

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

One Ashburton Place – Room 503  
Boston, MA 02108  
617-979-1900

**GERARD CIOFFI,**

Appellant

**G1-20-166**

v.

**TOWN OF SAUGUS,**

Respondent

Appearance for Appellant:

Paul J. Coleman, Esq.  
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325 Central Street  
Saugus, MA 01906

Appearance for Respondent:

John J. Vasapolli, Esq.  
Vasapolli and Ricciardelli  
320 Central Street  
Saugus, MA 01906

Commissioner:

Paul M. Stein

**DECISION**

On November 11, 2020, the Appellant, Gerard Cioffi, acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from the decision of the Town of Saugus (Saugus) to bypass him for appointment as a Police Officer with the Saugus Police Department (SPD).<sup>1</sup> A pre-hearing conference was held via remote videoconference (Webex) on January 5, 2021 and a full hearing was held via remote video conference (Webex) on March 9, 2021, which was digitally and audio/video recorded and the parties received a link to the recording.<sup>2</sup> Both parties filed a Proposed Decision on May 14, 2021. For the reasons set forth below, Mr. Cioffi's appeal is denied.

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<sup>1</sup> 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.

<sup>2</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to use the recording to supply the court with the stenographic or other written transcript of the 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.

## **FINDINGS OF FACT**

Nine (9) exhibits were introduced into evidence: seven joint exhibits (*JExhs.1 through JExh.7*) and two (*AppExh.1 & AppExh.2*) on behalf of the Appellant. Based on the documents submitted and the testimony of the following witnesses:

*Called by the SPD:*

- Michael Ricciardelli, SPD Chief of Police

*Called by the Appellant:*

- Gerard Cioffi, Appellant
- Paul VanSteensburg, SPD Detective

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following facts:

1. The Appellant, Gerard Cioffi, is a life-long resident of the Commonwealth. He grew up in Revere where he received his high school diploma in 2003. After high school he pursued a semi-professional hockey career and currently works part-time as a skating coach. He has lived in Saugus for approximately ten years. (*JExhs.4 through 7*)

2. Mr. Cioffi took the March 2019 examination for entry-level municipal police officer administered by the Massachusetts Human Resources Division (HRD) and received a passing score of 92. His name appeared on the eligible list established by HRD on September 1, 2019.

*(Stipulated Facts)*

3. Mr. Cioffi first applied for appointment as an SPD Police Officer in September 2019. SPD Detective VanSteensburg was assigned to perform a complete background investigation, which he conducted in November 2019, and which included a review of the application packet, a personal interview with Mr. Cioffi, checking his driver and criminal records, and inquiry into his employment, personal and neighborhood references. (*JExhs.5 & 6; Testimony of VanSteensburg*)

4. By letter dated January 13, 2020, Saugus Town Manager Scott C. Crabtree, the Appointing Authority, informed Mr. Cioffi that, based on the recommendation of SPD Interim Police Chief Ronald P. Giorgetti, he had decided to bypass Mr. Cioffi in favor of one candidate ranked below him. (*J.Exh.5; Testimony of Chief Ricciardelli*)

5. The reasons provided for recommending Mr. Cioffi's bypass in January 2020 included:

- Three SPD incident reports (2015 –Mr. Cioffi threatened neighbor; 2015 – argument with female friend leaving her locked out of home; 2017 – argument with female friend);
- Two abuse prevention orders (in 2000)<sup>3</sup> and twelve (12) sealed criminal records with no convictions, five (5) of which (in 2000 and 2006) were continued without a finding (CWOFF) in 2000 and 2006;
- Negative reports from neighbors describing Mr. Cioffi's as "aggressive with strong foul language", exhibiting "roid [sic] rage"; one neighbor called him a "hothead" who gets upset easily; another neighbor said that the "thought of him with a gun scares me";
- A poor driving record with over two dozen entries, including nine (9) responsible infractions (two 2009 speeding violations) and four surchargable accidents (most recently in 2015); and
- Incomplete responses to certain questions on the SPD hiring application, including omissions in employment history from 2000 to 2011, omission of attendance at a community college, and failure to provide required explanations for driving record infractions and suspension from school.<sup>4</sup>

