

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

BRIANNE CARNELL,
DAVID HERNANDEZ,
CONOR MOCCIA &
CHASE ROBICHAUD,
Appellants

v.

G1-19-260 (Carnell)
G1-19-261 (Hernandez)
G1-19-262 (Moccia)
G1-19-263 (Robichaud)

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellants:

Bryan Decker, Esq.
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Boston, MA 02122

Appearance for Respondent:

Winifred B. Gibbons, Esq.
Boston Police Department
Office of the Legal Advisor
1 Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

DECISION ON APPELLANTS' MOTION FOR SUMMARY DECISION

On December 13, 2019, the Appellants, Brianne Carnell, David Hernandez, Conor Moccia and Chase Robichaud (Appellants), filed appeals with the Civil Service Commission (Commission), contesting the decision of the Boston Police Department (BPD) to rescind their conditional offers of employment and bypass them for original appointment to the position of permanent, full-time police officer. A pre-hearing was held at the offices of the Commission on

January 14, 2020. The Appellants filed a Motion for Summary Decision on January 23, 2020 and the BPD filed an opposition on February 11, 2020.

Based on the Appellants' motion and the BPD's opposition and all other documents contained in the record, the following appears to be undisputed:

1. On March 25, 2017, the Appellants took and passed a civil service examination for police officer.
2. On September 1, 2017, the state's Human Resources Division (HRD) placed the names of the Appellants on an eligible list for police officer.
3. On March 29, 2019, HRD sent the BPD Certification No. 06203 from which the BPD was authorized to appoint 120 candidates as police officers.
4. Each of the Appellants signed the Certification as willing to accept appointment.
5. During April and May 2019, the Appellants each attended a BPD orientation for police officer candidates that would be considered for appointment from Certification No. 06203.
6. As part of the orientation session, BPD officials walked through the review and selection process. As part of that orientation, candidates were told that, if they received a conditional offer of employment, they would need to meet certain conditions, including completing the Boston Police Academy, which falls under the fall under the Massachusetts Municipal Police Training Committee (MMPTC).
7. The BPD candidates at the orientation session were explicitly told that passing the Physical Abilities Test (PAT), administered by HRD, would allow them to enter the Police Academy.
8. The BPD candidates at the orientation session were also told that, *once enrolled in the Academy*, they would need to meet *progressive* physical standards that increase over time. They were told that physical training would take place for two hours each day and that,

failure to participate (and meet the progressive standards) would be considered a failure to participate in the physical training. Ultimately, failure to participate (and meet the progressive standards) in 30% of the physical fitness training hours would lead to dismissal from the Academy. Specifically, the BPD officials told the candidates, that, if, *after several weeks in the Academy*, they were not meeting the progressive standards, they would not be getting credit for the two hours of physical training and, thus, would be unlikely to meet the number of hours required to continue with the Academy.

9. BPD officials at the orientation *encouraged* the candidates to become familiar with the progressive standards and to train sufficiently to exceed the standards prior to joining the Academy.
10. BPD officials also told the candidates that, after undergoing a physical readiness test on the first day of the Academy, they would be divided into three separate groups based on their physical readiness with physical training customized for each group.
11. Separately, on June 21, 2019, the following events took place at the monthly meeting of the MMPTC, the group that oversees Police Academies in Massachusetts:

“At last month’s meeting, concerns of a few of the Commonwealth’s largest departments over the entry-level fitness standards that had been recently voted on for implementation July 1, 2019, produced a six-month moratorium on its implementation, moving it to January 1, 2020. Chairman Hicks commented that he has been receiving feedback that this was not a welcome change. He stated that the Committee needs to be sensitive to all cities and towns in the Commonwealth. There was much discussion about a lower entry standard, giving time to build to a predetermined higher standard of fitness. It was suggested that MPTC might develop a training video on how to properly prepare for training, available to those who are considering pursuing this career. A lower entry level would allow more students entry and with an opportunity for coaching in Health and Wellness on how to build strength and stamina, with a reasonable goal. Those departments that have cadet programs could be mentoring these students and help prepare them for application. Several ideas were offered with regards to working with candidates during the hiring process. Ultimately, a new Motion was made to reconsider the Motion of last month’s meeting regarding the moratorium on entry-level fitness testing to enter a police academy and instead revise the fitness standard to establish a 30th percentile entry level (based on the Cooper Institute norms) for any academy

