

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

MICHAEL CONNORS,
Appellant

v.

CITY OF SOMERVILLE,
Respondent

Case No.: G1-12-200

DECISION

The Civil Service Commission (Commission) voted at an executive session on September 19, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated July 16, 2013. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on September 19, 2013.

A true record. Attest.



Christopher C. Bowman
Chairman

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.

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.

Notice to:

Joseph Sulman, Esq. (for Appellant)

Matthew Buckley, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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July 16, 2013

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Michael Connors v. City of Somerville
DALA Docket No. CS-12-525
CSC Docket No. G1-12-200

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections.

Sincerely,

Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Joseph L. Sulman, Esq.
Matthew J. Buckley, Esq.

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals
One Congress Street, 11th Floor
Boston, MA 02114
(617) 626-7200
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www.mass.gov/dala
Docket No.: G1-12-200
CS-12-525

MICHAEL CONNORS,
Appellant

v.

CITY OF SOMERVILLE,
Respondent

Appearance for Petitioner:

Joseph L. Sulman, Esq.
Law Office of Joseph L. Sulman
185 Devonshire Street, Suite 502
Boston, MA 02110

Appearance for Respondent:

Matthew J. Buckley, Esq.
Assistant City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Administrative Magistrate:

Angela McConney Scheepers, Esq.

SUMMARY OF RECOMMENDED DECISION

The City of Somerville had reasonable justification to bypass the Appellant for the position of permanent full-time police officer. I therefore recommend that the Civil Service Commission dismiss the appeal.

RECOMMENDED DECISION

Pursuant to the provisions of M.G.L. c. 31, § 2(b), the Appellant, Michael Connors (Appellant), seeks review of the City of Somerville's (Appointing Authority or City) reasons for bypassing him for appointment to the position of permanent full-time police officer in the

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Somerville Police Department (Department). As reasons for the bypass, the City cited positive reasons for the four, lower-ranked selected candidates, and negative reasons for the Appellant.

A pre-hearing conference was held on July 24, 2012 at the offices of the Civil Service Commission (Commission), One Ashburton Place, Room 503, Boston, MA 02108. A full hearing was held on September 24, 2012 at the offices of the Division of Administrative Appeals (DALA), One Congress Street, 11th Floor, Boston, MA 02114. The Appellant testified on his own behalf and called two other witnesses, Brian Hartigan of Northeast Security and Lieutenant James Squires of the United States Army National Guard. The Respondent called one witness, Police Chief Thomas Pasquarello. The hearing was digitally recorded. As no notice was received from either party, the hearing was declared private.

I admitted the Respondent's ten (10) documents into evidence. I admitted the Appellant's bypass appeal form as Exhibit 11. The Respondent submitted its post-hearing brief on October 30, 2012. The Appellant submitted his post-hearing brief on November 1, whereupon the record closed.

FINDINGS OF FACT

Based on the documents entered into evidence and the testimony of the witnesses, I make the following findings of fact:

1. The Appellant, Michael Connors, has been employed as a correction officer at the Department of Correction (DOC) since November 2011. He is assigned to MCI Framingham. (Testimony of Appellant; Exhibit 7.)

2. The Appellant took and passed the civil service examination for entry-level police officer on April 30, 2011. He received a score of 85. (Testimony of Appellant; Exhibit 1.)

3. Mayor Joseph A. Curtatone is the Appointing Authority for the City of Somerville. (Exhibit 3; Testimony of Chief Pasquarello.)

4. On or about December 9, 2011, the state Human Resources Division (HRD) issued certification number 202595 to the Department. The certification authorized the Department to appoint 10 permanent, full-time police officers. (Exhibit 1.)

5. The Appellant submitted his application for employment to the Department on January 4, 2012. (Exhibit 3.)

6. Lt. Dan Cotter conducted the Appellant's background investigation. He discovered that, following high school, the Appellant enlisted in the United States Air Force (USAF) on November 29, 2004. After basic training, he trained for 13 weeks in the Apprentice Course of the Security Force, the equivalent of the Military Police. He was stationed at Malmstrom Air Force Base, Montana. (Exhibit 3.)

7. The Appellant received the Global War on Terrorism medal, the National Defense Service medal, Air Force Training Ribbon, Basic Force Protection Badge and the Security Police Shield. On December 13, 2005, the Appellant had to take a General Discharge Under Honorable Conditions due to two instances of misconduct within 3 months. He did not complete a full term of service. (Exhibit 3.)

