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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 10-3602-C

ALICIA CROSBY

v.

BOSTON POLICE DEPARTMENT and
CIVIL SERVICE COMMISSION

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF ALICIA CROSBY'S MOTION FOR JUDGMENT ON THE PLEADINGS

The plaintiff, Alicia Crosby ("Crosby"), has appealed from a decision by the

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Sett defendant, the Civil Service Commission ("Commission"), dismissing her appeal of
10.02.13

NIT the Boston Police Department's ("the BPD" or "the Department") psychological

SG bypass of her for an appointment to the position of police officer. The BPD

COOPD

RLD rescinded a conditional offer of employment that it had made to her after a BPD

ATG psychiatrist opined that Crosby was not psychologically fit to become a police officer.

LMB Crosby contends that the psychological bypass was improper and lacked a substantial

PREP

(mod) evidentiary basis because a majority of the Commission's members accepted Hearing

Commissioner Henderson's ("Henderson" or "Commissioner") findings of fact in

their entirety, but substituted their own conclusions without identifying facts to

support that opposing decision. For the following reasons, Plaintiff's Motion for

Judgment on the Pleadings is allowed.

BACKGROUND

The following facts are taken from the Hearing Commissioner's findings:

Crosby is from Boston and has always wanted to be a Boston police officer. After graduating from high school, she received a Bachelor of Arts in criminology at Suffolk University in 2001. Crosby does not and has never suffered from, or been treated for, a mental or psychological disorder. She has been a corrections officer/deputy sheriff for the Suffolk County Sheriff's Department since October of 2002. Her record at the Department is unblemished; she has never been disciplined, has received high scores in her performance evaluations, conducted every six months, and has never received a poor rating related to judgment or decision-making.

On July 27, 2006, the BPD gave Crosby a conditional offer of employment after successfully completing her background investigation. The offer was conditioned upon her passing a medical examination and psychological screening. Crosby was administered two paper-and-pencil tests, the Minnesota Multiphasic Personality Inventory-2 ("MMPI-2") and the Personal Assessment Inventory ("PAI"), as well as a two-level psychological interview. On August 28, 2006, Crosby met with Dr. Marcia Scott ("Dr. Scott"), the Department's first level screener. Ultimately, Dr. Scott found no observable evidence that Crosby had a current Axis I mental disorder, but she concluded that Crosby presented "personality difficulties that interfere with her ability to communicate clearly and make effective judgments," and that "[t]hese

personality traits could seriously interfere with her ability to successfully train for or perform the duties of an armed police officer.”

These findings led to a second level psychiatric screening, conducted by Dr. Julia Reade (“Dr. Reade”), a licenced psychiatrist in private practice. Dr. Reade makes the final recommendation to the Police Commissioner as to whether or not a candidate should be hired, based on her assessment of each candidate’s psychological fitness to work as a Boston Police Officer. On September 5, 2006, Dr. Reade met with Crosby. She ultimately found that Crosby “would have significant difficulties” functioning as a police officer and deemed her not acceptable for employment as a Boston police officer.

On November 22, 2006, the BPD requested that the Human Resources Department (“the HRD”) bypass Crosby for employment as a result of Dr. Reade’s findings. On January 19, 2007, the HRD accepted the reasons provided by the BPD and Crosby was notified of the bypass. Crosby filed an appeal to the Commission. On January 3, 2008, Dr. James Beck (“Dr. Beck”) interviewed and performed an independent psychological examination of Crosby, reviewed her application materials, her previous paper-and-pencil tests, and Dr. Reade’s disqualifying report. Dr. Beck concluded that Crosby does not have “any mental disorder or behavioral characteristics that would significantly interfere with her performing the essential functions of a Boston Police Officer.” Crosby also sought an independent

psychological examination from Dr. Mark Schaeffer, who agreed with Dr. Beck's findings.

On August 26 and November 4, 2008, a full hearing was held before Hearing Commissioner Henderson, at which Drs. Reade and Beck testified (amongst others). On June 9, 2010, the Commissioner issued his findings of fact and his conclusion that the BPD's bypass of Crosby was not "justified," as required under the Civil Service laws, and that the bypass must be overturned. He did not require that the BPD hire Crosby, but ordered that they afford her a new psychological screening process. Henderson found that Dr. Reade could not point to a single example in Crosby's personal life or prior work record that substantiated her opinion that Crosby had a "history" of psychological issues. Indeed, he found that Crosby's prior work history showed the opposite. Additionally, Henderson found that Dr. Reade harbored a bias against Crosby.