beginning after September 1, 2019. Students must also then attain the 40th percentile in all four events by week 8. Those who fail to do so will be retested by week 10. Failure to meet the standard by week 10 will result in dismissal for non-disciplinary reasons. Participation requirements remain in effect. The Motion was seconded and passed, one abstention (Vieira). Jason Shea, MPTC SWC will be asked to amend the daily PT regimen to reflect the new standards.” (emphasis added)

12. After attending the BPD orientation sessions in April / May 2019, each of the Appellants completed a student officer application and underwent a thorough background investigation by the BPD.

13. Each of the candidates received conditional offers of employment from the BPD on the following dates:

- Moccia: June 4, 2019
- Robichaud: June 18, 2019
- Carnell: August 30, 2019
- Hernandez: August 30, 2019

14. The conditional offers of employment for Moccia and Robichaud were contingent upon: 1) Successful completion of a medical examination; 2) Successful completion of a psychological examination; 3) successful completion of the PAT administered by HRD; and 4) successful completion of the Boston Police Academy.

15. The conditional offers of employment for Carnell and Hernandez were contingent upon all of the above, but also referenced successful completion of “the new Recruit Entry Fitness Standards Test.”

16. On August 20, 2019, *approximately two months after the MMPTC established the new physical fitness entry standards for police academies*, BPD applicants in this hiring cycle, including the Appellants, received the following email from the BPD’s Diversity

Recruitment Officer & Exam Administrator:

“Recruit Applicant:

A recent decision by the Municipal Training Committee will have a direct impact on our (BPD) hiring process. Please note, after the successful completion of the Physical Abilities Test, all Recruit Applicants will be required to pass the new Recruit Academy Entry Level Fitness Standard. This fitness test will be administered by our Academy on or around November 2, 2019 and additional information will be sent or disseminated some time after the Physical Abilities Test. Please see the attached announcement for this decision and physical fitness requirements. If you have questions regarding this process, please contact BPD HR via email [].”

17. Each of the Appellants passed the medical, psychological and PAT screening.

18. The Appellants then each took the new entry level physical fitness test and failed as follows:

MOCCIA

Event	New Entry Level Standard	Applicant Completion	Pass / Fail
Push-Ups	26 in one minute	22 in one minute	Fail; 4 push-ups short
Sit-Ups	35 in one minute	33 in one minute	Fail; 2 sit-ups short
1.5 mile run / walk	13:16 minutes	12:42.9 minutes	Pass
300-meter run	52.6 seconds	52.6 seconds	Pass

ROBICHAUD

Event	New Entry Level Standard	Applicant Completion	Pass / Fail
Push-Ups	20 in one minute	26 in one minute	Pass
Sit-Ups	32 in one minute	29 in one minute	Fail; 3 sit-ups short
1.5 mile run / walk	13:46 minutes	13:06.2 minutes	Pass
300-meter run	63 seconds	56 seconds	Pass

CARNELL

Event	New Entry Level Standard	Applicant Completion	Pass / Fail
Modified Push-Ups	20 in one minute	18 in one minute	Fail; 2 push-ups short
Sit-Ups	30 in one minute	49 in one minute	Pass
1.5 mile run / walk	15:52 minutes	14:26.8 minutes	Pass
300-meter run	71 seconds	63.8 seconds	Pass

HERNANDEZ

Event	New Entry Level Standard	Applicant Completion	Pass / Fail
Push-Ups	20 in one minute	26 in one minute	Pass
Sit-Ups	32 in one minute	34 in one minute	Pass
1.5 mile run / walk	13:46 minutes	13:29.5 minutes	Pass
300-meter run	63 seconds	65.2 seconds	Fail; 2.2 seconds short

19. The BPD subsequently rescinded the Appellants' conditional offer of employment and notified them that they were being bypassed for appointment. These appeals followed.