8. The first instance of misconduct occurred on August 16, 2005. The Appellant was charged with the following offenses:

Violation of UCMJ, Article 92

You, who knew or should have known of your duties, at or near Great Falls, Montana, on about 13 August 2005, were derelict in the performance of your duties in that you willfully failed to refrain from drinking alcohol beverages while under the age of 21 years, as it was your duty to do.

Violation of UCMJ, Article 111

You did, at or near Malmstrom Air Force Base, Montana, on or about 13 August 2005, near the Malmstrom Air Force Base Main Gate, physically control a vehicle, to wit, a passenger car, while drunk.

(Exhibit 3.)

9. The Appellant received an Article 15 non-judicial punishment¹ consisting of a reduction of rank to the grade of Airman Basic, a forfeiture of \$617.00 pay, suspended through May 6, 2006, restriction to the limits of the base for 15 days, and 15 days of extra duty. (Exhibit 3; Testimony of Appellant.)

10. The Appellant received a severe reprimand:

Reprimand: You are hereby SEVERELY REPRIMANDED. Driving under the influence is a very serious offense. There is absolutely no excuse for the behavior you exhibited. You have been briefed many times on the dangers of drinking and driving and know that you may contact any member of this unit or the local chapter of Airmen Against Drunk Driving for a ride home if you find yourself incapacitated. Your failure to plan for a safe ride home resulted in your bringing significant discredit to yourself, this unit and the Air Force. Through these acts, you have shown neglect towards your assigned duties as a member of the United States Air Force, and more importantly as a Security Forces member. I urge you to carefully consider the ramifications of your actions and the expectations of today's Airmen. I demand [an] immediate, permanent and positive change in your behavior. Future actions like this will be dealt with swiftly and severely.

(Exhibit 3.)

11. The second instance of misconduct occurred approximately three months later on November 2, 2005. The Appellant was charged with the following offense:

Violation of UCMJ, Article 92

You did, at or near the India Missile Facility, within the state of Montana, on or about 2 November 2005, violate a lawful general regulation, to wit: paragraph 2.12.6, Arming and Use of Force by Air Force Personnel, Air Force Instruction 31-207, dated 1 September 199, by clearing your firearm without the supervision

¹ An Article 15 is a non-judicial punishment under the Uniform Code of Military Justice. (Exhibit 3.)

of a trained clearing barrel attendant who has access to a clearing barrel, as it was your duty to do.

(Exhibit 3.) The Appellant received an Article 15 non-judicial punishment of a forfeiture of \$250.00 pay and restriction to the limits of the base for 45 days.

12. On December 5, 2005, the Appellant's sergeant recommended that he be discharged for minor disciplinary infractions, under a *general* rather than an *honorable* discharge. The sergeant's reasons were:

- a. On 16 Aug 05, You attempted to drive on base while intoxicated. You were arrested for MIP [minor in possession of alcohol] and DUI [driving under the influence]. For this misconduct you received an Article 15 dated 7 Sep 05.
- b. On 2 Nov 05, you cleared your firearm without the supervision of a trained clearing barrel attendant who has access to a clearing barrel as it was your duty to do. For this misconduct, you received an Article 15 dated 1 Dec 05.

(Exhibit 3; Testimony of Appellant.)

13. The Appellant's Certificate of Release or Discharge from Active Duty, with a separation date of December 13, 2005, stated that he was a Security Forces Apprentice for 10 months, that he did not complete his first full term of service, and that he was separated due to misconduct. (Exhibit 3.)

14. After returning from the Air Force, Appellant attended Mass Bay Community College from 2006 to 2007 while working at Sears and Lowes. The Appellant later attended Bunker Hill Community College for less than one semester. He has not yet received a college degree. (Exhibit 3; Testimony of Appellant.)

15. The Appellant enlisted in the Army National Guard in June of 2007 after completing Army basic training. He is now an E5 Sergeant. (Testimony of Appellant; Exhibit 7.)

16. The Appellant was deployed to Iraq from October 2008 until October 2009, where he trained the Iraqi Police Force. He was deployed to Haiti for one month after the earthquake there in January 2010. (Testimony of Appellant; Exhibit 7.)

