

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

**JAMES CARON,**  
*Appellant*

v.

**CITY OF HAVERHILL,**  
*Respondent*

G1-11-351

Appearance for Appellant:

Neil Rossman, Esq.  
Rossman & Rossman  
200 State Street  
Boston, MA 02109

Appearance for Respondent:

William D. Cox, Jr., Esq.  
City Solicitor  
145 South Main Street  
Boston, MA 01835

Commissioner:

Cynthia A. Ittleman<sup>1</sup>

**DECISION**

Pursuant to the provisions of G.L. c. 31 § 2(b), the Appellant James Caron (hereinafter “Appellant”), seeks review of the reasons given by the City of Haverhill (hereinafter “Appointing Authority” or the “City”) used to justify bypassing the Appellant for original appointment to the position of permanent, full-time firefighter.<sup>2</sup> The Appellant filed a timely appeal with the Civil Service Commission (hereinafter “Commission”) on December 13, 2011,

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Hunter Holman in drafting this decision.

<sup>2</sup> On January 4, 2012, the state Human Resources Division (hereinafter “HRD”) provided information indicating that there were four positions to be filled that were temporary, part-time firefighter positions and that the City appointed four (4) temporary part-time firefighters. However Certification numbers 3337 (the re-employment certification) and 203337, dated December 28, 2010, list the candidates to be considered for four (4) permanent full-time firefighter positions (Ex. 2) and the City’s October 17, 2011 letter to HRD concerning the appointment of candidates indicates that four candidates were appointed to permanent full-time firefighter positions. Therefore, this decision concludes that the position involved in the instant case is a permanent full-time firefighter position. (Ex. 10).

and the parties appeared for a pre-hearing conference on February 14, 2012 and a full hearing on April 5, 2012. The witnesses were sequestered during the full hearing with the exception of the Appellant. The full hearing was digitally recorded and a copy of the recording was sent to each party. A written transcript became part of the record. Post-hearing recommended decisions were due on May 2, 2012 and were filed in a timely manner. The record was reopened on October 30, 2012 for the Commissioner to ask the Appellant for further information relating to his military reactivation. On November 1, 2012, the Appellant submitted an affidavit appending a military document related to his reactivation. On November 5, 2012, the City filed a response to the Appellant's affidavit and attached document. For the reasons stated herein, the appeal is denied.

## **FINDINGS OF FACT**

Based on the fifteen (15) exhibits admitted and the testimony of the following witnesses:

### *For the Appointing Authority:*

- Ricci Anthony Accardi, Captain of the Haverhill Fire Department
- Richard B. Borden, Fire Chief of the Haverhill Fire Department
- Scott A. Ziminski, Haverhill Police Officer
- Allen DeNaro, Haverhill Chief of Police

### *For the Appellant:*

- James Caron, Appellant

and taking administrative notice of all matters filed in this case, including, without limitation, the parties' post-hearing submissions on November 1 and 5, 2012; as well as all pertinent statutes,

case law, rules, regulations and policies; and drawing reasonable inferences from the credible evidence, a preponderance of the evidence establishes the following:

1. The Appellant spent much of his youth in Beverly, Massachusetts and graduated from Danvers High School. (Caron Test.)
2. In the period 2005-2006, the Appellant resided with his mother and stepfather at [REDACTED] in Georgetown, Massachusetts (hereinafter "Georgetown address"). (Caron Test.)
3. On November 6, 2006, the Appellant began basic training in the United States Air Force; he was discharged from active duty on November 5, 2009. (Caron Test.)
4. During the three years the Appellant was on active military duty, his "home of record" was listed as [REDACTED] Georgetown, Massachusetts (hereinafter the "Georgetown address"). (Caron Test.)
5. A "home of record" is typically a military member's address at the time they entered active duty and is used as a stable address for important information to be sent to the military member. (Caron Test.)
6. The Georgetown address was also the address on the Appellant's driver's license and the address at which two vehicles were registered to the Appellant when he was on active military duty. (Ziminski and Caron Test.)
7. The Appellant was re-activated to military service for the period beginning on or about April 6, 2010 and ending on or about June 5, 2010. (Caron Test.; Caron Affidavit)

