

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

ADELINO CANUTO,
Appellant,

v.

BOSTON POLICE DEPARTMENT,
Respondent

Docket Number:

G1-23-174

Appearance for Appellant:

James Gilden, Esq.
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Sharon, MA 02067

Appearance for Respondent:

Omar Bennani, Esq.
Boston Police Department
Office of the Legal Advisor
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Commissioner :

Angela C. McConney¹

SUMMARY OF DECISION

The Commission denied the Appellant's bypass appeal as the Boston Police Department had reasonable justification to bypass him for original appointment as a permanent full-time police officer based in part on the Appellant's failure to notify police that a firearm was in the trunk of his car when it was stolen.

¹ The Commission acknowledges the assistance of Law Clerk Camryn Given with the preparation of this decision.

DECISION

On September 7, 2023, the Appellant, Adelino Canuto (Appellant or Mr. Canuto), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Police Department (Department or BPD) to bypass him for original appointment to the position of permanent, full-time police officer with the Department.

The Commission conducted a remote pre-hearing conference on October 17, 2023. On January 10, 2024, I conducted an in-person full evidentiary hearing at the offices of the Commission, located at 100 Cambridge Street, Boston MA.² The hearing was recorded via Webex and link to the recording was provided to the parties.³ On April 12, 2024, the parties filed proposed decisions, whereupon the administrative record closed.

FINDINGS OF FACT:

I marked the Appellant's Pre-hearing Memorandum as "A" and the Department's Pre-hearing Memorandum as "B" for identification. I admitted nine exhibits from the Department (Exhibits 1-9.) I admitted the October 6, 2023 letter from HRD to the Commission as Exhibit 10. Based upon the documents submitted and the testimony of the following witnesses:

Called by the Department:

- Detective Joel Resil, Recruit Investigations Unit, Boston Police Department
- Teori Shaw-Boyce, Deputy Director of Human Resources, Boston Police Department

² The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

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

Called by the Appellant:

- Adelino Canuto, the Appellant

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

Appellant's Background

1. Adelino Canuto is a 34-year-old male, currently residing in the City of Boston.

(Exhibit 7; Testimony of Appellant)

2. Mr. Canuto emigrated from Cape Verde in 2007 and has resided in Boston since then. (Exhibit 1; Testimony of Appellant)

3. Mr. Canuto has been employed as a letter carrier for the United States Postal Service since September 2016. (Exhibits 1 and 7; Testimony of Appellant)

Procedural Background

4. On March 18, 2022, Mr. Canuto passed the civil service examination. (Exhibit 10; Stipulated Facts)

5. On July 1, 2022, the state's Human Resources Division (HRD) established an eligible list of candidates for Boston Police Officer. (Exhibit 10)

6. Between September 2022 and January 2023, HRD issued Certification No. 08848 to the Department, upon which Mr. Canuto was ranked 87th among those willing to accept appointment. (Stipulated Facts) In an August 25, 2023 letter enclosing his appeal rights, the Department notified Mr. Canuto of his bypass for original appointment to the position of police officer, referencing his initial failure to report a missing firearm on August 9, 2019 and the resulting charge brought against him. The letter cited "significant concerns with [Mr. Canuto's] judgment". (Exhibit 8; Testimony of Shaw-Boyce)

7. On September 7, 2023, Mr. Canuto filed an appeal with the Commission.

(Stipulated Facts)

Background to August 9, 2019

8. Mr. Canuto worked for a security company from September 2013 to September 2016. At first, Mr. Canuto worked as a truck driver. He later applied for an armed guard position, a position that required him to carry a firearm. In 2014, Mr. Canuto completed a gun safety course and received his license to carry (LTC) a firearm. (Exhibit 1; Testimony of Appellant)

9. At the beginning of his employment as an armed guard, Mr. Canuto used a company-owned firearm. The employer suggested that Mr. Canuto purchase his own firearm since the company had a limited supply of firearms and several new employees. (Testimony of Appellant)

10. Mr. Canuto purchased a Smith and Wesson 9mm pistol with the intention of using it for his employment. (Exhibits 1 and 2; Testimony of Appellant)