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<sup>3</sup> Mr. Cioffi was the subject of only one abuse prevention order in 2000; the other incident on his record was an error. (*J.Exh.5; Testimony of Appellant*)

<sup>4</sup> The suspension was related to the 2000 abuse prevention incident which his then girlfriend had obtained against him and resulted in his transfer to another school, located in a separate wing of the building, to complete his senior year. (*J.Exh.5; Testimony of Appellant*)

6. Mr. Cioffi was advised of his right to appeal his non-selection to the Commission, but he did not file an appeal from his January 2020 bypass. (*JExh.5 & 6; Undisputed Facts*)

7. In March 2020, HRD issued Certification #07041 to Saugus for appointment of three (3) new SPD Police Officers. Mr. Cioffi's name appeared ranked 4<sup>th</sup> on the certification among the candidates who signed willing to accept appointment. (*Stipulated Facts*)

8. On April 14, 2020, Mr. Cioffi completed a new application packet. (*Jt.Exh.7 & App.Exh.8*)

9. Mr. Cioffi's April 2020 application was assigned to Sgt. Det VanSteensburg to perform an updated background investigation after which he submitted his updated investigation report to newly appointed Chief Ricciardelli in July 2020. (*J.Exh.4; Testimony of Chief Ricciardelli & VanSteensburg*)

10. Sgt. Det. VanSteensburg did not reinterview Mr. Cioffi because he believed he had sufficient information in the current and prior application packet, as well as his November 2019 interview and another interview would be "redundant". He did attempt to make contact with the new landlord at the home where Mr. Cioffi had moved since his last application with the SPD but was unsuccessful. (*J.Exh.4; Testimony of VanSteensburg*)

11. Sgt Det. VanSteensburg updated Mr. Cioffi's criminal and driver history, which showed no new entries. He spoke to the supervisor at the company where Mr. Cioffi had started working as a laborer in February 2020, who called him an "excellent employee" and good choice to become a police officer. He noted that Mr. Cioffi's new application continued to contain a number of omissions, as well as about a half-dozen discrepancies between the first and second applications in such areas as employment dates, description of his travel history and past personal relationships, but stated that he believed that "the lack of information provided in this current background packet was based on an assumption we already had this information from the 2019 background investigation" and "I do not believe these inconsistencies from the 2019 and 2020 packet were

purposefully done to falsify information, nor were they egregious individually.” He concluded, however, that “[a]s a whole . . . [the discrepancies from the two packets submitted less than a year apart] show a complete lack of attention to detail.” (*J.Exh.4; Testimony of VanSteensburg*)

12. Sgt. Det. VanSteensburg also indicated in his July 2020 report: “Mr. Cioffi’s past history, in terms of issues in school, relationships, criminal charges, and motor vehicle offenses is certainly not flattering for this position, however, he does not shy away from this” and he believes “his history is what makes him a better person”, and so do his references. . . . He has overcome a difficult childhood and seems to be positive and dedicated to friends and family. There does seem to be concerns with possible aggression based on our in-house dealings and neighbor perceptions.” (*J.Exh.4; Testimony of VanSteensburg*)

13. Based on Sgt. Det. VanSteensburg’s July 2020 report, by letter dated August 3, 2020, SPD Chief Ricciardelli recommended to Town Manager Crabtree that Mr. Cioffi again be bypassed, essentially for the same reasons provided by former Chief Giorgetti in January 2020. (*Jt.Exh.4*)<sup>5</sup>

14. Town Manager Crabtree concurred with Chief Ricciardelli’s recommendations and, by letter dated October 1, 2020, informed Mr. Cioffi that he had been bypassed in favor of three other candidates (Candidates A, B & C) ranked below him on the certification. (*Jt.Exhs 1 through 4*)