*Living Situation from November 2009-May 2010:*

8. After the Appellant was discharged from the military on November 5, 2009, he drove back to the Georgetown address with a friend from Minot Air Force Base in North Dakota, where he was stationed when he was discharged. (Caron Test.)
9. The Appellant arrived at the Georgetown address close to Thanksgiving and he stayed at this address for a few weeks while he waited for the Transportation Management Office (hereinafter “TMO”)—a military moving company—to deliver personal items he left in North Dakota. (Caron Test.)
10. Sometime in December, 2009, the Appellant moved from the Georgetown address to begin staying with a friend in Saugus through January, 2010. (Caron Test.)
11. In February, 2010, the Appellant began staying with a woman who lived in Salem, where the Appellant “lived out of a duffel bag” until he purchased a house in Haverhill in May, 2010. (Caron Test.)
12. From November, 2009 to May, 2010 the Appellant would also periodically visit and stay with friends in Haverhill on the weekends. (Caron Test.)

*Purchasing a House:*

13. Within the first week of returning to Massachusetts in late November, 2009, the Appellant contacted a realtor to help him locate a home to buy in Haverhill. (Caron Test.)
14. On November 30, 2009, the Appellant signed a document with the real estate agency where the realtor worked stating that he would use the agency exclusively to find a home in Haverhill to buy. (Ex. 12)

15. On February 6, 2010, the Appellant's credit score was examined to ensure that he qualified for a veteran loan to purchase a house. (Ex. 13)
16. On March 17, 2010, a house the Appellant wanted to buy at [REDACTED] in Haverhill (hereinafter "Haverhill address") was inspected. On March 24, 2010, the Appellant signed a purchase and sale agreement for the house at the Haverhill address. (Ex. 14)
17. On May 7, 2010, the Appellant purchased the house on [REDACTED] in Haverhill (hereinafter "Haverhill house"). (Ex. 15) This is the first time the Appellant resided in Haverhill. (Caron Test.)
18. After purchasing the Haverhill house, the Appellant did not change his home of record with the military, the address on his driver's license, or the address on his vehicle registration from the Georgetown address to the Haverhill address until his insurance company notified him that he needed to do so. (Caron Test.)

*Civil Service Exam and Application:*

19. The Appellant took the firefighter entry level civil service examination on April 24, 2010, scoring a 98. (Caron Test. and Admin. Notice) The Appellant listed Haverhill as his town of residence for the purpose of receiving residency preference. (Caron Test.)
20. On or about November 18, 2010, the City of Haverhill requested a Certification list from the state HRD to fill four (4) firefighter positions. (Ex. 1)
21. On December 28, 2010, the state HRD issued Certification 203337 to the City. (Ex. 2)  
The Appellant's name does not appear on this list. (Ex. 2)
22. By letter dated February 8, 2011, HRD added the Appellant's name to Certification 203337. The Appellant was tied for first among those residents willing to accept the position. (Ex. 3)

23. On February 16, 2011, the Appellant filed an application for employment with the Department. (Caron Test.) In the section of the application that required candidates to list their residency for the past ten (10) years, the Appellant left blank the period from November, 2009 to May 2010. (Ex. 5) On his application, the Appellant listed Haverhill as his residency beginning in May, 2010 to the present. (Ex. 5)
24. At the Commission's full hearing in this case, the Appellant admitted that it would have been more truthful to indicate on his application form that he stayed with friends but he left blank the period from November 2009 to May 2010 because he felt that it would be unprofessional to indicate that he had stayed with friends during that time. (Caron Test.)
25. Ricci A. Accardi, Captain of the Haverhill Fire Department, has been a member of the Fire Department for twenty-six (26) years and a Captain for eleven (11) years. He has participated in a couple of interviews of applicants. (Accardi Test.)
26. Richard B. Borden has been Chief of the Fire Department for approximately seven and one-half (7.5) years. Before becoming Chief, Mr. Borden was a Firefighter, Lieutenant and Deputy Chief of the Department. As Chief, it is part of his job to interview candidates. He has interviewed approximately fifteen (15) applicants. (Accardi Test.)
27. Ricci A. Accardi, Captain of the Haverhill Fire Department, and Richard B. Borden, Haverhill Fire Chief, interviewed the Appellant for the available firefighter position on or about May 13, 2011. (Accardi and Borden Test.)
28. After Chief Borden and Captain Accardi interview candidates, they discuss their impressions with each other and, ultimately, Chief Borden ranks the candidates. (Accardi Test.)