August 9, 2019 Incident

11. On August 9, 2019, Mr. Canuto planned to join a friend at the firing range after work. He secured his firearm in a locked case and placed it in the trunk of his car. There was also ammunition in the trunk. (Exhibit 9; Testimony of Appellant)

12. After his friend canceled on him, Mr. Canuto decided to get a haircut at a local barber shop. (Exhibit 7; Testimony of Appellant)

13. When Mr. Canuto entered the barbershop, he took the gun in its locked case with him. (Testimony of Appellant)

14. Mr. Canuto had advertised his car for sale on Facebook Marketplace one week before. While Mr. Canuto was at the barbershop, a buyer contacted him on Facebook Marketplace, and asked to see the motor vehicle that evening. (Exhibit 7; Testimony of Appellant)

15. Mr. Canuto provided the potential buyer with his home address and agreed to meet him later that evening. (Exhibit 7; Testimony of Appellant)

16. When Mr. Canuto arrived home around 9:00 p.m., a male flagged him down, identifying himself as the potential buyer from Facebook Marketplace. Mr. Canuto turned the engine off and exited the car, placing the car key fob in his pocket. He leaned against the door as the potential buyer began inspecting the car. (Exhibit 7; Testimony of Appellant)

17. When the male asked if he could see the interior of the car, Mr. Canuto agreed. The male got in the car alone, sitting in the driver's seat. The male then pushed the ignition start button. Because Mr. Canuto was nearby with the key fob in his pocket, the car started. (Exhibit 7; Testimony of Appellant)

18. The male then drove away without Mr. Canuto's permission. After approximately five minutes, Mr. Canuto concluded that he was not going to return. (Testimony of Appellant)

19. Mr. Canuto called 911 and reported that his car was stolen. The 911 operator told Mr. Canuto that since the suspect did not have the car key fob, it was likely that he would return shortly.⁴ (Testimony of Appellant)

⁴ There is no recording of Mr. Canuto's August 9, 2019's 911 call because the Department's recording system was not working properly at the time. (Exhibit 5; Testimony of Resil)

20. The 911 operator forwarded the call information to a dispatcher for the appropriate police district. At approximately 10:00 p.m., the dispatcher sent a call to police officers with the car's make and model information. (Testimony of Det. Resil; Exhibit 4)

21. If a stolen firearm is reported in a 911 call, it is considered a high priority pursuant to BPD procedure, and this information is forwarded in the dispatch call. (Exhibit 3; Testimony of Det. Resil)

22. At approximately 10:00 p.m., Mr. Canuto went to the District C-11 Police Station and spoke to a police officer. The police officer generated an incident report and gave Mr. Canuto the incident report number. The incident report contained no information about a firearm. (Exhibits 2, 4 and 7; Testimony of Appellant)

23. On the next day, August 10, 2019, Mr. Canuto's girlfriend and friends called him after seeing his motor vehicle. Mr. Canuto called 911 again and was told to return to the police station. At this time, Mr. Canuto mentioned the missing firearm to an officer. The incident report stated, "[Mr. Canuto] then told Officer McGrath that he asked dispatch to notify him when his vehicle was located because he had a firearm in the trunk." (Exhibit 2; Testimony of Appellant)

24. When Officer McGrath contacted the police officer that had generated the August 10, 2019 incident report, that police officer said that he was unaware of a firearm. When that police officer later called Mr. Canuto, Mr. Canuto insisted that he had told the initial 911 operator about the firearm. The initial 911 call texts did not mention a firearm. (Exhibit 2; Testimony of Appellant)

25. In his application to the BPD, Mr. Canuto explained the events: “A matter of minutes went by and I notified BPD and also relayed to dispatch that there was a firearm in the trunk locked safe.” (Exhibits 1, 7 and 9; Testimony of Appellant)

26. Later, in his discretionary interview with Detective Resil, Mr. Canuto claimed that numerous times on August 9, 2019, he stated to officers “my biggest concern is the weapon” when discussing his stolen vehicle. (Exhibits 1, 7 and 9; Testimony of Appellant)

27. On August 11, 2019, police officers found Mr. Canuto’s stolen car. They arrested the driver, an unlicensed 17-year-old male. The firearm and the ammunition were not in the vehicle and neither have ever been found. (Exhibit 2 and 7; Testimony of Appellant)

