?, #155 – Trouble sleeping?, #161 – Venereal disease?, #184 – Have you ever been seriously injured?, #188 – Have you ever been a patient in a hospital or sanitorium?, #189 – Have you ever consulted a psychologist, psychiatrist or social worker for any emotional problems?, #199 – Do you now or have you ever taken any drugs or medicine? And #201 – Do you drink beverages which contain caffeine? (i.e. coffee, coke?) If yes, how much?

Some of the information sought seems to be extensive, detailed, invasive of privacy and not reasonably related to the applicant’s current medical qualification for the position. A thorough medical examination and review and a physical abilities test should satisfactorily address the issue of physical and medical qualification. The Appellant did not have a copy of her completed 2004 questionnaire when she completed the 2006 questionnaire. She was aware however, that the Department did have a copy of her 2004 questionnaire when she

completed the 2006 questionnaire. (Exhibits 4 & 5 and Testimony of Greenstein and Appellant)

16. On her 2004 questionnaire the Appellant checked off “yes” for questions that addressed back injuries, conditions or pain generally, or work related injuries that cause restrictions or loss of work time or a work related claim and medication/medical treatment. These “yes” answers prompted a written explanation by the Appellant and a follow-up review by the Nurse-Practitioner. These answers/explanations followed by a review were to questions # 14, 94, 112, 186, 190, 191, 192, 193, and 197. Some of these questions were generally redundant and called for some overlapping in the answers/explanations. The Appellants explanations provided adequate detail that would alert or prompt any reader, (Nurse-Practitioner) to make a further inquiry, if so desired. (Ex. 4, Testimony of Appellant and Greenstein)

17. On her 2006 questionnaire the Appellant checked off “yes” for questions that addressed back injuries, conditions or pain generally, or work related injuries that cause restrictions or loss of work time or a work related claim and medication/medical treatment. These “yes” answers prompted a written explanation by the Appellant and a follow-up review by the Nurse-Practitioner. These answers/explanations followed by a review were to questions # 5, 7, 21, 64, 72, 144, 192, 243, 246, 249, 250,252, 254, 256 and 261. Some of these questions were generally redundant in subject matter and called for some overlapping in the answers/explanations. The 2006 questionnaire also had an additional page which contained, seventy-five, (#1-75) additional, numerically redundant and covering

redundant medical matters, calling for a circle of “yes or no” in answering. The Appellants explanations provided adequate detail that would alert or prompt any reader, (Nurse-Practitioner) to make a further inquiry, if so desired. (Ex. 5, Testimony of Appellant and Greenstein)

18. On or about January 19, 2006, the Appellant had a thirty minute interview with Dr. Marcia Scott, the Department psychiatrist. Dr. Scott’s notes indicate that the Appellant passed the psychiatric screening. The notes also indicate that the Appellant disclosed to Dr. Scott: her “discharge” from ROTC when she couldn’t run because of “spondylolistheses and Spondylitis” and that “She also had an ‘unrelated’ back injury while working baggage for Alitalia.” Dr. Scott’s notes concluded that the Appellant’s cognitive presentation was “Open, disclosing, focused, alert” and that her affect was “full appropriate”. (Ex. 6)
19. The Appellant also voluntarily submitted reports of recent physical examinations that she had undergone on her own initiative and specifically in preparation for this 2006 application and the medical-screening process. In December 2005 and January 2006 she had obtained medical examinations and reports from her long time treating physicians, including the Chief of Orthopedic Surgery at Children’s Hospital and her Primary Care Physician. She submitted the written results to the Department. The records fully disclose her scoliosis, a mild curvature of the spine. The Appellant’s evaluations concluded she was cleared for strenuous physical activity, had no physical restrictions and no clinical symptoms of spondylolysis or spondylolisthesis. (Exs. 14-17, testimony of Greenstein and Appellant)

20. Zelma Greenstein is a licensed Nurse Practitioner and has been practicing since April, 1972. Although her employer now is the Boston Medical Center, (BMC) she works full-time for the Boston Police Department, (BPD) under a contractual arrangement. She has been employed this way by the BPD for 22 years. The majority of her time is spent on case management or following the medical progress of the BPD officers out on Worker's Compensation. She also performs physical exams of police civilian employees, cadets and recruits. She has performed thousands of these physical exam/reviews over that time. (Testimony of Greenstein)
21. As part of the 2004 hiring process for Appellant's BPD social worker job, she had filled out a similar Health History questionnaire to that of the one she filled out for the 2006 police officer application. That 2004 questionnaire stayed on file with the Department. Roberta Mullan is the Director of the Department's Occupational Health Services Unit ("OHSU"). The Director's position is an administrative one, not a medical one, despite the fact that there are some medical professionals under her administrative direction. Mullan testified that if a job applicant has previously worked or applied for the Department, the OHSU refers back to any and all medical documentation the Department has on file in order to compare the answers on a previous questionnaire with that of the Applicant's current questionnaire. The purpose is to compare the documents, looking for changes or discrepancies and seeking an explanation of the changes or discrepancies. (Ex. 4 and testimony of Mullan)

22. On Sunday, January 22, 2006, the Appellant had a physical examination at the Department under the auspices of the OHSU. The medical screening and physical exam was conducted by Nurse Practitioner Zelma Greenstein. Greenstein had also performed Ida's 2004 medical exam. Greenstein and Appellant reviewed the Appellant's Health History questionnaire to clarify any of the questions that the Appellant had answered "yes" to. Greenstein had ten scheduled physical exams and interview-evaluations that day, from 7:00 AM to 7:00 PM. (Testimony of Appellant, Mullan and Greenstein)
23. Greenstein's 2006 physical exam and interview-evaluation revealed that the Appellant's examination was normal including her spinal mobility, neck muscle strength, balance, coordination, reflexes and cranial nerves. Greenstein testified that if she had needed more records from the Appellant she would have followed her normal practice. That normal practice is for her to make a written note of the requested records and for recruit to be given seven additional days to produce any requested additional medical records. Greenstein testified that she apparently had all the medical records necessary to make such a determination on January 22, 2006, there had been full disclosure and those records had been provided by Ida. There upon, Greenstein should have continued to follow her normal practice by signing-off on the chart and then sending the entire medical file with her notes on to Medical Director, Dr. Arnold, for him to sign-off on the medical screening process. Dr. Arnold rarely sees or examines applicants and then only when requested to do so by the Nurse Practitioner. Dr. Arnold was not on duty on the day of the exam and review. Greenstein testified that her routine practice is not to

administratively review the candidate's medical file, if needed, with an OHSU administrator on the same date as the physical exam. She testified; "We (her and Dr. Arnold or Mullan) don't review those records at that time, in between ten exams, we don't have the time then, we wait until all the records are in. She testified that "the applicants are instructed to bring in the documents for the exam, but most don't." "We give them seven days for the review and we review them as they come in, in a week or so." Greenstein's testimony was very clear since she follows her well established routine and makes clear detailed objective notes of her observations, actions and determinations. She testified that she does not have any time to do her review on the day of the physical exam because she is too busy. Since candidates are routinely given an additional seven days to bring in additional records, the final medical review, if necessary, would then occur at least seven days after the physical exam. (Exs. 4, 5 and Testimony of Greenstein)

