

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

GUERBY CENATUS,

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

Docket Number:

G1-24-091

Appearance for Appellant:

James Gilden, Esq.
Law Office of James W. Gilden
173 North Main St.
Sharon, MA 02067-1230

Appearance for Respondent:

Jennifer Cipolletti, Esq.
Boston Police Department
Office of the Legal Advisor
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Commissioner:

Shawn C. Dooley

SUMMARY OF DECISION

The Commission allowed the bypass appeal of a candidate for Boston Police Officer as the Boston Police Department misapplied its own “automatic disqualifier” guidelines related to driving histories and was unable to show a nexus between the candidate’s driving history and his current ability to serve as a police officer.

DECISION

On September 23, 2023, the Appellant, Guerby Cenatus (Appellant), 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 (BPD) to bypass him for original appointment to the position of permanent, full-time police officer.¹ On July 23, 2024, a remote pre-hearing conference was held via Webex. On February 20, 2024, I conducted a full in-person full evidentiary hearing at the offices of the Commission in Boston. The hearing was recorded via Webex.² On September 24, 2024, the parties filed proposed decisions. For the reasons set forth below, Mr. Cenatus's appeal is allowed.

FINDINGS OF FACT

The Appellant entered one exhibit (App Ex. 1) and the Respondent entered four exhibits (Resp Exhs. 1-4) into evidence. I also requested that the BPD submit a copy of a list of automatic disqualifiers for candidates being considered for appointment which I have marked as post-hearing exhibit 1. Based upon the documents submitted and the testimony of the following witnesses:

Called by the BPD:

- Director of Human Resources Natasha Levarity (Ms. Levarity), Boston Police Department
- Detective Sean Flynn (Det. Flynn), Recruit Investigations Unit, Boston Police Department

Called by the Appellant:

Guerby Cenatus, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² A link to the audio/video recording was provided to the parties. 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 they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

establishes the following findings of fact:

1. The Appellant is a 36-year-old Black male who is currently a resident of Boston. (*Resp. Ex. 2*)
2. The Appellant is currently employed as a Deputy Sheriff for a County Sheriff's Office. (*Resp. Ex. 2*)
3. The Appellant is currently assigned as a transportation officer for the Sheriff's office. His duty is to drive a van and transport prisoners to medical appointments and court appearances throughout the Commonwealth. (*Testimony of the Appellant*)
4. On March 18, 2023, the Appellant took the written examination for police officer administered by the state's Human Resources Division (HRD). (*Stipulated Fact*)
5. On July 1, 2023, the Appellant was added to the eligible list for Boston Police Officer. (*Stipulated Facts*)
6. On August 11, 2023, HRD issued Certification No. 09448 to the BPD to fill 163 vacancies. (*Stipulated Fact*)
7. The Appellant was ranked 80th among those candidates willing to accept appointment. (*Stipulated Fact*)
8. Approximately 41 candidates ranked below the Appellant were offered positions as Boston Police Officers. (*Stipulated Fact*)
9. The Appellant completed BPD's application packet and was assigned to a recruit investigator, Detective Sean Flynn, of the Recruit Investigations Unit. The Detective did a background investigation of the Appellant and put together a document with the pertinent findings. This is referred to as a Privileged and Confidential Memorandum (PCM). (*Testimony of Det. Flynn*)