15. Candidate A is a U.S. citizen who moved to Greece as a teenager. He served one year in the Greek Army, completed a police academy there, and served as an unarmed municipal police officer for thirteen (13) years. He had no criminal record and no negative driver’s history. He returned to the United States in 2017 and took a job as a cook, cashier and host for a Peabody MA restaurant. His personal, neighborhood and professional references uniformly vouched for his

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<sup>5</sup> One of the reasons stated for bypassing Mr. Cioffi each time was that the tattoos on his arm that would be visible when wearing an SPD uniform. By the time of the second application, however, the SPD was in the process of changing its tattoo policy and did not press that reason at the Commission hearing. I infer that the reference to tattoos in the second bypass letter was an inadvertent, unintended mistake.

character. He asserted that he was due to receive an Associate's Degree from North Shore Community College but did not include a transcript in his packet. (*Jt.Exh.1*)

16. Candidate B is a life-long Saugus resident whose brother is a SPD Police Officer. He holds a B.S. degree in Criminal Justice from Salem State College and an EMT certificate from North Shore Community College. He had no criminal record or negative driver's history. His personal, neighborhood and professional references uniformly vouched for his character. His employment has included work as a security guard and as an intern with the Lynn Police Department. He had held a Class A License to Carry since 2017. His application included "minor omissions" including providing only one year (rather than two) of tax returns and failing provide an answer to a question on the application regarding workdays missed. The background investigator did not report that he conducted any personal interview of Candidate B. (*Jt.Exh.2; Testimony of Chief Ricciardelli & VanSteensburg*)

17. Candidate C had been employed by the Boston University Police Department for seventeen years where he was promoted to the rank of Sergeant in 2018. He is also a Reserve Patrolman in Merrimac, MA. He had completed the MPTC full time police academy. He also served for ten years in the U.S. Army Reserves where he attained the Rank of Specialist/E4 and received an Honorable Discharge in 2001. He received strong recommendations from his Captain at Boston University and the Merrimac Police Chief. He had one entry on his criminal record from 1995. His driving record included 4 citations prior to 2000 and two surchargeable accidents, one in 1990 and a second in February 2020. He was unable to provide copies of his tax records which are handled by his accountant. The background investigator stated that, due to the COVID-19 emergency, an in-person interview was not conducted. (*Jt.Exh.3; Testimony of Chief Ricciardelli & VanSteensburg*)

18. Mr. Cioffi duly filed a timely appeal of his bypass with this Commission. (*Claim of Appeal*)

## **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).

Original and promotional 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. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. 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 Service Comm’n, 483 Mass. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service 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’’. Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (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”).

The governing statute, G.L. c. 31, gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority’s action” and it is not necessary that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). The commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*,” then the occasion is appropriate for intervention by the commission.” Id. (*emphasis added*). See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct:

“Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”

Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

The duty imposed upon a police officer to be truthful is one of the most serious obligations he or she assumes. “[P]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” Falmouth v. Civil Service



Comm'n., 61 Mass. App. Ct. 796, 801 (2004) citing City of Cambridge v. Civil Service Comm'n., 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997) (“The city was hardly espousing a position devoid of reason when it held that a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer.... It requires no strength of character to speak the truth when it does not hurt.”) See, e.g., Desmond v. Town of West Bridgewater, 27 MCSR 645 (2014); Ung v. Lowell Police Dep’t, 24 MCRS 567 (2011); Gallo v. City of Lynn, 23 MCSR 348 (2010). See also Minoie v. Town of Braintree, 27 MCSR 216 (2014); Everton v. Town of Falmouth, 26 MCSR 488 (2013) and cases cited, aff’d, SUCV13-4382 (2014); Gonsalves v. Town of Falmouth and cases cited, 25 MCSR 231 (2012), aff’d, SUCV12-2655 (2014); Keating v. Town of Marblehead, 24 MCSR 334 (2011) and cases cited.

Providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” Kerr v. Boston Police Dep’t, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016). Moreover, a bypass letter is available for public inspection upon request, so the consequences to an applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L. c. 31, § 27, ¶ 2.

Thus, the corollary to the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness requires that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. See, e.g., Boyd v. City of New Bedford, 29 MCSR 471 (2016) (honest mistakes in answering ambiguous questions on NBPD Personal History

Questionnaire); Morley v. Boston Police Dep't, CSC No. G1-16-096, 29 MCSR 456 (2016) (candidate unlawfully bypassed on misunderstanding appellant's responses about his "combat" experience); Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history).

### **ANALYSIS**

The SPD has established by a preponderance of the evidence that the decision to bypass Mr. Cioffi was reasonably justified for sound and sufficient reasons, including, in particular, a pattern of motor vehicle infractions, a history of violent behavior, corroborated by recent multiple reports from neighbors, and a pattern of errors and omissions in his application.

I agree that most of Mr. Cioffi's criminal and driving record date back more than twenty years and did not result in any convictions. However, he was involved in an incident as an adult that resulted in a CWOFF as recently as 2006, and several motor vehicle infractions when he was in his twenties and thirties, most recently in 2015. This pattern of behavior, together with the reports of involvement in altercations with others, most recently in 2017, and concerns from several neighbors expressed to the background investigator, that he was prone to aggression, portray the type of person who the SPD can reasonably conclude presents an unacceptable present risk to serve as a police officer with a badge and gun and all the authority that entails.

I also agree, as Sgt. Det. VanSteensburg concluded, that Mr. Cioffi's errors and omissions in his applications were not purposefully made with any intention to deceive and are more properly viewed as honest mistakes. Nevertheless, the SPD was entitled to conclude that the number of these mistakes, and the repeated nature of the inconsistencies and omissions that permeated both of his applications, presented a serious lack of attention to detail that is also an unacceptable character trait for a police officer.

Finally, I have considered the Appellant's contention that his weaknesses were viewed more harshly than those of the selected candidates. I find nothing about the record of any of the selected candidates that presents demerits comparable to Mr. Cioffi. All three of the selected candidates had prior experience in law enforcement and came highly recommended by their personal, neighborhood and professional references. The isolated omissions by two of the candidates does not equate to the pattern of mistakes in Mr. Cioffi's application.

The fact that Candidate B had a brother in the SPD, absent any evidence that he was involved in any way in the selection process, falls far short of any evidence of favoritism or bias of this otherwise plainly qualified candidate who had no criminal or negative driving record and had attained a college degree in Criminal Justice. Similarly, I do not view the fact that the SPD hired Candidate C (a university police Sergeant and Reserve municipal police officer) as establishing disparate treatment or favoritism in selecting him over Mr. Cioffi despite the fact that Candidate C did not produce his tax returns as required and had one recent surchargeable accident on his record and one stale criminal entry. Absent a preponderance of credible evidence that the selection of that lower-ranked candidate was influenced by bias or favoritism, which does not appear here, the Commission would be impermissibly substituting its judgment for that of the appointing authority, which has considerable discretion in weighing the relative qualifications of candidates for the important job of an SPD police officer.

Mr. Cioffi has a strong interest in becoming a police officer. As some point, he may learn to correct his poor attention to detail, produce a record of steady employment, and demonstrate through his behavior that he has overcome his prior proclivity toward anger and confrontation. As of October 2020, however, Saugus has established, by a preponderance of the evidence, that, after a reasonably thorough review, it had sound and sufficient reasons that reasonably justified its decision to bypass him for appointment as an SPD Police Officer.

## **CONCLUSION**

For all of the above stated reasons, the bypass appeal of Gerard Cioffi, under Docket No. G1-20-166, is *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Ittleman, Camuso, Stein & Tivnan, Commissioners) on February 10, 2022.

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:

Paul J. Coleman, Esq. (for Appellant)

John J. Vasapolli, Esq. (for Respondent)