17. The Appellant graduated from the Warrior Transition Course (8/17/2007), completed Driver's Training (11/13/2008), completed training on Mine Resistant Ambush Protected Vehicle (5/19/2009) and Counter Improvised Explosive Device Training Level 3 (8/13/2009). The Appellant received the Driver's Badge (8/5/2009), the Combat Action Badge (5/29/2009), the Army Good Conduct Medal (9/1/2009), the Army Commendation Medal for commendable service during Operation Iraqi Freedom (8/2010) and has twice received the Massachusetts Emergency Service Ribbon (7/11/2010 and 8/30/2011). On July 15, 2011, the Appellant was promoted to Sergeant. (Testimony of Appellant; Testimony of Lt. Squires; Exhibit 8.)

18. The Appellant received an honorable discharge from the Army, but has remained in the National Guard. (Testimony of Appellant; Exhibit 7.)

19. On pages 6-7 of the employment application, the Appellant disclosed to the Department that he had received "a general discharge under honorable [conditions] for drinking and driving under age on post in 2005." He did not mention the second Article 15 incident. (Exhibit 3.)

20. On page 6 of the employment application, the last question stated: "If you were ever a member of the Armed Forces, were you court-martialed?" The Appellant answered "no." The application continued on to page 7 where the first question stated: "If you were ever a member of the Armed Services, including National Guard or Reserves, were you the subject of any other form of disciplinary action besides court marshal [*sic*]?" The Appellant left this

question blank. The next question stated, "If you answered yes to any of the previous two questions, please explain." Again, the Appellant left this question blank. (Exhibit 3.)

21. On page 10 of the employment application, the Appellant had answered "no" to the following questions, "Have you ever been arrested for violation of a criminal statute" and "Have you ever been arrested but never tried for a criminal offense?" (Exhibit 3.)

22. During his investigation, Lt. Cotter discovered that the Appellant had worked as a security guard for Securitas. The Appellant told the lieutenant that he was dismissed because he tried to transfer to another employer. Securitas said that the Appellant had been discharged for insubordination. (Exhibit 3.)

23. In his employment application, the Appellant stated that he worked as a full time security guard at Northeast Security from December 2009 until October 2011 when he got his position at the DOC. (Exhibit 3.)

24. Brian Hartigan, the Appellant's direct supervisor at Northeast Security, testified at DALA. Hartigan said that the Appellant was the best employee he ever had, someone he could rely on because of his strong work ethic and maturity. He had quickly promoted the Appellant to a supervisory position. (Testimony of Brian Hartigan; Testimony of Appellant; Exhibits 3 and 10.)

25. Lieutenant James Squires, a member of the Appellant's National Guard unit, testified on his behalf. He watched the Appellant grow from a member of the team, to a squad leader, then a platoon leader. He said that the Appellant would make an excellent police officer because of his training and experience in the military police. (Testimony of Lt. Squires.)

26. Lt. Cotter submitted his background investigation report to the Department on April 1, 2012. He reported that the Appellant had good credit and no criminal history. Lt. Cotter

listed three positive employment aspects: (1) Outstanding Army record, (2) ability to work in a team, and (3) highly thought of in the DOC, Army and Northeast Security. (Exhibit 3.)

27. Lt. Cotter also listed three negative aspects: (1) the Appellant's Air Force record, (2) his failure to be forthcoming about his second Article 15 discipline, and (3) his record at Securitas. The lieutenant noted that the reasons provided by the Appellant in his employment application did not reconcile with the records provided by the USAF and Securitas. As a matter of fact, there is no mention of employment at Securitas at all. (Exhibit 3.)

28. On May 9, 2012, the Appellant was interviewed by a four-member interview panel consisting of Chief Thomas Pasquarello, Deputy Chief Paul Upton, Labor Counsel Bob Collins and Director of Personnel Sarah Kloos. (Exhibit 3; Testimony of Pasquarello.)

29. The interviewers asked each candidate the same 30 questions and kept notes of their answers. (Exhibit 3.)

30. The interviewers asked the Appellant to explain the discrepancy between the information on his employment application and his Air Force record. (Exhibit 3; Testimony of Pasquarello.)

31. The Appellant informed the panel that he did not realize an Article 15 was considered an arrest. He said that while he listed his first Article 15 for the August 16, 2005 MIP and DUI on the employment application, he did not list the second Article 15 because he did not recall that the November 2, 2005 incident had resulted in an Article 15. The interview panel asked him to submit his recollection of the two Article 15 incidents in writing. (Testimony of Pasquarello, Testimony of Appellant; Exhibits 3 and 9.)