24. It is noted as corroboration of her habit and practice, that Greenstein did make such a request for additional medical records at the Appellant's earlier, May 7, 2004 medical exam/ review; due to the Appellant's 2002 work related back injury and prior scoliosis. Greenstein then went further and made a further detailed written note next to a bold, underlined "HOLD" in the margin : "I have requested current back evaluation by MD (She states had evaluation within past 2 months for another job). She will get records." Greenstein made further notes, on May 11, 2004, on her follow-up of the requested medical records received from Dr. Jacobs (Ex. 4, Testimony of Greenstein)

25. Greenstein testified that she routinely, “records objectively” on the applicant’s chart or medical records exactly what occurred during the exam-interview evaluation. She testified that she writes it down “immediately” and “exactly” at the time, since her “memory is not so good.” She even noted on the 2006 chart that Ida was “tanned” and had “bruises” from her practice at the gym to get over “the fence” or wall as part of the physical abilities test (PAT), which is “difficult, especially for a woman.” She further testified that: “I would have noted it if I felt that Ida was withholding documents or information.” “I have been doing this for 42 years” and she stated; “I’ve worked for 22 years with Roberta Mullan.”

(Testimony of Greenstein)

26. Greenstein was not called nor expected to be called, by the Department as a witness in its case in chief. Mullan was aware, at the time that she testified that Greenstein was not designated to be called as a witness by the Department.

(Testimony of Mullan) Greenstein was only called as a rebuttal witness, after the Department had rested on its case in chief, on November 7, 2007. She was the last and only witness to testify on the final day of hearing, April 15, 2008. Greenstein was called in rebuttal by the Department to rebut a serious, repeated statement attributed to her in testimony by Ida. Ida claimed that the repeated statement had been made by Greenstein, at the end of her exam-interview with Greenstein.

Greenstein had been alerted prior to her testimony, by BPD attorney Chisholm as to the repeated statement attributed to her and her purpose as a rebuttal witness.

Greenstein appeared to be genuinely surprised on the witness stand when she was confronted with the fact that the memo from Roberta Mullan recommending Ida’s

bypass was dated the same day as her physical exam, January 22, 2006.

Greenstein spontaneously exclaimed; “I don’t know how or why a recommendation would be made rejecting the applicant, on the same day as the exam, January 22, 2006.” She further testified: “It doesn’t make sense to me for Roberta Mullan to recommend bypass that same day.” Greenstein appeared to be incredulous even after reading the memo-She testified: “I can’t believe its true...I’ve never seen it until right now!” Greenstein then volunteered the only explanation that appeared to make any sense to her- She testified: “Maybe the memo was written at a later date but referred to the date of the exam.”

(Testimony and demeanor of Greenstein)

27. Ida had not identified Greenstein personally or visually, at the time Ida testified.

Ida testified that during her interview with the nurse practitioner, identified by her, by name only, as “Zelma” or the “nurse-practitioner”. She testified that at the end of her review-interview, Zelma or the nurse-practitioner gave her “odd looks” and then stated to her; “I’m going to make sure you don’t get on”. Ida testified that the nurse practitioner then repeated the statement, a short time later, as Ida was standing next to the door, ready to exit the room. Ida stated that her reaction was “shocked” and she “didn’t know what to think”. Ida, as a witness was visibly upset while recalling this memory on the witness stand. Her voice quaked and quivered while her face exhibited pain and hurt. It seemed that she was about to shed a few tears. (Testimony and demeanor of Appellant)

28. This hearing officer examined Greenstein closely on her practice and habits in this process. I find that she is a person of long-standing practice and routine. She jots

down information as she is being told of it or events as they occur. She is the gatekeeper for Dr. Arnold and Dr. Arnold only reviews what she calls to his attention. If she had made a referral to Dr. Arnold, she would have made notes of it and she did not make any notes of a referral or any conversation or event regarding a referral to either Dr. Arnold or Roberta Mullan. Greenstein also did not make any notes of a subsequent conversation with Robin Hunt regarding these matters. Greenstein testified that “only Dr. Arnold reviews her notes and records.” Dr. Arnold was not on duty on the day of the exam and interview. Greenstein only does medical case reviews with Dr. Arnold. Roberta Mullan does overall non-medical reviews sometime thereafter and Greenstein might be called by Mullan to verify or clarify her notes. Greenstein, out of confirmed habit, would have entered detailed written notes in the Appellant’s file, if she had: noticed and/or contacted Mullan regarding any discrepancies or withheld information. Greenstein did not make any such notes in Ida’s file. However, both Mullan and Hunt testified that they each had a conversation with Greenstein regarding the alleged omissions and discrepancies on Ida’s health questionnaires. Mullan testified to a detailed discussion she had with Greenstein, while examining the questionnaire on January 22, 2006, regarding those alleged omissions and discrepancies and the implication of dishonesty by Ida. Mullan clearly testified that Greenstein initially alerted her to those alleged omissions and discrepancies, on January 22, 2006. Hunt also testified that she also had conversation with Greenstein regarding the alleged omissions and discrepancies, sometime prior to the second roundtable discussion. Hunt described Greenstein as Mullan’s “source” for this information .Greenstein

did initially alert Mullan to the alleged omissions and discrepancies and had a detailed discussion and review with Mullan regarding them, on January 22, 2006. Greenstein also did have at least one conversation with Robin Hunt regarding the alleged omissions and discrepancies prior to the second roundtable discussion. (Exhibits and testimony and testimony of Greenstein)