28. After the incident, the BPD’s Licensing Unit suspended Mr. Canuto’s LTC. When Mr. Canuto reapplied for his LTC, it was denied because of the incident on August 9, 2019. (Exhibit 7; Testimony of Appellant)

29. Mr. Canuto was charged with improper storage of a firearm (G.L. c. 140 § 131L) and was summonsed to court. Mr. Canuto was arraigned on December 18, 2019, and the court dismissed the charges in August of 2020 upon the condition that Mr. Canuto complete pre-trial probation, take a firearm safety training course, and perform community service. (Exhibits 1, 3 and 9; Testimony of Appellant, Testimony of Resil)

The Roundtable Decision

30. Det. Joel Resil has been employed by the Department for 21 years. He has served as a detective for the last two and a half years and is assigned to the Recruit Investigations Unit (RIU). As part of his RIU duties, he conducted Mr. Canuto’s background investigation. Detective Resil searched Mr. Canuto’s criminal history, driving history, employment history,

education, and personal references. On January 2, 2023, Detective Resil conducted a home visit and interviewed Mr. Canuto. (Exhibit 7; Testimony of Resil, Testimony of Shaw-Boyce)

31. Det. Resil compiled the information into a Privileged and Confidential Memorandum (PCM) to present to the Department's roundtable. The members of the roundtable were Human Resources Dep. Dir. Teori Shaw-Boyce, Sgt. Det. John Puglia, Dep. of Internal Affairs Philip Owens, Attorney Omar Bennani and Attorney Joseph McClennan. (Exhibit 7; Testimony of Det. Resil, Testimony of Shaw-Boyce)

32. On or about January 10, 2023, Det. Resil presented the PCM to the roundtable. He left the room after making his presentation, and the roundtable deliberated on Mr. Canuto's application. (Testimony of Resil, Testimony of Shaw-Boyce)

33. The roundtable had questions about the August 9, 2019 incident, and asked Det. Resil to obtain more information. (Exhibits 7 and 9; Testimony of Resil)

34. With Det. Wozniak present, Det. Resil conducted a discretionary interview with Mr. Canuto on January 11, 2023. The detective asked Mr. Canuto for a more detailed explanation of the August 9, 2019 incident, and Mr. Canuto recounted the events. When Det. Resil asked Mr. Canuto if he was "absolutely certain" that he informed the first 911 operator about the firearm in the trunk of the car, Mr. Canuto responded that he was certain he had. Det. Resil asked if any officer had a follow-up question about the firearm, and Mr. Canuto said that no one had. Det. Resil asked if a police report was generated specifically for the missing firearm, and Mr. Canuto said he did not make a report. Det. Wozniak told Mr. Canuto his timeline was not adding up. (Exhibit 9; Testimony of Resil)

35. Det. Resil updated the PCM and presented these additional findings to the roundtable. The roundtable still had concerns about Mr. Canuto's judgment after the updated

memorandum, and found Mr. Canuto's behavior on August 9, 2019 inconsistent with that of a responsible firearm carrier. (Exhibits 7 and 8; Testimony of Resil, Testimony of Shaw-Boyce)

36. The roundtable made the decision to bypass Mr. Canuto, and notified him in an August 25, 2023 letter enclosing his appeal rights. (Exhibit 8)

37. The roundtable was also concerned about the Facebook Marketplace transaction itself, that Mr. Canuto agreed to let a stranger look at his car and enter the vehicle while a firearm was in the trunk. (Testimony of Shaw-Boyce)

Applicable Civil Service Law

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, § 1. *See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996). *See also Brookline v. Alston*, 487 Mass. 278 (2021) (analyzing broad scope of the Commission's jurisdiction to enforce basic merit principles under civil service law).

Original appointments of civil service employees are made from a list of candidates, called a "certification", whose names are drawn in the order in which they appear on the applicable civil service "eligible list", using what is called the 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09.