32. On May 17, 2012, the Appellant submitted that the second Article 15 incident occurred when he experienced a weapons malfunction while properly loading his side arm in the

armory cleaning barrel. He does not mention that he was clearing the firearm without the supervision of a trained clearing barrel attendant, as he was charged under UCMJ, Article 92.

(Exhibits 3 and 9.)

33. The panel also inquired about the Appellant's departure from Securitas, which the background check had revealed as a dismissal due to insubordination. The Appellant had not mentioned Securitas on his employment application. The Appellant explained to the panel that Securitas had contracted him out to Fidelity Investments at the World Trade Center in Boston. Fidelity approached him about a position, but after contacting Securitas, learned that hiring Appellant would constitute a breach of contract. Securitas then told the Appellant that his pursuit of a position with Fidelity constituted a conflict of interest and dismissed him. The interview panel also asked the Appellant to submit his recollection about that incident in writing as well. (Testimony of Appellant; Exhibits 3 and 9.)

34. Also in his May 17, 2012 submission, the Appellant wrote that after Fidelity Investments asked for a waiver so that it could hire him, per its agreement with Securitas, Securitas refused. The Securitas manager then dismissed him because he was pursuing alternate employment opportunities. (Exhibits 3 and 9.)

35. The interview panel questioned the Appellant about his gun registration. At the time of the interview, it had been revoked due to an outdated address. The Appellant explained that it slipped his mind because he had been in Haiti with the Army National Guard. The Appellant agreed to update the information immediately. (Testimony of Chief Pasquarello, Testimony of the Appellant.)

36. During the interview, the interviewers asked the Appellant question 14, “We all have certain “buttons” that set us off. What “buttons” do you have that set you off? How do you control them?” (Exhibit 3; Testimony of Chief Pasquarello.)

37. The Appellant answered, “Can’t stand people who talk ghetto ... Can’t stand people who dress ghetto” ... “Baggy pants, underwear showing, sticker on hat still.” He also made a comment about people living in East Somerville. (Exhibit 3; Testimony of Chief Pasquarello.)

38. The Appellant was one of four to five individuals who were invited back for a second interview. When the panel expressed its concern that he may profile people in certain parts of the City, the Appellant said that he would not profile them, he basically would not date “them.” (Testimony of Chief Pasquarello.)

39. On or about May 21, 2012, the City informed the Appellant of his bypass. The City provided positive reasons for each of the lower ranked candidates, and negative reasons for bypassing the Appellant. (Exhibit 2.)

40. The negative reasons listed for the Appellant were: (1) maturity issues; (2) failure to comply with MA General Laws, Chapter 140 concerning the licensing of firearms, resulting in License to Carry being not in compliance; (3) truthfulness issues relating to arrest; (4) severe reprimand in service for DUI – lost rank from E3 to E1; (5) non-disclosure of second Article 15; and (6) accepted discharge “under honorable conditions (general)” for misconduct to avoid court martial. (Exhibit 2.)

41. On or about May 30, 2012, the City notified HRD of its intent to hire four candidates. The City had the budget to hire ten candidates, but the chief only recommended the

candidates he found suitable. Each of the four appointed candidates ranked below Appellant. (Exhibit 1; PAR.02; Testimony of Chief Pasquarello.)

