

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

WILLIAM CAVANAUGH,
Appellant

v.

G2-19-174

WESTFIELD POLICE COMMISSION,
Respondent

Appearance for Appellant:

Andrew J. Gambaccini, Esq.
Reardon, Joyce & Akerson, P.C.
4 Lancaster Terrace
Worcester, MA 01609

Appearance for Respondent:

John Garber, Esq.
Weinberg & Garber, P.C.
One Roundhouse Plaza, Suite 304
Northampton, MA 01060

Commissioner:

Christopher C. Bowman

DECISION

On August 20, 2019, the Appellant, William Cavanaugh (Officer Cavanaugh), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Westfield Police Commission (City) to bypass him for promotional appointment to the position of police sergeant. On September 11, 2019, I held a pre-hearing conference at the Springfield State Building in Springfield, MA. I held a full hearing at the same location on November 13, 2019.¹ The full hearing was digitally recorded and both parties

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

received a CD of the proceeding.² On December 20, 2019, the parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT:

Thirty-seven exhibits were entered into evidence at the full hearing (Respondent Exhibits 1-13 (Exhibits R1-R13) and Appellant Exhibits 1-24 (Exhibits A1-A24). Exhibits R5 and R6, the personnel files of the Appellant and the selected candidate, were marked as confidential. Based on the documents submitted and the testimony of the following witnesses:

For the City:

- Lawrence Valliere, Chief, Westfield Police Department;
- Felix Otero, Commissioner, Westfield Police Commission;
- Leonard Osowski, Commissioner, Westfield Police Commission;
- Michael McCabe, Captain, Westfield Police Department;

For Officer Cavanaugh:

- William Cavanaugh, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences from the evidence, I find the following:

1. The City of Westfield, located in Hampden County in Western Massachusetts, has a population of approximately 41,000. A three-member Police Commission serves as the Appointing Authority for the City's Police Department.
<https://www.cityofwestfield.org/242/Demographics>
2. The City's Police Department is comprised of a chief, two captains, five lieutenants, nine sergeants, sixty-four full-time police officers and ten reserve police officers. (Exhibit A2)

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

3. Officer Cavanaugh is thirty-one years old. He has lived in Westfield for most of his life. He received a bachelor's degree and a master's degree in criminal justice from Westfield State University. He received a juris doctor from Western New England School of Law in 2012.
(Testimony of Appellant)
4. In 2012, Officer Cavanaugh was appointed by the City as a reserve police officer. He was appointed to a permanent, full-time police officer position in 2013. (Testimony of Appellant)
5. Officer Cavanaugh works principally within the patrol division and, since 2016, has served as a desk officer for two of his four assigned shifts. Since 2018, Officer Cavanaugh has also served as a Field Training Officer, helping train officers right out of the Police Academy.
(Testimony of Appellant)
6. On October 15, 2016, Officer Cavanaugh took the promotional examination for police sergeant and received a score of 81. (Stipulated Facts)
7. As of June 17, 2019, after other candidates were promoted in prior promotional cycles, Officer Cavanaugh was ranked first on the eligible list; the second-ranked candidate had a score of 79. (Testimony of Appellant)
8. Three eligible candidates, including Officer Cavanaugh, were interviewed by two members of the Westfield Police Commission. All three candidates performed well during the interviews. (Testimony of Otero and Osowski)
9. The two Commissioners put great weight on the recommendations of the Police Department's senior command staff, including the incoming Police Chief, whose promotion was imminent. (Testimony of Otero and Osowski)
10. The senior command staff unanimously recommended the second-ranked candidate.
(Testimony of Otero and Osowski)

11. On June 21, 2019, the Police Commission notified Officer Cavanaugh that he had been bypassed for promotion by the second-ranked candidate. (Exhibit R11)

12. The bypass letter read as follows:

“Dear Officer Cavanaugh,

The Westfield Police Commission has been impressed with you and your credentials from the time you were first appointed as a reserve police officer on September 8, 2012 and then to a full-time police officer on September 21, 2013. All reports from commanding officer have been positive, however, we feel that you don't have the experience and maturity level at this time and we are hoping that with a little more experience, you will mature into an excellent choice for a command position. Stay positive, circumstances can change overnight; be prepared to move forward. We are confident that you will have an excellent future with the department.

I have enclosed the bypass appeal form for your review, should you decide to appeal the appointment.