The Commission's role is to determine whether the appointing authority has shown, by a

preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. *Boston Police Dep’t v. Civil Serv. Comm’n*, 483 Mass. 461, 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012). *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law’”. *Brckett v. Civil Service Comm’n*, 447 Mass. 233, 543 (2006); *Commissioners of Civil Service v. Municipal Ct.*, 359 Mass. 211, 214 (1971) and cases cited. See also *Mayor of Revere v. Civil Service Comm’n*, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., *Falmouth v. Civil Serv. Comm’n.*, 61 Mass. App. Ct. 796, 801 (2004), citing *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303-305, rev. den., 10 428 Mass. 1102 (1997); *Police Comm’r v. Civil Serv. Comm’n*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

ANALYSIS

The BPD has shown, by a preponderance of the evidence, that it had reasonable justification to bypass Mr. Canuto for original apportionment as a police officer. The BPD conducted a reasonably thorough and detailed investigation. When the roundtable had further questions about the August 19, 2019 incident, they provided Mr. Canuto with the opportunity to share more information in a discretionary interview with Detective Resil. After reviewing Det.

Resil's process and adherence to procedure, I find that he conducted a fair investigation. I now weigh the Department's stated reasons for bypassing Mr. Canuto.

The Department specifically took issue with Mr. Canuto's failure to inform officers of the missing firearm on the day the car was stolen.

Throughout Mr. Canuto's application to the Department, his discretionary interview, and the hearing, Mr. Canuto insisted that he told the first 911 operator about the firearm. There is not an existing recording of this 911 call, so the Department could not verify this claim. However, based on the evidence contained in the administrative record, I find that Mr. Canuto did not mention the firearm in his first contact with law enforcement personnel. After Mr. Canuto called 911, the resulting dispatch to officers did not mention a firearm. A stolen firearm is of utmost importance to responding officers. If Mr. Canuto had truly made it clear to the 911 operator that there was a firearm in the trunk of the stolen motor vehicle, that information would have been considered a top priority and reported in the dispatch call. Officer Collins, the author of the police incident report, reviewed the 911 call texts from Mr. Canuto's first call to 911 and saw no mention of the firearm. Since both the documentation and the events point to the fact that Mr. Canuto did not initially report the firearm, the roundtable had a credible basis for this finding.

The roundtable found that Mr. Canuto's failure to report the firearm evidenced issues of judgment. A stolen vehicle becomes a more serious issue when there is a weapon involved. According to BPD procedure, a missing firearm would have received high priority. This means the police officers would have been on high alert for the vehicle. Therefore, if the missing firearm was reported sooner, the police officers would have been more likely to find the car faster and potentially recover the firearm. Mr. Canuto should have understood these concerns, especially as someone who underwent a gun safety course and held an LTC. Although Mr.

Canuto eventually told the officers about the firearm, it was not until the next day, August 10, 2019. Mr. Canuto's failure to immediately mention the firearm (and the ammunition) demonstrates a serious lapse of judgment.

Separate from Mr. Canuto's failure to report the firearm, it is concerning that Mr. Canuto agreed to show a vehicle to a potential buyer with a firearm in the trunk of the car. Mr. Canuto then allowed the stranger to get in the driver's seat. Mr. Canuto's decision-making resulted in an unlicensed juvenile operating a stolen motor vehicle, and a missing firearm and ammunition. Therefore, the roundtable's decision to bypass Mr. Canuto based on his lack of sound judgment in this situation is reasonably justified.

As a police officer, Mr. Canuto would be expected to carry and operate a firearm under high stress and difficult circumstances. This makes Mr. Canuto's decisions even more concerning. It is reasonable for the Department to have concerns over Mr. Canuto's behavior in more stressful situations that would inevitably arise as a police officer.

Public safety officers are held to a high standard given the amount of discretion and power they hold in their position. Police officers are expected to both abide by and enforce the laws. Mr. Canuto's failure to do so provided the Department with reasonable justification to support its concern that the Appellant lacked the good judgment necessary for performing the job duties of the position.

I find that the Department was reasonably justified in bypassing Adelino Canuto for the reasons cited above.

CONCLUSION

The Appellant's appeal filed under Docket No. G1-23-222 is hereby *denied*.

Civil Service Commission

/s/ Angela C. McConney

Angela C. McConney
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey and McConney, Commissioners [Stein – Absent]) on July 25, 2024.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 C.M.R. § 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:
James Gilden, Esq. (for Appellant)
Omar Bennani, Esq. (for Respondent)