10. The Appellant's current supervisor at the Sheriff's office provided a positive reference and described the Appellant as "respectful" during the background investigation interview completed by Det. Flynn. (*Resp. Ex. 2*)
11. Prior to the Sheriff's Department, the Appellant served as a campus police officer at a state facility. His supervisor reported to Det. Flynn that there were no issues with the Appellant and described him as "a great officer, really good at de-escalation." (*Resp. Ex. 2*)
12. After a review of the Appellant's driving history, Det. Flynn gave the Appellant an opportunity to address his driving record. (*Testimony of Det. Flynn*)
13. The Appellant addressed his past driving record to the recruit investigator by submitting the following written statement: *"My current driving record shows several citations I received throughout my driving career primarily in the earlier years. My youthful ignorance led me to receive more citations than I am proud of when I was in my late teens and early twenties. In the past ten years I have matured and realized how unsafe that driving style was. I have significantly improved my driving record and plan to continue to do so. I have taken courses and practiced safe driving techniques in order to improve my record and my driving."* (*Resp. Ex. 2*)
14. Motorists who have received a notification that the Massachusetts Registry of Vehicles (RMV) intends to suspend their driver's license/right to operate a motor vehicle for being found responsible for three or more surchargeable events in a two-year period (calculated from the conviction date) are required to complete the Driver Retraining Program (DRP) through the [National Safety Council \(NSC\)](#) to avoid the suspension or to have their license reinstated. The Appellant was required to complete an NSC course in 2016 and 2017. (*Resp. Ex. 4; Testimony of Ms. Levarity*)

15. Since taking the NSC course in 2017, the Appellant's driving record consists of the following warnings or events for which he was found responsible:
- 9/14/18: speeding in violation of special regulation
 - 4/26/19: non-appealable warning for speeding
 - 5/11/19: unregistered vehicle
 - 1/10/20 window obstructed / non-transparent
 - 5/29/20: surchargeable accident
 - 5/14/23: non-appealable warning for speeding in violation of special regulation.
16. BPD has a policy that states that a candidate who was required to take an NSC course within 3 years of going before the hiring roundtable is automatically disqualified. As referenced above, the last time that the Appellant took an NSC course was approximately 7 years ago, in 2017.³ (*Post Hearing Exhibit 1*)
17. When additional information would be helpful in making a decision about whether to bypass a candidate, the BPD may grant the candidate what is referred to as a discretionary interview. The Appellant was not granted a discretionary interview. (*Testimony of Ms. Levarity*)
18. The Appellant was notified that he was bypassed by the BPD on May 30, 2024 due to concerns with his "driving history and judgment." (*Resp. Ex. 1*)

³ Ms. Levarity repeatedly testified that the automatic disqualifier for taking an NSC course was 7 years and since the Appellant had taken one within that time frame, he was automatically disqualified.

LEGAL STANDARD

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the state's Human Resources Division (HRD) or, in certain cases, by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. The statute provides:

No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status. Id. (*emphasis added*)

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights. (*emphasis added*)

The fundamental mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31, which command, among other things, “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” 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. A mechanism for ensuring adherence to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority of a

“certification” which ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. G.L. c. 31, §§ 6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the “2n+1” formula. G.L. c. 31, § 27; PAR.09.

In order to deviate from the rank order of preferred hiring and appoint a person “other than the qualified person whose name appears highest,” an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L. c. 31, §§ 1 and 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a “reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and was “reasonably justified”. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688 (2012), citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006). and cases cited; Beverly v. Civil Service Comm’n 78 Mass. App. Ct. 182 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

ANALYSIS

The BPD argues that the Appellant’s poor driving history is a valid reason to bypass him for appointment as a police officer. The Appellant argues that most of the infractions are either stale or, in the case of recent warnings, not worthy of any weight as he had no right to appeal those warnings.

These are not new issues for the Commission. There is no denying the appropriateness of

diligently investigating a candidate's driving record, as police officers are often called upon to operate a police cruiser, sometimes at high speeds in stressful situations. As the Commission has previously ruled, however, an appointing authority must conduct a reasonably thorough review of the candidate's driving record and consider the applicant's driving history in the proper context to determine whether there is a nexus between the prior misconduct and the candidate's current ability to perform the duties of the position to which they seek appointment. "An appointing authority, as part of a reasonably thorough review, should at least afford the applicant with the opportunity to address the underlying issues, either with the background investigator or an interview panel." Wine v. City of Holyoke, 31 MCSR 19, 24 (2018). By affording a candidate the opportunity to address driving infractions head-on, an appointing authority will have an adequate basis on which to decide whether the infractions have any bearing on the candidate's fitness to perform the responsibilities of the position.