Respectfully,

Leonard M. Osowski, Police Commissioner” (Exhibit R11)

13. Captain McCabe and then-incoming Police Chief Valliere's assessment of Officer Cavanaugh's maturity was based in part on three off-duty incidents involving alcohol. (Testimony of Valliere and McCabe)

14. At the June 17, 2019 Commission meeting, Captain McCabe and Chief Valliere did not refer specifically to these off-duty issues, because they did not want to make a public record of those issues, which could potentially harm Officer Cavanaugh's future prospects. (Testimony of Valliere and McCabe)

15. One such incident was a 2:00 A.M. one-car crash in Southwick that occurred on August 27, 2017. Officer Cavanaugh admitted he had had 6 beers to drink in three hours earlier that evening, but testified that the alcohol was not a factor, that he had dozed off behind the wheel after a long day of work. (Testimony of Appellant; Exhibits R7 and R9)

16. Another incident occurred in December, 2017, at a bar in Agawam, Massachusetts.

According to Officer Cavanaugh, he had an altercation with a bouncer, in which he identified himself as a police officer. Mr. Cavanaugh admitted he was drinking that night and took an Uber home. (Testimony of Appellant, Exhibit R9)

17. The third incident occurred on January 13, 2019, about six months before the June 17

Commission meeting. That night, in Westfield, Officer Cavanaugh failed to pull over when pursued by a City police cruiser. He was followed by the police cruiser to a Westfield bar, which he then entered. The officer in the cruiser called the ranking shift Sergeant, who came to the scene. The sergeant called Officer Cavanaugh out from the bar, determined that he had been drinking, after which Officer Cavanaugh was given a “courtesy ride” home. (Exhibits R8 & R9; Testimony of Officer Cavanaugh)

18. Captain McCabe and Chief Valliere believed these incidents reflected a lack of maturity on Officer Cavanaugh’s part, causing them to conclude that Officer Cavanaugh should not be in a leadership position in the City’s Police Department at that time. (Testimony of Valliere and McCabe)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); citing Cambridge v. Civil Serv. Comm’n., 43 Mass.App.Ct. 300, 304. “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of

personnel administration” and protecting employees from “arbitrary and capricious actions.”
G.L. c. 31, § 1.

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 at 304. 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 v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions (City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 824-826 (2006) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. Beverly.

The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown (Beverly citing Cambridge at 305, and cases cited). However, when the reasons for bypass relate to alleged misconduct, the appointing authority is entitled to such discretion “only if it demonstrates that the misconduct occurred by a preponderance of the evidence.” (emphasis in original) (Boston Police Dep’t v. Civ. Serv. Comm’n & Michael Gannon, 483 Mass. 461 (2019) citing Cambridge at 305).

Analysis

The City has proven, by a preponderance of the evidence, that Officer Cavanaugh, through his recent actions, has shown a lack of maturity required of a superior officer, justifying their decision to bypass him for promotional appointment to police sergeant.

The January 2019 incident, standing alone, provided the City with a valid reason to bypass Officer Cavanaugh for promotional appointment. The written reports regarding that incident, much of which Officer Cavanaugh did not contest during his testimony, paint a disturbing picture of a police officer who does not understand the high standard required of those holding his position. While intoxicated, the Appellant, driving at a high rate of speed, failed to stop for a fellow Westfield police officer who had activated the lights on his cruiser. The Appellant then pulled into the parking lot of a local bar, was dismissive of the on-duty police officer who had pulled in behind him – and then walked into the bar. The police sergeant that responded to assist the on-duty officer that night discovered a visibly intoxicated Cavanaugh who walked out of the bar and attempted to get back into the driver's side of his vehicle. Rather than administer a field sobriety test of Cavanaugh, the sergeant gave Cavanaugh a ride home.

During his testimony before the Commission, Officer Cavanaugh didn't seem to grasp the seriousness of his actions; the fact that the January 2019 incident appeared to be part of a pattern of poor judgment while intoxicated; or that a meaningful course correction on his part is needed. Until that occurs, the City will remain justified in bypassing him for promotional appointment.

I did not ignore or overlook the many positive attributes of Officer Cavanaugh, nor did the Police Commission. He is smart, motivated, personable and committed to a long career in law enforcement. That, however, does not outweigh the City's well-founded judgment that it would

be too high of a risk, at this time, to promote him to the position of sergeant, which inherently requires someone with the ability to make sound decisions.

Finally, I considered all of Officer Cavanaugh's other arguments, including the argument that the selected candidate has also shown poor judgment involving past incidents. He has, but there has been a period of several years since these incidents occurred and that candidate has demonstrated to the command staff that he has learned from his past mistakes. That distinguishes the selected candidate from Officer Cavanaugh.

For all of the above reasons, the Appellant's appeal under Docket No. G2-19-174 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By 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)(1), 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:
Andrew J. Gambaccini, Esq. (for Appellant)
John Garber, Esq. (for Respondent)