29. I find Zelma Greenstein to be an older woman, a professional with vast experience in these matters. She projects herself as a straight-forward witness. Her presentation as a witness is that of soft spoken and genteel yet unflappable. She closely follows her well-established practice in making contemporaneous detailed notes when processing medical exam/reviews. She does this out of habitual practice and because her “memory is not so good.” It would be highly unusual, for her to fail to make detailed notes of the discussions and review she had with Roberta Mullan and the conversation she had with Robin Hunt regarding these matters. Based on her presentation and denial, It would seem to be out of character for her to make that type of statement, (“I’m going to make sure you don’t get on”) attributed to her by Ida. However, despite Greenstein’s denial of making the statement attributed to her by Ida, I find that she did make that statement and repeated it, just as Ida testified to. Greenstein also volunteered in her testimony, as a defense, that she does not make those kinds of bypass decisions and therefore would not have made the statement for that reason alone. However, she is vastly familiar with and involved in this decision making process and with the people making those decisions, including Roberta Mullan. I also find that if indeed, Greenstein had followed her confirmed habit of making detailed

notes of her own observations, determinations and interactions regarding Ida, as specifically testified to by Mullan and Hunt, the notes would have provided some evidence to support Ida's claim on the statement attributed to Greenstein.

Greenstein instead, chose not to leave her own fingerprints (notes), on Ida's medical chart while still accomplishing her goal of having Ida bypassed for appointment by Mullan. Greenstein's credibility is severely undermined by the contradictions testified to by Roberta Mullan, Robin Hunt as well as Ida.

Greenstein's motive for making the repeated statement to Ida is undetermined here and probably indeterminable. The subtleties, vagaries and nuances that sometimes trigger psychological and/or emotional reaction between people are not always capable of detection or substantiation. It is found that Greenstein did initially alert Mullan to and then discussed the alleged omissions and discrepancies with her, in detail, on January 22, 2006. It is also found that Greenstein then subsequently discussed the alleged omissions and discrepancies with Robin Hunt as Mullan's source of information. It is also found that Greenstein did make the repeated statement to Ida at the close of Ida's exam-interview on January 22, 2006. Greenstein lacked any observable professional and/or personal indignation at the accusation by Ida. Greenstein was flat and matter of fact in her testimonial denial of the accusation. Therefore, base on the above, I find Greenstein to lack credibility as a witness. (Exhibits and testimony, Testimony and demeanor of Greenstein)

30. I find the Appellant Ida Candreva to be an honest and credible witness. I find that Ida is a credible and reliable witness in her assertion that Zelma Greenstein made

the statement to her: “I’m going to make sure you don’t get on”. (Exhibits and testimony, administrative notice, testimony and demeanor of Appellant)

31. The discrepancies related by Mullan in her January 22, 2006 memo, as the reasons for bypass, are as follows: ***First***, in 2004 Appellant indicated that “yes” she ***was rejected from the military*** due to a back injury. She also indicated during her 2006 interview with Dr. Scott that she had been discharged from her ROTC program because she could not run due to her back condition but ***she did not reveal this ROTC discharge in 2006*** on her medical history questionnaire, ***Second***, in 2004 Appellant stated that she had a head injury that resulted in some treatment for a laceration followed by headaches. ***She failed to mention this head injury/treatment in her 2006 health history*** Also, ***Third***, in 2004 the Appellant stated that she had a ***back injury sustained at work in 2002*** lifting luggage and was out of work 3 or 4 months for that. After we reviewed her medical records provided at the time, the records show that she was fully disabled from June 29, 2002 to December 14, 2002 and partially disabled thereafter. The records also showed that she was taking narcotics for five months as a result of this injury. However in her 2006 history she stated that she lost one day from work due to this injury and was advised light duty (she states that she never returned to this job because there was no light duty available) and was only prescribed narcotics for about one month following the injury. Mullan also stated ***Additional Concerns:*** to conclude the memo by stating that: “There are also several concerns in her current medical history, which we are addressing but will be unable to determine if we have received an accurate history regarding those

issues until we have been provided the records. Ms. Candreva was very well aware of the current medical guidelines as she quoted us the section covering her present diagnosis. We are concerned that she has attempted to disguise her full medical history so as not to portray her condition as disabling, which has resulted in many discrepancies.”(Emphasis added) Mullan also states the Appellant: “ has been less than honest with us and am concerned that this may represent an untruthfulness issue...” (Emphasis added) (Ex. 3)

32. Roberta Mullan’s January 22, 2006 memo is an inaccurate representation of the Appellant’s medical records, current medical condition and other relevant circumstances. It misleads the reader regarding the source and finality of that medical information, conclusions and opinions and therefore the further and ultimate conclusion that the Appellant was untruthful based on it. Mullan claimed “...“There are also several concerns in her current medical history, which we are addressing but will be unable to determine if we have received an accurate history regarding those issues until we have been provide the records. However Mullan did not attempt to address any of those issues and did not make any subsequent inquiry into or a request for records from the Appellant, her treating Physicians or Det. Famolare. Mullan merely discussed some matters with Nurse-Practitioner Greenstein, without identifying Greenstein as the source of the information. Robin Hunt did not return the Appellant’s numerous subsequent attempts at contact for the purpose of learning her application status. Mullan repeatedly uses the plural pronouns “we” “our” and “us” as the source of the various medical or factual conclusions and opinions stated, without identifying

the other person(s). The memo begins: “We performed a physical examination on Ida Candreva on this date.” It has been determined that Mullan is an administrator and not a medical professional. Any medical determination which she states regarding the Appellant may only be attributed to Nurse Practitioner Greenstein or Dr. Arnold M.D, the two medical professionals involved in this matter or possibly the Appellant’s treating physicians. Dr. Arnold was not on duty, on the day of the exam and memo and Greenstein after examining and interviewing the Appellant, reviewing her records, apparently found all of her medical records and explanations to be complete. Greenstein did not make any notes regarding any: failures, omissions or discrepancies in Ida’s medical file. Greenstein did not refer her to Dr. Arnold or require her to produce additional records. Greenstein found the Appellant to be normal and therefore found she passed the medical review. (Testimony of Greenstein). Greenstein thereupon signed-off on the Appellant’s medical review and sent it on for Dr. Arnold’s sign-off. (Exhibits and testimony, Exhibit 3 and testimony of Mullan, Hunt, Appellant and Greenstein)