29. When the Appellant appeared for his interview, he was informed that he could change, amend, or withdraw any information on his application and that he should do so if necessary because the information would be used by the Department when determining whether he would proceed in the hiring process. (Accardi and Borden Test.) The Appellant was also told that the interview is conducted under oath and that he should be honest. The Appellant signed a document stating that he understood his obligation to be truthful during the application and interview process. (Accardi and Borden Test.)
30. During the interview, the Appellant was asked generic questions that were posed to all of the firefighter candidates being considered and he was asked to explain why he left a gap in the residency history on his application. (Accardi and Borden Test.)
31. The Appellant explained to Captain Accardi and Chief Borden that he had come home from the military and was living with friends thereafter until he bought a home in Haverhill. (Accardi and Caron Test.) When asked what cities his friends lived in, the Appellant told Chief Borden and Captain Accardi that they lived in Saugus and Salem and that occasionally he stayed with friends in Haverhill on weekends. (Caron Test.)
32. Captain Accardi stated that the Appellant did well during the interview and that the Appellant honestly answered the questions he was asked. (Accardi Test.)
33. Chief Borden doubted the veracity of the Appellant's statements about his residency when he returned from active military duty and before he owned the house at the Haverhill address. (Ex. 6 and Borden Test.)
34. On May 13, 2011, on or about the date of the Appellant's interview, Chief Borden wrote a letter to James J. Fiorentini, the Mayor of Haverhill and the Appointing Authority for the City, recommending that the City bypass the Appellant, stating that the Appellant was

evasive when questioned about the residency gap on his application for the period between November, 2009 to May, 2010 and because the evasive behavior was dishonest. (Ex. 6 and Borden Test.) Specifically, Chief Borden wrote, "The inconsistencies in residency and not living in the City of Haverhill for the one year prior to the examination are sufficient reasons for bypass." (Ex. 6)

35. In his testimony at the Commission's full hearing, Chief Borden admitted that part of the reason he thought the Appellant was evasive during his interview was that he thought that the Appellant had lied about at least part of his driving record on his application and during his interview. (Borden Test.<sup>3</sup>) Before Chief Borden wrote his letter to the Mayor, but after he interviewed the Appellant, Chief Borden received what he thought was the Appellant's driving record, which appeared to indicate that the Appellant had many more motor vehicle infractions than the one (1) infraction the Appellant had disclosed on his application and during his interview. (Borden Test.<sup>4</sup>) However, it was established at the Commission's full hearing that Chief Borden's conclusion that the Appellant had lied about his driving record was incorrect because it was not part of the Appellant's driving record but it was someone else's driving record that had many infractions. (Borden Test.)

36. At the pertinent time, it was the job of the Haverhill Police Department to review the candidates' driving records and the police would report their findings to the Appointing Authority. (Borden Test.)

37. On or about May 20, 2011, a week after the interview and Chief Borden sent the bypass letter to the Mayor, Officer Scott A. Ziminski, an investigator for the Haverhill Police

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<sup>3</sup> See Borden testimony at 45:22-46:7, 53:20-54:4.

<sup>4</sup> See Borden testimony at 45:22-46:7.



Department assigned to perform a background investigation on the Appellant, continued the background investigation he had begun earlier when he checked the Appellant's residency. (Ziminski Test.)