42. The Appellant filed an appeal with the Civil Service Commission on June 21, 2012. (Exhibit 11.)

CONCLUSION AND ORDER

A. *Applicable Legal Standards*

When a candidate for appointment appeals from a bypass, the commission's role is not to determine whether that candidate should have been bypassed. The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 187 (2010). The commission determines, "on the basis of the evidence before it, whether the appointing authority [has] sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification" for the decision to bypass the candidate. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241 (2006), citing G.L. c. 31, § 2 (b). "Reasonable justification in this context 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 Serv. Comm'n*, *supra*, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928). See also *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 189, 190-91 (2010) citing *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 824-826 (2006). See also *Methuen v. Solomon*, No. 10-01813-D, Essex Sup. Ct. (July 26, 2012); *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012). A "preponderance of the evidence test requires the Commission to determine whether, on the 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 Serv. Comm’n*, 31 Mass. App. Ct. 315 (1991). In determining whether the department has shown a reasonable justification for a bypass, the commission's primary concern is to ensure that the department's action comports with "[b]asic merit principles," as defined in G.L. c. 31, § 1. *See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001). The commission "finds the facts afresh" in conducting this inquiry, and is not limited to the evidence that was before the Department. *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187 (2010). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. *Id.* Cities and towns have wide discretion in selecting public employees, and absent proof that they acted unreasonably, may not be forced to take the risk of hiring unsuitable candidates. *Tewksbury v. Massachusetts Civ. Serv. Comm’n*, No. 10-657-G, Suff. Sup. Ct. (August 30, 2012) (Superior Court found that the town acted reasonably; Commission erred when it reversed DALA Recommended Decision and improperly substituted its judgment).²

B. Reasonable Justification for Bypassing the Appellant

The City gave four reasons for its bypass of the Appellant: (1) maturity issues; (2) failure to comply with MA General Laws, Chapter 140 concerning the licensing of firearms, resulting in License to Carry being not in compliance; (3) truthfulness issues relating to arrest; (4) severe reprimand in service for DUI – lost rank from E3 to E1; (5) non-disclosure of second Article 15; and (6) accepted discharge “under honorable conditions (general)” for misconduct to avoid court martial. (Exhibit 2.) I find that the City was reasonably justified in bypassing Appellant for the

² *Cyrus v. Tewksbury*, Docket Nos. G1-08-107, CS-08-539, Recommended Decision, (June 5, 2009), *rev’d by Final Decision* 23 MCSR 58 (2010).

position of permanent full time police officer in the Department because of the foregoing reasons.

The Appellant was not forthright about his disciplinary history in the United States Air Force, which led to a reduction in rank and a severe reprimand for the first incident, and led him to leave military service in order to avoid even more serious discipline after a second incident within three months.

Untruthfulness is a serious concern and the Department is justly concerned with candidates' ability to tell the truth consistently. *See Beverly*, 78 Mass. App. Ct. at 189-190; *Modig v. Worcester Police Dep't*, 21 MCSR 78, 82 (2008) (police officer candidate's failure to respond accurately to a question about his prior employment on a personal history questionnaire was grounds for bypass); *Escobar v. Boston*, 21 MCSR 168 (2008) (candidate's untruthfulness in another police department's application is grounds for bypass); *Moran v. Auburn*, Docket Nos. G1-08-42, CS-08-317, Recommended Decision (June 5, 2009), *adopted by Final Decision* 23 MCSR 233 (2010) (Town was justified in bypassing the Appellant for multiple reasons including misrepresentations about his extensive driving history and past criminal behavior, including assault and battery and OUI); *Konamah v. Lowell*, Docket Nos. G1-10-131, CS-11-34, Recommended Decision, (January 12, 2012) *adopted by Final Decision* 25 MCSR 73 (2012) (candidate's failure to complete application truthfully and to disclose actual role in business gave appointing authority reason for bypass); *O'Neil v. Cambridge*, Docket Nos. G1-12-14, CS-12-202, Recommended Decision (August 14, 2012), *adopted by Final Decision* November 5, 2012. (Town was justified in bypassing the Appellant for an arrest for domestic assault and battery).

I find that the Appellant withheld important information on the employment application form when he failed to disclose his second Article 12 violation. (Exhibit 3.) On pages 6-7 of the

employment application, although the Appellant disclosed to the Department that he had received “a general discharge under honorable [conditions] for drinking and driving under age on post in 2005,” he failed to mention the second Article 15 incident when he failed to clear a firearm in the presence of a trained barrel attendance as required.

On page 7 of the employment application, the Appellant again withheld information when he did not respond to the first question, “If you were ever a member of the Armed Services, including National Guard or Reserves, were you the subject of any other form of disciplinary action besides court marshal [*sic*]?” The next question stated, “If you answered yes to any of the previous two questions, please explain.” The Appellant left this question blank. Again the Appellant withheld important information to the Department, even when offered a chance to explain what had taken place on the employment application. (Exhibit 3.)

The Appellant was untruthful when on page 10 of the employment application he answered “no” to the following questions, “Have you ever been arrested for violation of a criminal statute” and “Have you ever been arrested but never tried for a criminal offense?”