Analysis / Relief to be Granted

The undisputed facts here show that the Appellants are aggrieved persons. They were harmed through no fault of their own when the entrance requirements for police officer were effectively modified mid-way through the hiring process.

As part of their orientation in April / May 2019, the Appellants were explicitly told by BPD officials that passing the PAT was the sole requirement for entry into the Police Academy. That critical information was accurate at the time.

Unbeknownst to the Appellants, however, the MMPTC, the body that governs police academies in Massachusetts, was involved in an ongoing debate regarding whether new recruits should be required to meet new physical fitness standards prior to entering the Academy and what the effective date of those new requirements should be. The public minutes of those meetings show that the BPD's representative on the MMPTC had serious reservations about the new requirements and the effective date. As of May 2019, the BPD representative and others had convinced the MMPTC that the effective date for any new standards should be January 2020, months after the BPD's then-ongoing hiring cycle would be completed. One month later, however, in June 2019, the MMPTC reversed course – again – and moved the effective date up to September 1, 2019. That meant that the information provided to BPD recruits months earlier at the BPD orientation was no longer valid.

The MMPTC's June 2019 reversal was not communicated to BPD recruits until approximately two months later, on August 20, 2019. Although each of the Appellants completed a thorough background investigation and met all of the conditional requirements referenced at the BPD orientation, they (just barely) failed the new entry-level physical fitness standards established by the MMPTC.

I reviewed the entire audio / video recording of one of the BPD's orientation sessions that was submitted as an attachment to the BPD's brief. It shows a highly professional team of BPD officials providing new recruits with a detailed description of the Department, its role as *part* of community and the requirements needed to become a police officer. The BPD is correct that

these officials informed the recruits of the strenuous fitness requirements of the Academy and encouraged the recruits to begin training to meet those strenuous requirements. Importantly, however, as referenced above, each of the recruits was explicitly told that the only requirement for entering the Academy was passage of the Physical Abilities Test administered by HRD. Further, they were explicitly told that the Academy fitness standards, once enrolled, were progressive and would be administered / tested over several weeks. Finally, they were told that, upon entry, they would be divided into separate groups with training customized based on their physical fitness. That is *starkly* different from being told of the need to pass newly-established physical fitness standards *prior to admission* into the Police Academy.

Despite the changed conditions, and despite the two-month delay in notifying recruits of these changed conditions, the Appellants came frustratingly close to meeting those new conditions, with one of the Appellants meeting all of the new standards, with the exception of the 300 meter run, coming up *2.2 seconds short*. Based purely on commonsense, it is highly likely that the Academy's fitness training program, which begins on the first day of the Academy, would have allowed this Appellant to improve his time by at least 2.2 seconds or for the other Appellants to improve their performances (i.e. – 2 more sit-ups in a minute).

For these reasons, relief is warranted to ensure that the Appellants, now aware of the new physical fitness requirements, have at least one additional opportunity to be considered for appointment as a Boston Police Officer, a job for which the BPD already granted them a conditional offer of employment.

The Appellants' appeals are *allowed*.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders that:

1. HRD shall place the names of the Appellants at the top of any current or future Certification for permanent, full-time police officer in the Boston Police Department until such time as they are appointed or bypassed.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 27, 2020.

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

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

Notice:

Bryan Decker, Esq. (for Appellants)
Winifred Gibbons, Esq. (for Respondent)
Patrick Butler, Esq. (HRD)
Regina Caggiano (HRD)