38. Officer Ziminski has been a Haverhill police officer for sixteen (16) years and he was a police officer for two (2) years in another city or town. He has conducted police and firefighter applicant background investigations in Haverhill for approximately eight (8) years; he was trained to conduct background investigations by the FBI. Officer Ziminski conducted a motor vehicle check for any vehicles registered to the Appellant and he checked the Appellant's driving record on May 23, 2011. (Ziminski Test.) Officer Ziminski found that the Appellant had a driver's license registered to the Georgetown address and that the Appellant owned two vehicles. (Ziminski Test. and Ex. 8) Officer Ziminski did not verify that the vehicles were registered to the Georgetown address during his initial investigation because he assumed that the vehicles were registered to the same address as the Appellant's driver's license. (Ziminski Test.) On February 22, 2012, after the City bypassed the Appellant and Officer Ziminski was told he would be testifying at the Commission in the instant case, Officer Ziminski verified his assumption that the Appellant's vehicles were registered to the Georgetown address. (Ziminski Test. and Ex. 9)

39. On May 23, 2011, Officer Ziminski went to the Georgetown address, which was the address on the Appellant's driver's license. He spoke with a neighbor, Officer Sullivan, a police officer with the Georgetown Police Department, who told Officer Ziminski that the Appellant was in the military and that the Appellant had lived at the Georgetown address for several years. (Ziminski Test.) Officer Sullivan also stated that he last saw

the Appellant living at that address “about eight months prior” to May 23, 2011.

(Ziminski Test., Ex. 8)

40. Also on May 23, 2011, Officer Ziminski wrote a letter containing his findings to Chief DeNaro, Haverhill Police Chief. (Ex. 8, Ziminski Test.) The letter stated that, based on Officer Sullivan’s comments and the address on the Appellant’s driver’s license, the Appellant was not a resident of Haverhill during the “required time” and that actually he was a resident of Georgetown. (Ex. 8)
41. On May 23, 2011, Police Chief DeNaro wrote a letter to Mary Carrington, the Haverhill Human Resources Director. This letter stated that, based on Officer Ziminski’s findings, the Appellant “failed to meet the civil service residency requirements for a position as a Haverhill Firefighter.” (Ex. 7 and DeNaro Test.)
42. On October 17, 2011, Mayor Fiorentini sent a letter to the state HRD. (Ex. 10) This letter states in part:

Mr. James Caron **was not selected** as a City of Haverhill firefighter due to information revealed during the background and interview process. Mr. Caron not did (sic) account for his place of residence for the one year prior to the Firefighter examination date. The candidate was asked bout (sic) his residence during the time period of April 2009 to May of 2010. He stated that he lived with difference (sic) friends but provided no addresses. When asked again where he lived, the candidate was evasive and did not answer the question.

The City of Haverhill feels that the candidate did not live in the City of Haverhill and would not qualify for the residence preference. Secondly, his evasiveness in answering questions would contribute to an inability to perform successfully as a public safety employee in the city of Haverhill.

(Ex. 10)(emphasis in original)

43. Also on October 17, 2011, the Mayor sent a bypass letter to the Appellant, which letter stated that the Appellant was bypassed and simply referred to, and included a copy of the letter the Mayor sent to HRD explaining the City's decision. (Ex. 11)
44. The City filled the four available firefighter positions with four Haverhill resident candidates, all of whom were lower on the Certification than the Appellant. (Exs. 2, 3)
45. The Appellant did not reside in Haverhill before he took the firefighter exam. (Caron Test., Ex. 15)
46. The Appellant filed a bypass appeal with the Civil Service Commission on December 13, 2011. (Admin. Notice)

## DISCUSSION

### Applicable Civil Service Law

The role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge v. Civil Service Comm’n, 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). *See* Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). Appeals to the Commission are determined by a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing

Authority has established that the reasons assigned for the bypass of an appellant were more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315 (1991); G.L. c. 31, § 43.

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, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003). Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge, 43 Mass.App.Ct. at 304.

### Credibility

The Appellant’s testimony at the full hearing before the Commission was generally credible. The Appellant recalled certain activities and events during pertinent times. In addition, he provided documentary evidence in an effort to substantiate his testimony regarding his attempts to purchase a home in Haverhill. However, the Appellant was less credible when he testified that he did not accurately disclose his residence from November 2009 to May 2010 on his application because he felt it would be unprofessional to indicate that he stayed with friends during this time is not credible. He admitted at the full hearing at the Commission that it would have been more accurate to indicate on the application where he had stayed from November, 2009 to May 2010. It is more likely that he did not disclose his residence at that time because he

knew that the failure to establish his residency in Haverhill prior to the April exam would preclude him from availing himself of the residency preference. In addition, the Appellant's claim of Haverhill residence was undermined by the Georgetown address on his driver's license and on the registration for his car prior to the exam. Finally, the Appellant's claim to timely Haverhill residence is undermined by the documentation indicating that he purchased a home in Haverhill on May 7, 2010, which was after he took the firefighter exam.