On June 3, 2010, the Commission issued a 3-2 decision, adopting the Hearing Commissioner's findings of fact, but substituting its own conclusion, affirming the BPD's psychological bypass of Crosby. Crosby appealed that decision to this court pursuant to G.L. c. 30A, § 14.

DISCUSSION

Judicial review pursuant to G.L. c. 30A, § 14, is limited to the administrative record. G.L. c. 30A, § 14 (7). The Hearing Commissioner is the sole judge of the

weight given to the evidence before her, and when the Commissioner's decision is based on substantial evidence the reviewing court will not substitute its views as to the facts. *Guarino v. Director of the Div. Of Employment Sec.*, 393 Mass. 89, 92-93 (1984); *Cherubino v. Board of Registration of Chiropractors*, 403 Mass. 350, 354 (1988) (citing *Arthurs v. Board of Registration of Med.*, 383 Mass. 299, 304 (1981)); *South Worcester Co. Regional Vocational Sch. Dist. v. Labor Relations Bd.*, 386 Mass. 414, 420 (1982). The reviewing court must give deference to the agency's experience and expertise. G.L. c. 30A, § 14 (7); see *DiLoreto v. Fireman's Fund Ins. Co.*, 383 Mass. 243, 248-249 (1981). "[A]n administrative agency . . . has considerable leeway in interpreting the statute and its regulations, which . . . stand on the same footing as statutes with reasonable presumptions to be made in favor of their validity. As 'long as the [agency's] interpretation of its regulations and statutory mandate is rational, and adhered to consistently, it should be respected,' and given substantial deference." (Citations omitted.) *Smith v. Sex Offender Registry Bd.*, 65 Mass. App. Ct. 803, 813 (2006).

The party challenging an administrative decision bears the burden of demonstrating its invalidity. *Faith Assembly of God v. State Bldg. Code Comm'n*, 11 Mass. App. Ct. 333, 334 (1981). The factual findings of the agency will be overturned where the reviewing court finds that they were not supported by substantial evidence. See G.L. c. 30A, § 14 (7). That is "such evidence as a

reasonable mind might accept as adequate to support a conclusion.” G.L. c. 30A, § 1; *see Lycurgus v. Director of the Div. of Employment Sec.*, 391 Mass. 623, 627-628 (1984). The decision may also be overturned where it “is arbitrary or capricious, an abuse of discretion, or not in accordance with the law.” *Doe No. 10216 v. Sex Offender Registry Bd.*, 447 Mass. 779, 787 (2006).

The Commission’s review of a hiring decision is limited to determining whether the Department “has sustained its burden of proving that there was reasonable justification for the action taken by” the Department. *City of Cambridge v. Civil Service Comm’n*, 43 Mass. App. Ct. 300, 304 (1997). Additionally, “[n]o administrator shall be reversed by the commissioner except upon a finding that such decision was not based upon a preponderance of the evidence in the record.” G.L. c. 30A, § 2(b). As such, the Commission’s role is limited, and offers substantial deference to the hiring authority below, in this case the BPD. *See City of Beverly v. Civil Service Comm’n*, 78 Mass. App. Ct. 182, 188 (2010).

In his decision, the Hearing Commissioner, identified substantial evidence presented at the hearing before him to support his conclusion that the BPD’s decision was not based upon a preponderance of the evidence. It is also concerning that eighty-seven percent of the candidates between the Fall of 2005 and the Summer of 2007, who were referred from Dr. Scott to Dr. Reade, were also found unfit by Dr. Reade. This case, however, concerns the Commission’s blanket adoption of the

Hearing Commissioner's findings of fact and then substituting a contrary conclusion.

Where the Commission rejects the conclusions of the Hearing Commissioner, its substituted conclusions must be supported by substantial evidence, unless the decision can rest on the accepted findings. *See Comm'r of Revenue v. Lawrence*, 379 Mass. 205, 210 (2010). Here, a conclusion supporting the BPD's psychological bypass cannot be supported by the accepted findings, which discredit Dr. Reade's disqualification recommendation and plainly determined that Crosby was not affected by any disqualifying psychological disorder. As such, the Commission's decision required the support of new findings of fact. Because the Commission failed to do so, its final decision was not based upon substantial evidence and must be vacated.

ORDER

For the foregoing reasons, the Plaintiff Alicia Crosby's Motion for Judgment on the Pleadings is ALLOWED. Judgment shall enter vacating the Civil Service Commission's decision in this action.

A handwritten signature in black ink, appearing to read "P. M. Lauriat", written over a horizontal line.

Peter M. Lauriat
Justice of the Superior Court

Dated: September 27, 2013

Notice sent
10.02.13
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