33. Despite the Appellant’s medical clearance by Greenstein on January 22, 2006, Mullan includes in her memo a reference to “spondylolistheses and spondylitis” and “scoliosis” and Mullan states in the memo; “During her psychological evaluation she mentions to Dr. Scott that she had been diagnosed with spondylolistheses and Spondylitis. According to her records, she has also been diagnosed with scoliosis. All three conditions may potentially be cause for rejection depending on the history.” This is purely medical speculation by Mullan, since those potential issues had been medically determined in the Appellant’s

favor after Greenstein's exam and medical review. The Appellant had already revealed and discussed those three back conditions; her work related back injury and her motor vehicle neck injury, with Greenstein at the exam/review. Yet Mullan cites Dr. Scott the Psychiatrist, as the source of some of this medical information. Mullan admits the occurrence of the medical examination in her memo; "In light of this and her significant medical history a thorough history and examination was performed. A review of her pre-employment physical exam for the position of Social Worker performed on May 7, 2004 was completed." However, Mullan's reference to Dr. Scott, the only medical professional she named, seems to imply that Dr. Scott is the source of this potentially disqualifying medical circumstance and that the disqualifying matter remained unresolved.

(Exhibit 3, testimony of Mullan)

34. Roberta Mullan testified on the first day of hearing, November 7, 2007 as a witness in the Department's case in chief. She testified regarding her primarily administrative duties as Director of OHSU, mainly following the progress of Worker's Compensation cases or police officers injured in the line of duty. Mullan also described the Appellant's medical-psychological screening process in this matter and her own participation in it. She testified that her own "role is pretty cursory". She testified that regarding the medical review, "the final approval is by the Medical Director, (Dr. Arnold)". She stated generally, that "At some point during the day...Ida would have appeared at our office... after her lab work was done, for her scheduled appointments." "She would already have her health questionnaire filled out". Mullan was then asked: Q. – "Could you tell us

how far Ida made it through the screening process?” She answered: A. – “To the best of my recollection ...in the usual manner she went through the background investigation into the conditional offer stage ...Then she had her initial medical evaluation with the Nurse Practitioner and I believe she had... she did have her oral psychological interview with our Psychiatrist, (Dr. Marcia Scott)” Q. – “What happened after those evaluations?” Mullan answered: A. – “The ... umm... the Nurse Practitioner brought to my attention...” [Then Mullan goes on to describe the details of the discrepancies that the Nurse Practitioner pointed out to her.] Mullan then continues her rendition of this continuing conversation: A. – “I said well, we have to pull her old records anyway. Let’s see what we have there and then we pulled the file. I went through it because of the time constraints on the Nurse’s part and I saw some discrepancies. I went over them with the Nurse to insure that we had the correct stories and I felt, based on what I was seeing that she was providing some inaccurate history. It was clearly different from what she told us in 2004.” Mullan then went on to review and reference Exhibit 4, (the 2002 Health History form), including Greenstein’s notes, to describe those discrepancies.(Exhibits 4, 5 and Testimony of Mullan)

35. Although Mullan admitted in her testimony, regarding the discrepancies: that there is “room for error” and “not everyone’s memory is perfect” and “If at least we feel we have a fairly honest representation of what the history is” she also testified that: “I thought it was fairly deliberate” and regarding the wide time variance of missed work in 2002, she testified: “I thought that was misleading and then there were other discrepancies; the ... military and the head injury.” ...“It

appeared to *us* to be a pattern”. Mullan was then questioned about her past practice to resolve apparent discrepancies. Depending on the discrepancy “...five months versus four months” She answered: A. – “*We* may discuss it, (discrepancies) with the applicant; if it’s necessary...It may not be that important, depending on what the situation is, (minor incident). But when *we* feel it’s clearly some sort of misrepresentation on the health history form, I usually do a report and present it to my supervisor who is Robin Hunt and then the “Round Table” reviews and decides whether we’re going to go forward or not with the applicant.”

Mullan was then asked about the Appellant’s familiarity with the medical guidelines for disqualification by category of medical conditions. Mullan answered: - A. “Well, at some point and I didn’t document this for the record, because I can’t document it all that goes on in our office...but I recall Ms Candreva bringing to my attention that she had spondylolisthesis and clearly she had read the medical guidelines, because...I, ... I remember her being concerned about that and ...umm we as well would be because it’s a category A medical condition so we would have to do it for the review anyway.” Then Mullan was asked why she told Robin Hunt of her concerns? She answered: because “... there’s clearly some sort of misrepresentation on the health history form” Mullan concluded her direct examination by stating that this is an issue of “integrity” or “truthfulness” which is very important due to police officers’ court testimony. The final question asked was: Q. – “was that the extent of your involvement with Ms. Candreva? To which she answered: A. – “Yes, I believe so.” (Exhibits 3, 4, 5 and testimony of Mullan)

36. Mullan testified on cross-examination as follows: Q. - The Nurse Practitioner as part of her exam took notes? A. - Yes, the Nurse Practitioner always does that. Q. - Is it fair to say that therefore, it is in your sole discretion whether or not you have made that . . . formed that opinion about whether or not someone's been truthful, that's in your sole discretion, you made that determination? A. - It starts with me. Q. - And it sounds like it ends with you, too? A. - Not necessarily. Q.-Did you actually go through these records yourself? A. - Yes, I did. Q - And then you made the ultimate determination correct? A. - I reviewed it with the Nurse Practitioner to make sure that our stories were correct, based on what I had found in the record and then I wrote my report and I gave my opinion. Q. - Is that the report to Ms. Hunt? A. - Yes. (Testimony of Mullan)
37. Robin Hunt presented the Appellant's case to the second roundtable discussion which determined the bypass of the Appellant. Hunt's presentation recommending bypass was primarily based on Mullan's memo of January 22, 2006. Mullan did not appear at the second round table but her memo was presented. However, Hunt testified that she also had conversations with Mullan and Greenstein ("Mullan's source"), prior to her presentation to the second round table.(Testimony of Hunt)
38. The Appellant did not have a copy of her 2004 Health History questionnaire available to use as a reference, when she completed her 2006 Health History questionnaire (Testimony of Appellant)
39. At this hearing, the Appellant testified that she had a back injury that occurred while she was a student athlete at Drexel University and enrolled in ROTC. As a member of ROTC she hurt her back as a result of frequent running on concrete. In

order for her back to heal, she had to stop running, waiting for her back to heal she had to “disenroll” from ROTC. She was never an active member of the military, nor was she rejected by the military. She stated that in an effort to be precise in the answers to the 2006 Health History questionnaire, she testified that she called “U Penn” to ask if ROTC was considered the military and she determined that it was not part of the military. She also asked several friends who were military veterans and they confirmed that ROTC was not part of the military. I credit her testimony. (Testimony of Appellant)