The testimony of Officer Ziminski and Police Chief DeNaro was generally credible, as they testified forthrightly, easily recalling their involvement with the Appellant's application process. When Officer Ziminski was told he would be testifying at the Commission's full hearing, he verified the Appellant's residence information at the pertinent time. Captain Accardi appeared to testify credibly, quickly stating the facts he recalled regarding the Appellant's interview and, when appropriate, stating that he did not recall details instead of speculating. Captain Accardi also stated that he did not have any reason not to believe the Appellant's answers because he knew that the background investigation would illuminate any inaccuracies in the Appellant's information. Fire Chief Borden's credibility regarding the Appellant's residency and his responsiveness to inquiries about his residency was undermined by the testimony of Captain Accardi, who testified at the Commission's full hearing that the Appellant performed well during his interview and that he answered the questions truthfully.

The credibility of Chief Borden's testimony is further limited by his inconsistent statements when discussing a mistake that he had made in ascribing the poor driving record of another candidate to the Appellant. (*See Borden Test.*<sup>5</sup>) On one hand, the Chief testified that based on this inaccurate assumption, he concluded that the Appellant was evasive and he was not truthful

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<sup>5</sup> *See Borden testimony at 62:23-63.1.*

because he had only disclosed one motor vehicle infraction on his application and during his interview. After the inaccurate assumption was discovered at the Commission's full hearing, Chief Borden was asked whether this conclusion contributed to his decision to recommend bypassing the Appellant. Chief Borden responded by downplaying the importance of the Appellant's alleged driving record, stating that even though he thought the Appellant had lied about his driving record he did not consider this alleged untruthfulness when writing his letter to the Mayor because it was not his job to investigate the Appellant's driving record or to conduct a background investigation. Chief Borden also stated that he "may" have discussed what he believed at the time to be the Appellant's driving record with the Mayor of Haverhill and the Haverhill Human Resources office. Thus, although the City did not include the driving record as a reason for bypassing the Appellant, the driving record error and Chief Borden's inconsistent statements in this regard further undermine his testimony.

### Analysis

The Appointing Authority argues that the Appellant did not reside in Haverhill a year before April 24, 2010, the date the Appellant took the firefighter exam, and, therefore, the Appellant does not meet the requirements set out by HRD for residency preference in Haverhill. In addition, the Appointing Authority asserted that the Appellant was evasive with regard to his residence for several months prior to the exam. The Appellant argues that although he did not establish residency from November 2009 to May 2010, he was attempting to establish residency in Haverhill by buying a house, a process which takes time. The Appellant urges that an individual who is discharged from active military duty should be allowed time to establish a residency. Further, the Appellant states that he did not complete the residency section of the application because he was concerned about the negative impression it might leave.

Ordinarily, in order for an applicant for original appointment to the police force or fire force of a city or town to qualify for residency preference, the applicant must live in that city or town for “one year prior to the date of the examination”. G.L. c. 31, § 58. For the purposes of civil service law, “...‘reside’ is used to designate the physical location of the employee’s house or other dwelling place.” Doris v. Police Comm’r. of Boston, 374 Mass 443, 444 (1978). “Your residence ... is the place where you actually lived and intended as your permanent home. A temporary living place, such as...a relative's or friend's house or apartment, etc., is not a residence.” Human Resources Division, Residency Preference Claim & Employment Location Selection Worksheet, <http://www.mass.gov/anf/employment-equal-access-disability/civil-serv-info/forms-and-labor-applications/exam-forms/residency-preference-claim-and-employment.html>. The Appellant did not reside in Haverhill for the one year prior to taking the civil service examination. However, HRD provides an exception to this requirement for individuals who have been on active military duty at certain times prior to taking the civil service examination. Specifically, the applicable exception here is in a document entitled, “Massachusetts Human Resources Division – Civil Service Unit, Information for Military Personnel Claiming Residency Preference for the 2010 Firefighter Entry Level Exam” (which is dated December 8, 2009)(hereinafter “HRD Military Residence Exception”). The City did not address the HRD Military Residence Exception with regard to the Appellant.

