

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

CHRISTOPHER COLLETT,
Appellant

Docket No.: G1-08-53

v.

DEPARTMENT OF CORRECTION,
Respondent

Representative for the Appellant:

Christopher Collett
Pro Se

Representative for the Respondent:

Alexandra McInnis
Director of Personnel
Human Resources Department
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Hearing Officer:

Angela C. McConney, Esq.

**DECISION ON APPOINTING AUTHORITY'S
MOTION FOR RECONSIDERATION**

The Appellant Christopher Collett (hereinafter the "Appellant"), appealed the February 26, 2008 decision of the Department of Correction (hereinafter "DOC") denying his request for appointment as a Correction Officer I (Certification Number 4080003, dated 01/22/08). A hearing was held on May 9, 2008 at the offices of the Civil Service Commission (hereinafter "Commission.") One tape was made of the hearing and is retained by the Commission. The hearing officer left the record open in order for DOC to submit records of its policy or guideline in regard to this matter. When those records were not forthcoming, on June 30, 2008 the Commission contacted DOC to forward the following information:

1. The length of time that the guideline prohibiting the hire of applicants with a Criminal Offender Record Inquiry (“CORI”) less than 5 years old has been in place;
2. The number of applicants who have been bypassed due to their CORI history for the last 5 years, with a breakdown by year;
3. The number of applicants - with no convictions - who have bypassed for the last 5 years, with a breakdown by year;
4. A list of cases where the Appellant prevailed at the Civil Service Commission after being bypassed due a CORI history, but no convictions.

DOC submitted Exhibit 5, a June 30, 2008 email showing that six (6) bypassed candidates filed appeals with the Commission. None of those appeals progressed to a full hearing on the merits of the case. Upon being informed that Exhibit 5 did not address the Commission’s June 30, 2008 request in full, DOC submitted Exhibit 6, a July 31, 2008 email showing the number of bypassed candidates going back only 2 years. Exhibit 6 shows that 145 candidates were bypassed in 2006, 125 in 2007, and 73 as of June 31, 2008. Of those 343 candidates, less than 10% appealed their bypasses to the Commission. Neither exhibit documents DOC’s policy or so-called guideline in regard to bypassing candidates with criminal histories.

The Commission issued a decision allowing the appeal on September 18, 2008.

The Appointing Authority filed a Motion for Reconsideration with an accompanying affidavit from DOC’s Personnel Director on October 1, 2008. The Appellant filed no response.

In its Motion, the Appointing Authority asserts that the hearing officer (1) misunderstood or misstated the evidence, and (2) ignored Commission precedent with respect to the use of arrest records in evaluating candidates for the position of Correction Officer.

With respect to DOC’s first assertion, nothing in the oral argument or evidence presented to the Commission limits DOC’s guideline to Assault and Battery charges. The guideline did not delineate the nature of the charges that would exclude a candidate; DOC testified only to CORI activity within the last five (5) years, leaving unanswered specifically which charges, regardless of the underlying facts or disposition, would result in an automatic disqualification from

employment with DOC. DOC's first assertion not presented in evidence or in oral argument – shows an informal policy covering offenses that are not articulated. For the sake of argument, even if DOC had documented that the CORI check focused strictly on the offense of Assault and Battery, the guideline remains informal and unwritten. It remains a blanket policy, applying to all candidates alike without any evidence showing a case-by-case analysis. This indecipherable guideline lacks transparency, predictability or consistency.

In regard to the affidavit filed with the Motion for Reconsideration, neither the oral argument nor documents submitted as part of the record in this case contain the specificity now articulated in the affidavit.

Further, DOC, according to their Motion for Reconsideration, appears to have misconstrued the Commission's reference to other Commission decisions involving the appointment of police officers. Nothing in the Commission decision suggests that the vetting process for correction officer applicants should be less vigorous than that used to screen police officer candidates in the Commonwealth.

DOC has failed to identify a clerical or mechanical error in the decision or a significant factor that the Commission or the presiding officer may have overlooked in deciding the case.

Therefore, DOC's Motion for Reconsideration filed under Docket No. G1-08-53 is hereby *denied*.

Civil Service Commission

Angela C. McConney
Hearing Officer

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis Stein and Taylor, Commissioners) November 6, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

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Human Resources Department
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P.O. Box 946
Norfolk, MA 02056

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