40. At this hearing the Appellant testified that when she injured her back lifting luggage at work in 2002 she took only one sick day and returned to work the next day until the end of July, when she began taking prescription medication for the pain and could not work. She was cleared to resume light duty when she no longer needed medication but no light duty positions were available. She then went on to another employment. She produced payroll records which corroborated her testimony of missing only one day of work due to back injury. I credit her testimony. (Ex. 11, testimony of Appellant)

41. At hearing, the Appellant testified credibly that her 2002 head injury was a minor one and not in her mind when she filled out her 2006 health history. The Nurse Practitioner concurred that this was a minor, normal incident, did not have any permanent effects and could easily be forgotten by an applicant. Even Roberta Mullan conceded on cross-examination that: “Yes, it (head injury) seemed like a minor incident.”(Testimony of Appellant, Mullan and Greenstein)

42. The roundtable committee reconvened to discuss the issues presented in Mullan's January 22, 2006 memorandum. Neither Greenstein nor Mullan attended the round table discussion. Hunt testified that the roundtable was concerned with major discrepancies found between the two questionnaires but that she did not call for a follow up, to investigate the discrepancies in the two questionnaires. Detective Famolare was the Investigator assigned by the (RIU) Recruit Investigation Unit to do Ida's background investigation. The round table did not call for any information from Detective Famolare, despite Mullan and Hunt's awareness that he had requested and received subsequent documents from Ida. As a result of the questionnaire discrepancies and their implications concerning the Appellant's truthfulness, the decision was made to bypass the Appellant.

(Testimony of Hunt)

43. Hunt testified that she also had conversations with Mullan's "source", the Nurse-Practitioner prior to her presentation to the second round table. Hunt testified that the round table was "quite surprised at the content of Mullan's memo. Hunt testified that the round table does not look at the details of each alleged discrepancy but instead "...we look at the big picture ...the greater picture." She testified that the round table discussion focused on "untruthfulness and dishonesty". The Round table felt that due to the "severity" of the misrepresentations and omissions on the Health History form that Ida's intent was to minimize in order to obtain employment. Hunt testified that the round table did not speak with or request to speak with anyone else because "...we felt we had enough information." Hunt testified that the typical practice of the round table

was to rely on the information provided by Roberta Mullan and the Nurse-Practitioner. (Testimony of Hunt)

44. Hunt relied on her memory of the events and discussions at the initial and second roundtable meetings. This hearing officer asked her specific questions regarding the transpirations of the roundtable in Ida's case but her answers were couched in general or qualified terms like "typically" or "It depends" referring to the roundtable's conduct generally. She never identified a specific roundtable member with a specific statement or concern. Also, she could not remember the date of either roundtable meeting. She couldn't even remember which month in which they occurred. She could not remember if the second meeting occurred in January or February or March or April, 2006. (Testimony of Hunt)
45. On or about April 27, 2006, Hunt wrote and submitted a memorandum to HRD requesting that the Appellant be bypassed. Hunt's reasons for requesting a bypass were based substantially upon Mullan's memorandum and stated that the Appellant "appears to have seriously misrepresented her health history in order to gain employment as a Boston Police Officer." She wrote that "it is the opinion of the Department that Ms. Candreva has failed to provide the OHSU with full disclosure regarding her health history" in an attempt to "mislead the OHSU and present herself in a more favorable light in order to gain employment as a Boston Police Officer." Hunt attached a copy of Mullan's January 22, 2006 memorandum to her own memorandum. (Exs. 2, 3, testimony of Hunt, and Mullan)
46. By a memo to the Appellant dated June 6, 2006, HRD determined the Department's reasons were acceptable, pursuant to G.L. c. 31 § 27, for bypassing

the Appellant. The Appellant testified that she did not receive a copy of this HRD memo until August, 2006. (HRD document packet, administrative notice, testimony of Appellant)

47. The Appellant's testimony and demeanor at the hearing reflected an honest and straight forward witness. I found her sincere and credible regarding her reasons for answering the questions as she did on her 2004 and 2006 health history questionnaires. She did not try to embellish answers in her favor. Her memory was affected by the age and relative seriousness of the medical condition she was addressing. She had been treated from child hood for various back injuries or conditions, including "spondylolistheses and spondylitis" and "scoliosis". She voluntarily disclosed: the "spondylolistheses and Spondylitis", the 2002 work related back injury and the ROTC discharge to Dr. Scott during her psychiatric screening interview on January 17, 2006 and to Nurse-Practitioner Greenstein at her January 22, 2006 exam-evaluation interview. She also voluntarily produced all of her medical records including physical therapy and recent medical evaluations at the time of Greenstein's medical exam and review. She had been an athlete in high school and college, suffering the usual aches, pains and minor injuries in the process. She continued to engage in routine, vigorous physical exercise right up to the time of her medical exam in this matter. The bruises from her practice to pass the PAT "wall test" were noted by Greenstein, on her medical exam. She testified, describing the 2002 work related back "strain or sprain" as "slight" because it was old, temporary and was less serious relatively to some of the other injuries she had suffered. She was aware at the time that she completed

- the 2006 questionnaire, that the Department already had her 2004 questionnaire on file. She believed that the volume and specificity of the medical records she voluntarily produced would address any medical issue thoroughly. On cross-examination she readily admitted to several mistakes in completing the voluminous 2006 health questionnaire. I find those mistakes to be minor and not done intentionally. She is a person who has displayed a life long desire to succeed and maintain a reputation for honesty, hard work and responsibility. She is bright and well educated, so that it would be natural for her to seek out and be familiar with the HRD medical standards regarding “spondylolistheses and spondylitis”. She is a credible witness and she made her best effort at full disclosure in this application process. (Exhibits, testimony, testimony and demeanor of Appellant)
48. The Department was specifically given the opportunity by this hearing officer, to call Detective Famolare, the BPD’s assigned Investigator, as a rebuttal witness when the Department requested a further date in order to call Zelma Greenstein as a rebuttal witness. The Appellant had been in contact with BPD Detective Famolare both before and after her Department medical exam on January 22, 2006, for the purpose of producing any and all records and/or information required by the BPD. On February 17, 2006, she faxed to Det. Famolare, copies of records concerning her time off from employment due to her 2002 back injury. (administrative notice, Ex 12, testimony of Appellant)
49. Roberta Mullan is a well practiced and a well prepared witness. She is intimately familiar with the application process and documentation used for the position of Boston Police Officer. She has been employed by the BPD’s OHSU since 1974