The pertinent part of the HRD Military Residence Exception provides that instead of having to reside in a city or town one full year prior to the examination, someone who is on active military duty on specific dates prior to the exam may establish residency preference nonetheless. Specifically, it provides that if an individual taking the civil service examination for the position of firefighter on April 24, 2010 entered active military service before April 24, 2009 and

returned before the April 24, 2010 exam, the Appellant may claim residency preference in either the city or town of his residence at the time he entered active military duty, or in the city or town of his residence upon return from active military duty. Since G.L. c. 31, § 58 indicates that residency is established in the period prior to the exam, I understand the HRD Military Residence Exception to similarly require residency to be determined prior to the April 24, 2010 exam. However, the HRD Military Residence Exception is unavailing for the Appellant.

The City argues that the Appellant established residency at the Georgetown address, not an address in Haverhill, before leaving for military service and when he returned to Massachusetts after being discharged from active military duty in November 2009. The City supports this allegation by stating that the Appellant kept his home of record, as well as his license and vehicle registration, at the Georgetown address after returning to Massachusetts from military service and that the Appellant's neighbor, Officer Sullivan, informed Officer Ziminski that the Appellant lived at the Georgetown address for years and until "about eight months prior" to May 23, 2011. The Appellant asserts that within a short period of time after he returned from military service, he began searching for a home to buy in Haverhill, he signed a purchase and sale agreement to purchase a house in March, before the exam, and moved in thereafter. The Appellant acknowledges not including in the residence section of his application information concerning his residence during the several months before he took the firefighter exam but he asserts he was concerned for the unprofessional appearance it would create.

As noted above, the residency preference for applicants who have been on active duty in the military recently is based on where they reside after their service and before the exam. The Appellant returned to the Georgetown address after completing his military service, where he stayed for a few weeks. Thereafter, the Appellant stayed in Saugus for a while, then in Salem for

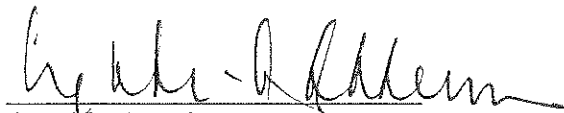


a while, and occasionally he spent weekends with friends in Haverhill before buying a house in Haverhill on May 7, 2010, after having taken the April, 2010 firefighter exam. Thus, for a number of months after his return from active military service and prior to the civil service exam he took, the Appellant was not a resident of Haverhill. The Appellant's post-hearing affidavit and documentation indicates that while he was re-activated into military duty from roughly April 6, 2010 to June 5, 2010, he lived on Westover Air Force Base in Massachusetts. At the full hearing, however, the Appellant indicated that he first resided in Haverhill on May 7, 2010 when he bought the house at [REDACTED] in Haverhill. The HRD Military Residence Exception requires us to look at the applicant's residence at the time he took the exam. When the Appellant took the exam on April 24, 2010, he was not a resident of Haverhill. Therefore, a preponderance of the evidence establishes that the Appellant did not meet the requirement for residency preference in Haverhill prior to taking the firefighter exam or upon his return from active military service pursuant to the HRD Military Residence Exception. Since the Appellant was not a Haverhill resident prior to the firefighter exam, he should not have appeared in the residents' preference section of the Certification. Since the four people who were selected were all Haverhill residents, the Appellant was not bypassed. As there was no bypass, we need not address that part of the City's bypass letter that alleges the Appellant was evasive regarding his residence prior to taking the firefighter exam, nor do we address the City's possible association of the Appellant with the wrong driver record.

### Conclusion

For the foregoing reasons, there was no bypass of the Appellant and the appeal is hereby *denied*.

### CIVIL SERVICE COMMISSION



Cynthia A. Ittleman  
Commissioner

**By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, [Yes], and Marquis [No] Commissioners on November 15, 2012.**

A True Record. Attest:



Commissioner

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 as stated below.

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 from the effective date specified in 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.

Notice to:

Neil Rossman, Esq. (for Appellant)  
William D. Cox, Jr., Esq. (for Respondent)  
John Marra, General Counsel (HRD)