

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

JENNIFER CROSBY,
Appellant

v.

G1-06-149

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Jennifer Crosby (hereafter "Crosby" or Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the Boston Police Department (hereafter "Appointing Authority", "City" or "BPD"), bypassing her for original appointment to the position of police officer. A pre-hearing was held on September 25, 2006 and the parties subsequently filed motions that were acted on prior to the full hearing. Specifically, the

Appellant filed a Motion to Compel the Appointing Authority to Produce Documents for which the City filed a response. The Appellant's Motion to Compel sought from the City any documents relating to restraining orders or criminal charges against any existing Boston police officers along with the racial breakdown of all such officers. The City filed an objection to the Appellant's motion arguing that the information requested was not relevant, represented an unwarranted invasion of personal privacy and is protected under the Criminal Offender Registry Information Law. The Appellant's Motion to Compel was denied with the caveat that the City was to produce a witness at the full hearing that was familiar with the background of candidates selected or bypassed in the hiring cycle which is the subject of this appeal.

The City also filed a Motion for Summary Decision with the Commission and the Appellant filed a response. The Commission denied the City's Motion for Summary Decision and opted to proceed with a full hearing.

A full hearing was held on April 18, 2007 at the offices of the Civil Service Commission. One tape was made of the hearing.

FINDINGS OF FACT:

Ten (10) Joint exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- Robin Hunt, Human Resources Director, Boston Police Department;
- Sergeant Detective Norman Hill; Boston Police Department;

For the Appellant:

- Jennifer Crosby, Appellant;

I make the following findings of fact:

1. The Appellant is a twenty-nine (29) year old female from Boston. She attended Boston High School and is a single mother with a ten-year old son. (Testimony of Appellant; Exhibit 7)
2. The Appellant has been employed as a medical secretary at an area hospital for the past two (2) years. She was inspired to seek employment with the Boston Police Department after meeting with a BPD recruiter in a Boston Career Center several years ago. (Testimony of Appellant; Exhibit 7)
3. The Appellant took an open examination for the position of police officer in 2005. (Stipulated Fact)
4. On December 12, 2005, the Appellant's name appeared on Certification 251238 for the position of permanent full-time female police officer for the Boston Police Department. (Stipulated Fact)
5. The Boston Police Department filled eighteen (18) female police officer positions from Certification 251238. A total of 84 candidates were selected as part of this overall hiring cycle. Three (3) of the candidates selected for appointment were ranked below the Appellant on the above-referenced Certification. (Stipulated Facts)
6. On April 28, 2006, the Boston Police Department notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment for the following reasons: a) Ms. Crosby was terminated from an employment position with [REDACTED] in December of 2003; b) Ms. Crosby had previously been charged with "Assault and Battery-Family Abuse" and "Disorderly

Person”; and c) Ms. Crosby had a 209A Restraining Order issued against her in February of 2000. (Stipulated Facts; Exhibit 1)

7. The above-referenced reasons for bypass were discovered as part of a background investigation completed by the Boston Police Department of all potential applicants. Ms. Crosby’s background investigation was completed by Boston Police Detective [REDACTED], a member of the Department’s Recruit Investigation Unit. (Testimony of Hunt and Hill and Exhibit 8)
8. The Appellant was told by Detective [REDACTED] that she would most likely have the opportunity to explain the facts related to incidents behind the bypass reasons, including those involving her criminal record. (Testimony of Appellant)
9. All BPD recruit applications, including the background investigations, are reviewed by a “roundtable” consisting of several members including Robin Hunt, the Director of Human Resources for the Boston Police Department, and Sergeant Detective Norman Hill, Commander of the Recruit Investigations Unit. (Testimony of Hunt and Hill)
10. The roundtable team has the option of conducting an additional “discretionary interview” with an applicant if they determine that additional information or clarification regarding the applicant is needed. (Testimony of Hunt and Hill)
11. Sergeant Detective Hill testified that it was a judgment call on his part not to request a discretionary interview with the Appellant given the “overwhelming evidence” against her contained in the Appellant’s background investigation. (Testimony of Hill)