To evaluate driving histories in the proper context, the Commission has ruled that appointing authorities must consider such factors as:

- The recency of any infractions;
- Whether the candidate is required to drive more frequently because of their occupation, particularly in high traffic areas; and
- Whether any of the violations such as nonpayment of fines for inspection stickers may be attributable to socioeconomic factors, and, accordingly, may have no bearing on whether an appellant can effectively serve in a public safety position.

See, e.g., Stylien v. Boston Police Department, 31 MCSR 209, 210 (2018); Gibbons v. City of Woburn, 32 MCSR 14 (2019); Kodhimaj v. DOC, 32 MCSR 377 (2019); Dorn v. Boston Police Department, 31 MCSR 375, 376 (2018).

More broadly, when the bypass, as here, involves a person of color, appointing

authorities must consider public policy concerns related to observed racial disparities in traffic stops. See Commonwealth v. Gonsalves, 429 Mass. 658, 670 (1999) (Ireland, J., concurring) (“The widespread public concerns about police profiling, commonly referred to as ‘DWB—driving while black,’ has been the subject of much discussion and debate both across the country and within the Commonwealth”).

Applied, here, the BPD has not shown that the Appellant’s prior driving history is a valid reason to bypass the Appellant for appointment as a police officer for the reasons discussed below. First, the BPD simply misapplied its own internal guidelines regarding when a candidate is automatically disqualified due to a prior NSC course. As shown in the post hearing exhibit submitted by the BPD, a candidate is automatically disqualified if they were required to complete an NSC course within the past three years. The BPD’s Human Resources Director, who drafted the Appellant’s bypass letter, incorrectly believed that the automatic disqualifier look-back period was seven years. This, alone, warrants the Appellant’s reconsideration, to ensure that the guidelines are properly and consistently applied.

Second, while discretionary interviews are not required in all cases to ensure a sufficiently thorough review, this appears to be a case where such an interview was warranted, particularly where some of the entries cited including non-appealable warnings as to which the Appellant has not previously had access to a forum to address, or contest, the citation.

Third, in regard to a 2018 number plate violation cited by the BPD as a reason for bypass, RMV records show that the Appellant was ultimately found “not responsible” for this violation—and, thus, I do not deem it relevant when assessing the Appellant’s driving record.

Fourth, based on a complete review of the record, including the witness testimony, I do not believe that the BPD, when assessing the Appellant’s current driving abilities, considered, at

all, that the Appellant's current duties at the Sheriff's office entail transporting inmates by driving a state-owned vehicle, which he has apparently completed without incident. Had the BPD done a more thorough review, including a discretionary interview, that important information could have been considered and assessed, allowing the Appellant's driving history to be placed in its proper context.

Finally, when a bypass, as here, involves a person of color, appointing authorities must consider public policy concerns related to documented racial disparities in traffic stops. See Commonwealth v. Gonsalves, 526 Mass. 658, 670 (1999) (Ireland, J., concurring). *Racial Profiling and Traffic Stops*, <https://nij.ojp.gov/topics/articles/racial-profiling-and-traffic-stops>, U.S. Dep't of Justice (Jan. 9, 2013). The Department of Justice recognizes that "research has verified that people of color are stopped more often than whites." *Id.*

CONCLUSION

For all of the above reasons, the Appellant's appeal under Docket No. G1-24-091 is hereby ***allowed***. Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- HRD shall place the name of the Appellant at the top of any current or future certification for the position of permanent full-time police officer in the Boston Police Department for additional consideration for appointment.
- If the Appellant is appointed as a Boston Police Officer, he shall receive the same civil service seniority date as the candidate appointed from Certification No. 09448. This date is for civil service purposes only and is not intended to provide the Appellant with any additional compensation or benefits, including creditable service toward retirement.
- Once the Appellant has been provided with the relief ordered above, the Department shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

Civil Service Commission

/s/ Shawn C. Dooley

Shawn C. Dooley

Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, and Stein; Commissioners) on March 6, 2025.

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 the 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)

Jennifer Cipolletti, Esq. (for Respondent)