and it's Director since 1986. Many of her answers were pro forma and would generally apply to any person bypassed for allegedly being misleading or incomplete in the application process. She overly emphasized: perceived errors, inconsistencies or omissions between the Appellant's two health questionnaires and implied an untoward motive from them. She failed to take any reasonable steps to resolve those perceived errors, inconsistencies or omissions despite having the opportunity and resources to do so. She failed to review her specific concerns with the Appellant, her treating Physicians, Detective Famolare or anyone but Hunt and Greenstein. Greenstein initially alerted and provided the alleged omission and discrepancy information to Mullan. Yet Greenstein's name does not appear in Mullan's memo. The omission of Greenstein's name from the memo was intentional, for the purpose of hiding her identity as the source and instigator of the alleged omissions and discrepancies. Mullan failed to address the issue of dishonesty with any of the Appellant's BPD supervisors; the Appellant then being a BPD employee. Mullan testified in a collectivist manner, by repeatedly using: "we", "us" or "our". She qualified some of her answers with such phrases as "I believe", "I felt" or "To the best of my recollection". She deflected responsibility for medical (dis)approval, away from Greenstein and on to the BPD's Medical Director, Dr. Arnold. However, Dr. Arnold was not on duty the day of the medical exam/review and Mullan's bypass memo, January 22, 2006. Mullan also testified that the Nurse-Practitioner Zelma Geenstein alerted her to and discussed the Appellant's alleged omissions and inconsistencies on January 22, 2006. It has been found here that Greenstein did alert Mullan to and

did discuss in detail Ida's alleged omissions and discrepancies with Mullan on January 22, 2006. Mullan crafted her memo at the instigation of and reliance on representations made by nurse-practitioner Greenstein, without identifying Greenstein as the instigator and source. Mullan walked a narrow line as a memo drafter and witness, while carefully avoiding falling off of the line. She was too quick on the draw, in forming her opinion regarding Ida's motives and honesty and could have done more to substantiate her opinion thereafter. I realize that this application-bypass process involves large numbers and is time consuming and time sensitive yet each applicant is entitled to fair consideration since an important career juncture is at hand. I do not assign great weight to Mullan's testimony and memo regarding Ida's motives and intentions. (Exhibits, testimony, testimony and demeanor of Mullan)

50. Robin Hunt is also a well practiced and a well prepared witness. She is intimately familiar with the application process and documentation used for the position of Boston Police Officer. She has been employed by the BPD's Human Resources Office since 1999, it's Deputy Director since 2003 and now it's Director for a year. She attributed the decision to bypass the Appellant, to the "roundtable". However she admitted that the roundtable generally relied on her presentation to make their decision. She testified that the roundtable relied on her presentation based on Mullan's memo and the memo itself, to bypass the Appellant. She failed to take any reasonable steps to resolve the memo's listed errors, inconsistencies or omissions despite having the opportunity and resources to do so. She failed to review her specific concerns with the Appellant, her treating Physicians,

Detective Famolare or anyone but Mullan and Nurse- Practitioner Greenstein. She also failed to address the issue of dishonesty with any of the Appellant's BPD supervisors; the Appellant then being a BPD employee. She testified in a general manner about the activities and process of the roundtable discussions. However, she was unable to answer some specific questions pertaining to the Appellant's roundtable process. She couldn't even remember the month in which the Appellant's bypass-roundtable occurred. She could not remember if it occurred in January or February or March or April, 2006. Hunt failed to return any of the Appellant's e-mails and other attempts at contact, while her application was pending. She also deflected responsibility for medical (dis)approval on to the BPD's Medical Director, Dr. Arnold. However, Dr. Arnold was not on duty the day of the medical exam/review and Mullan's bypass memo, January 22, 2006. Hunt also testified that the Nurse-Practitioner Zelma Geenstein ("Mullan's Source") discussed the Appellant's alleged omissions and inconsistencies with her, prior to the bypass-roundtable. Greenstein denied any such conversation. However, it has been found here that Greenstein did discuss Appellant related matters with both Mullan and Hunt. Hunt's role in this matter was the presentation to the roundtable, of information generated or detected by Greenstein and channeled to her through Mullan. Hunt's testimony is attributed the weight of a conduit of information and not the weight or reliability of a source. (Exhibits, testimony, testimony and demeanor of Hunt)

CONCLUSION:

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.” City of Cambridge vs. Civil Service Commission, 43 Mass.App.Ct.300, 304 (1997). 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 vs. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). Basic merit principles as defined in G.L. c. 31, §1 require that employees be selected and advanced on the basis of their relative ability, knowledge and skills, assured fair and equal treatment in all aspects of personnel administration and that they are protected from arbitrary and capricious actions. See Tallman v. City of Holyoke, G-2134 Cotter, et al v. City of Boston, et al., United States District Court of Massachusetts, Civil Action Number 99-1101, (Young, CJ).

It is well established that honesty and good character are essential qualifications for the position of police officer. In this instant matter, the Department bypassed the Appellant for appointment as a police officer due to her alleged dishonesty in completing the written Health History questionnaire portion of the application process. The Department alleges that the dishonesty was motivated by the Appellant’s desire to hide certain medical or factual matters, thereby improving her chances of passing the required medical exam/review for the position. The alleged dishonesty was formally determined by Roberta Mullan, the Department’s Director of Occupational Health Services Unit. However Mullan was initially alerted by Nurse-Practitioner Greenstein to the alleged

omissions and discrepancies which formed the basis of the claimed dishonesty.

Greenstein also discussed those allegations with Mullan, in detail. Mullan supported the determination of dishonesty, in consultation with Greenstein, by a comparison of the Appellant's answers on the lengthy 2006 Health History questionnaire to her answers on a prior 2004 questionnaire, which the Department had on file.