It is clear from the USAF records submitted to the Department that if the Appellant had not taken the general discharge he would have been subject to far greater discipline. It appears that he did not have much choice in the matter. His discipline for the two offenses was already serious enough. He had received a reduction in rank for the first offense, loss of pay and confinement to the base for 15 days. His second offense led to loss of pay and confinement to the base for 45 days. The Appellant uses this preferential treatment as the basis for saying that he was never arrested. However, being apprehended by his coworkers in a friendly manner does not change the fact that he was arrested and charged on two different occasions. On both

occasions, the Appellant consulted with a lawyer, waived his right to court martial, and accepted nonjudicial punishment proceedings.

Chief Pasquarello testified that although the Appellant's offenses and subsequent discharge from the Air Force may not have been disqualifying events in and of themselves, the Appellant's manner of addressing these indiscretions, both in the application and in his interviews, was concerning and justifiably contributed to the bypass decision. Although the panel gave the Appellant the opportunity to clarify the discrepancies between his employment application and the information received from the USAF and Securitas, his explanations in the May 17, 2012 written submission proved inadequate.

I find that the City had valid reasons to be concerned about the Appellant's lack of maturity. As a matter of fact, this entire matter is riddled with his immaturity. The Appellant testified that he basically sought redemption for his USAF years by his exemplary conduct in the Army National Guard. However, Chief Pasquarello remained concerned about the Appellant's USAF career because his offenses took place while he was a military police officer. The chief believed that the Appellant's service in the Security Force would be indicative of future performance as a police officer. Since the Appellant had been at DOC for less than 6 months at the time of the interview, the Appellant's work experience there was not sufficient for the Chief to draw the conclusion that the Appellant's pattern of behavior had improved.

The Chief heard the Appellant say during the panel interview that he could not stand people who speak, dress and act "ghetto." The panel was understandably concerned that Appellant might engage in profiling. When asked to explain the "ghetto" comment during the follow-up interview, the Appellant said that he would not profile, that he simply meant that he

would not date “them.” Chief Pasquarello was concerned by these comments because Somerville is a diverse city, and police officers must serve and respect all residents.

The Appellant’s omissions of important information from the application, failure to accurately report certain information, and failure to disclose the information accurately even when asked to do so in writing by the panel - all raised further concerns among the panel members about the Appellant’s maturity. The Appellant’s failure to disclose such important information about his background may reasonably be seen as an aspect of immaturity.

The Appointing Authority had to make a judgment regarding whether Appellant had sufficiently overcome his prior pattern of irresponsible behavior. In such circumstances, the courts have recognized that there is an inherent risk in hiring such a person and determined that “whether to take such a risk is . . . for the appointing authority to decide.” *See City of Beverly*, 78 Mass. App. Ct. at 190. The Chief acknowledged that Appellant showed signs of improvement from his prior indiscretions, but he did not believe that Appellant was quite ready. Based on those concerns, the City was not willing to bear the risk of appointing Appellant. An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone as a new . . . officer than in disciplining an existing tenured one.” *Attleboro v. Massachusetts Civ. Serv. Comm’n et al.*,³ No. 2011-734, Bristol Sup. Ct. (November 5, 2012), citing *Beverly* at 191.

The Appellant does not deny that at the time of the panel interview, his address was not up to date for his license to carry. He said that it had slipped his mind because he was being deployed to Haiti, and did correct it at the first opportunity.

³ William Dunn.


The reasons given for Appellant's bypass do not apply equally to any of the selected candidates. *See Borelli v. MBTA*, 1 MCSR 6 (1988). All of the other candidates showed attention to detail in their applications. None of them had firearms licensing violations. They are all mature, all of them had college-level degrees, and their respective interview notes contained nothing that could have been of serious concern. Where three of them had previous offenses, either the offenses were minor or the candidates gave satisfactory explanations.

I find that the Appellant has failed to meet the standards required in order to be a police officer in the City of Somerville.

There is no evidence that the City's decision was based on political considerations, favoritism or bias. Thus the City's decision to bypass the Appellant is "not subject to correction by the Commission." *Cambridge*, 43 Mass. App. Ct. at 305.

Based on the preponderance of credible evidence presented at the hearing, I conclude that the City was reasonably justified in bypassing the Appellant. Accordingly, I recommend that the appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Angela McConney Scheepers
Administrative Magistrate

DATED: **JUL 16 2013**