Civil Service law traditionally obligates the appointing authority to exercise sound discretion, within the particular circumstances of the case, in the selection of a candidate from a certified eligibility list. The Supreme Judicial Court stated succinctly and conclusively "The appointing authority, in circumstances such as those before us, may not be required to appoint any person to a vacant post. He may select in the exercise of a ***sound discretion***, among persons eligible for promotion or may decline to make any appointment." (Emphasis added) Goldblatt v. Corporate Counsel of Boston, 360 Mass. 660, 666 (1971). The Goldblatt decision then referenced Commissioner of the Metropolitan District Commission v. Director of Civil Service, 348 Mass. 184 (1964). The bypass decision there was determined to be an exercise of sound discretion because of the serious character of the criminal conduct underlying his conviction. The obvious inappropriateness of appointing as a police officer one previously convicted of a felony, (armed robbery), even though later pardoned (for grounds other than his innocence), was ample justification for the commissioner's refusal to appoint. See *State ex rel. Atty. Gen. v. Hawkins*, 44 Ohio St. 98, 102, 116-117." *Idem*. Commissioner of Metropolitan District Commission at page 197. The court had further explained its rationale earlier in that decision, while citing several other decisions, *Idem* at page 193; "we adopt a construction of Section 23 which is within the constitutional limits set out in Brown v. Russell, 166

Mass. 14, 21-27, and Opinion of the Justices, [324 Mass. 736](#), 740. We hold that under Section 23 an appointing authority has the power and duty to protect the public interest in having only public officers and employees of good character and integrity and may refrain from appointing a disabled veteran in preference to others where there are reasonable grounds to regard that veteran's character or past conduct as rendering him unfit and unsuitable to perform the duties of office.”

The above cited Goldblatt line of decisions address serious and weighty factual and statutory considerations on the character issue, which affect the countervailing rights and responsibilities of the appointing authority versus the candidates.

However, in this present matter the “roundtable discussion” process was clearly dominated and determined by Mullan’s memo and Hunt’s presentation of it to the roundtable. Mullan’s memo substantially relied on information provided by Nurse-Practitioner Greenstein, who actually conducted the medical exam-review. Mullan’s determination of dishonesty was essentially an opinion or inference base on a quick analysis by her, of perceived omissions or inconsistencies between the two questionnaires, as pointed out by Greenstein. She formed this opinion without making any attempt at verification, clarification or seeking an alternative explanation from any other source, but Greenstein. Mullan wrote her bypass memo on the same day as the Appellant’s medical exam/review, January 22, 2006. Mullan addressed her memo to the Department’s Director of Human Resources, Robin Hunt. Hunt then made a presentation, based on that memo, to the roundtable which bypassed the Appellant for appointment.

Mullan testified that the Nurse-Practitioner Zelma Geenstein alerted her to and discussed the Appellant's alleged omissions and inconsistencies on January 22, 2006. Mullan confirmed the alleged omissions and discrepancies in a detailed discussion with Greenstein on the date of the exam-review, January 22, 2006. Hunt also testified that the Nurse-Practitioner Zelma Geenstein ("Mullan's Source") discussed the Appellant's alleged omissions and inconsistencies with her, prior to the bypass-roundtable. However, Greenstein denied any discussion with or alerting of either Hunt or Mullan regarding the questionnaire omissions and discrepancies.

Greenstein lacks credibility, having been contradicted by both Mullan and Hunt on these material and substantive facts. Greenstein did discuss these Appellant related matters with both Mullan and Hunt, on January 22, 2006 or thereafter. Greenstein despite being the instigator and verifier of the alleged bypass information is not a credible witness and her testimony lacks reliability. Both Mullan and Hunt testified reliably by attributing to Zelma Greenstein, the initial alerting and discussions regarding the alleged discrepancies and omissions on the questionnaires. Greenstein held some animus toward the Appellant for some unknown reason. The Appellant is a credible witness. She testified that at the end of her review-interview, Zelma (Greenstein) or the nurse-practitioner gave her "odd looks" and then stated to her; "I'm going to make sure you don't get on". Ida testified that the nurse practitioner then repeated the statement, a short time later, as Ida was standing next to the door, ready to exit the room. Ida stated that her reaction was "shocked" and she "didn't know what to think". Ida, as a witness was visibly upset while recalling this memory on the witness stand. Her voice quaked and quivered while her face exhibited pain and hurt. It seemed that she was about to shed a

few tears. Greenstein unconvincingly denied making that repeated statement to Ida. Greenstein also tried to hide her involvement as the instigator and source of the bypass reasons, the alleged omissions and discrepancies. Greenstein, contrary to her well established practice, failed to make any notes whatsoever, on Ida's medical chart, regarding her detailed discussions with Mullan and Hunt. Greenstein knew that such detailed notes would support Ida's assertion regarding the repeated statement, showing animus on her part.

There is a foundational presumption of good faith and honesty upon which the appointing authority's appointment decisions are based. The Appeals Court stated: "We are not unmindful of the presumptive good faith and honesty that attaches to discretionary acts of public officials, see Foster from Gloucester, Inc. v. City Council of Gloucester, 10 Mass App Ct 284, 294 (1980), but that presumption must yield to the statutory command that the mayor produce "sound and sufficient reasons" to justify his action." Foot note 11. Mayor of Revere vs. Civil Service Commission & others, 31 Mass App Ct 315, 321 (1991) ¹¹

The Department's process here permitted Roberta Mullan and Robin Hunt to exercise excessive discretion in the determination of the Appellant's lack of integrity or honesty. Their determination was not based on a criminal conviction or other substantive evidence but was derived as inferences and interpretations based on claimed omissions and inconsistencies between two health-history questionnaires. Apparently, both Hunt and Mullan relied on Greenstein's experience and credentials as a medical professional, in forming their conclusions in this matter.

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). See Commissioners of Civil Ser. V. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass.App. Ct. 726, 727-728 (2003). However, 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. City of Cambridge, 43 Mass. App. Ct. at 304.

Here, credible testimony and reliable documentary evidence showed that the Department did not have reasonable justification for bypassing Appellant for appointment to the position of a Boston Police Officer. The Department’s assertion that Appellant was bypassed because she was untruthful by failing to provide the OHSU with full disclosure regarding her health history and by failing to do so, attempting to mislead and present herself in a more favorable light in order to gain employment was not supported by a preponderance of evidence. Rather, the reliable evidence indicates that the Appellant provided all of her medical records, evaluations, verbal information and a detailed and truthful health history. She underwent a physical examination-review with Nurse-Practitioner Greenstein on January 22, 2006, at which time Greenstein did not request more records or information from the Appellant. Greenstein testified to and corroborated it by her contemporaneous notes, determined that the Appellant successfully completed her physical exam-review, on January 22, 2006. However, Greenstein then immediately

attempted to secretly sabotage the Appellant's application by alerting Mullan to alleged omissions and discrepancies in the Appellant's questionnaires. Greenstein failed to follow her confirmed habit of making detailed notes in the medical chart, of any relevant observations, events, conversation or other matters related to her medical exam-interview. Greenstein omitted her note-taking habit here, to hide her role as the instigator and provider of the bypass information. Greenstein was concerned about being identified as the instigator, since she had just made a seriously prejudicial statement to the Appellant, and repeated it, at the end of her exam-interview with the Appellant. The Appellant had passed the psychiatric screening by Dr. Marcia Scott, a few days earlier. The Appellant had then answered all of Dr. Scott's questions, some relating to her medical, ROTC and employment history.

Neither Mullan nor Hunt attempted to clarify or verify any of the alleged discrepancies or omissions in the two lengthy health history questionnaires. Mullan and Hunt attributed a motive of dishonesty for the purpose of advantage to the alleged discrepancies or omissions. Both Mullan and Hunt relied too heavily on the experience and credentials of Nurse-Practitioner Greenstein, in forming their conclusions in this matter. However, they avoided any effort to substantiate their determination of dishonesty, even with the Appellant's then employer, the BPD and her BPD supervisors.

Mullan's rush to judgment on the dishonesty issue is the substance of her memo of January 22, 2006, the same day as the Appellant's physicals exam-review with Greenstein. Greenstein played the foundational role of establishing, substantiating and impelling the bypass reasons contained in Mullan's memo. Mullan relied excessively on Greenstein therefore, in forming her own opinion or determination of dishonesty, as

contained in her memo. Mullan's memo as presented by Hunt at the roundtable discussion is the reason for the Appellant's bypass.

The Appellant addressed each alleged omission or inconsistency at this hearing and provided complete explanations for each one. The Appellant did not have a copy of her 2004 questionnaire for reference, when she completed her 2006 questionnaire. However, she was aware when she completed the 2006 questionnaire, that the BPD did have her 2004 questionnaire on file for reference. At her medical exam-review, the Appellant voluntarily provided all of her medical records, including the reports from several recent physical exams.

The Department conceded that the minor head injury reported on the 2004 questionnaire but not on the 2006 questionnaire was actually a minor injury, likely to be forgotten by an Applicant. The ROTC matter is a non-issue and obviously so on its face; yet, the Appellant testified to her own efforts prior to completing the questionnaire, in determining that ROTC was not military service and that she had "disenrolled" in the program while in college. The Department had an affirmative duty to inquire into and prove that ROTC is actually military service. Instead, Mullan chose to believe that it was an intentional omission by failing to list it on the 2006 questionnaire as a "rejection or discharge from the military." The Appellant testified and produced payroll records to prove that she had missed only one day of work do to a work related back injury from lifting luggage at Logan Airport in 2002. Mullan wrongfully chose to believe that Ida had missed 3-4 months of work without attempting to inquire into or verify her belief.

Greenstein contacted or consulted both Mullan and Hunt regarding the Appellant's medical exam-review or questionnaire; yet, both Mullan and Hunt testified

that they had discussed the alleged omissions and inconsistencies with Greenstein. Mullan also testified that Greenstein initially alerted her to the omissions and inconsistencies. Both Mullan and Hunt are found to be credible witnesses on this issue. The Appellant also, is found to be a credible and reliable witness, especially regarding her claim that Greenstein made a severely prejudicial statement and repeated it at the close of her exam-review, on January 22, 2006. Greenstein has been contradicted by three witnesses on substantive and significant facts. She also has been found to have varied her long established habit of detailed note-taking, in an attempt to hide her role as instigator and provider of the bypass reasons.

Additionally, the Appellant produced other substantial and reliable testimonial and documentary evidence in support of her personal integrity and good character.

By a preponderance of the credible and reliable evidence in the record it is found that the Appellant was truthful and that she that she did not fail to provide a full and complete health history to the Department, with intent to enhance her chances of employment. Accordingly, the Appointing Authority did not have a reasonable justification, by a showing of sound and sufficient reasons for bypassing Appellant for appointment to the position of police officer for the Boston Police Department.

Therefore, the appeal under Docket No. G1-06-185 is *allowed*.

The Commission, after hearing and finding that the Appellant was bypassed for appointment through no fault of her own and pursuant to the powers of relief inherent in Chapter 534 of the acts of 1976, as amended by Chapter 310 of the Acts of 1993, to order the Human Resources Division to take the following action:

The Civil Service Commission directs that the Human Resources Division and the Boston Police Department shall place Ida Candreva's name at the top of the eligibility list

for appointment to the position of police officer, so that her name appears at the top of any existing certification and/or the next certification requested by the Boston Police Department from HRD for the next appointment to the position of police officer, so that she receives at least one opportunity for consideration. The Boston Police Department shall not use the same reasons claimed here, as reasons for bypass in any subsequent opportunity for appointment. Zelma Greenstein shall not participate in any subsequent processing, review or evaluation of the Appellant's appointment opportunity. Any future bypass of the Appellant shall be supported by an audio/video recorded record of any interviews, examinations, roundtables or other substantive conferences of the BPD concerning the Appellant. If the Appellant is appointed by the Boston Police Department, her seniority date for civil service purposes only, shall be retroactively adjusted back to the date of this bypass.

Civil Service Commission,

Daniel M. Henderson, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Taylor, Henderson, Marquis, and Stein, Commissioners) on January 15, 2009.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:
Mary K. Ames, Atty.
Tara L. Chisholm, Atty.
John Marra, Atty. HRD

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

503

CIVIL SERVICE COMMISSION

One Ashburton Place: Room

Boston, MA 02108

(617) 727-2293

IDA CANDREVA,
Appellant

v.

G1-06-185

BOSTON POLICE DEPARTMENT,
Respondent

MOTION TO STRIKE CERTAIN PARTS OF THE DECISION

Chairman Bowman moved to strike the hearing officer's credibility assessment regarding Zelma Greenstein.

Motion failed by a 3-2 Vote (Bowman, Chairman – Yes; Marquis, Commissioner – Yes; Henderson, Commissioner – No; Stein, Commissioner – No; Taylor, Commissioner – No) on January 15, 2009.

A true copy attest:

Christopher C. Bowman
Chairman