1995 Disorderly Person Arrest

12. It is undisputed that the Appellant, age 17 at the time, her brother, age 15 at the time, and two other individuals were walking down Dorchester Avenue in Dorchester on the night of September 29, 1995. According to the Appellant, the youths had just exited the Fields Corner MBTA station and were walking home after a night at the movies. (Testimony of Appellant)
13. Exhibit 2 is a Boston Police Department Incident Report completed by a Boston Police Officer on September 29, 1995. According to the Incident Report, the officer was conducting a random patrol at approximately 11:05 P.M. on the night in question when he observed a group of youths that looked to be harassing an elderly man. According to the incident report, when the officer approached to conduct a “threshold inquiry” of the Appellant’s brother, the Appellant “stepped in front of me preventing be from attaining (sic) information. After being told to step aside several times, [the Appellant] continued to refuse and yell at the officer.” According to the same Incident Report, a police sergeant came to the officer’s assistance and attempted to calm the Appellant. The Appellant’s brother was subsequently arrested for disorderly person at which time the Appellant “charged at the officers” while they were trying to arrest her brother. The Appellant was then arrested for disorderly person and transported to the district police station for booking. (Exhibit 2)
14. As part of her testimony before the Commission, the Appellant disputed the officer’s account of what occurred on the night of September 29, 1995. According to the Appellant, there was no elderly man present when the officer approached her brother “to my memory”. The Appellant acknowledges questioning the officer as to why he was talking to her brother, but stated, “there was no attitude, I was just concerned for

my brother who was 15 at the time. I did not resist arrest and I did not understand why we were being arrested at the time.” (Testimony of Appellant)

15. The Appellant’s testimony regarding the September 29, 1995 incident is not credible.

First, the officer’s report from that night specifically identifies by name the elderly person whom they believed was being harassed. According to the report, the man was familiar to both officers as a resident of the Pine Street Inn, a homeless shelter in Boston. This directly contradicts the testimony of the Appellant who stated that there was no elderly man present that night. Second, when asked during cross-examination if the disorderly person charge was dismissed *contingent upon serving 25 hours of community service*, the Appellant answered, “no”. That directly contradicts documents from Dorchester District Court submitted as Exhibit 3, which state explicitly that 25 hours of community service was a prerequisite for the charge against her being dismissed. (Testimony of Appellant, Exhibits 2 & 3)

December 28, 1998 Assault and Battery Charge

16. It is undisputed that the Appellant has a child, who, in 1998, was one year of age.

According to the Appellant, her son’s father pays child support and the two of them had an informal visitation arrangement in 1998. Again according to the Appellant, the visitation traditionally took place on weekends at the father’s apartment.
(Testimony of Appellant)

17. Exhibit 4 is a Boston Police Department Incident Report dated March 28, 1998.

According to the report, two officers “returned to the residence of [the Appellant] based on a cross complaint made by [her son’s father]. [The son’s father] stated that

he assaulted Jennifer Crosby only after she assaulted him. [The son's father] sustained visible injuries to the face (scratches next to both eyes)." (Exhibit 4)

18. On March 31, 1998, the Appellant was charged with "family abuse / assault and battery" based on the March 28, 1998 incident report. The charge was dismissed on September 23, 1998 upon request of the Commonwealth. (Exhibit 5)
19. In regard to the above-referenced family abuse and assault and battery charge, the Appellant testified before the Commission that she called the police because her son's father was abusing her. Again according to the Appellant, her son's father was subsequently arrested and "taken to jail". The Appellant testified that a couple of days after that incident her son's father filed a cross-complaint, purportedly in retaliation. The Appellant testified that she does not remember scratching her son's father. (Testimony of Appellant)

February 22, 2000 209A Restraining Order

20. Exhibit 6 is a copy of a restraining order issued against the Appellant at the request of her son's father on February 22, 2000. According to the order, it was issued without advance notice to the Appellant after an ex-parte proceeding in Dorchester District Court. (Exhibit 6)
21. In an affidavit attached to the application for the above-referenced 209A restraining order, the father of the Appellant's son stated that on February 22, 2000, "Jennifer Crosby came to my residence unexpectedly (sic) at 11:30 P.M. legidly (sic) to pick up our child...wich (sic) by verbal agreement I visit with on weekend (sic). I asked her to leave or whate (sic) out in the hall. Do (sic) to sapision (sic) of conflict with my girlfriend who was in my room. She ended up fighting with my sister and mother,

with our child in her hand. I felt threatend (sic). I've just been put on probation and I feal (sic) she (illegible) of jeperdising (sic) my freedom." (Exhibit 6)

22. The Appellant testified at the Commission hearing regarding the events of February 22, 2000. According to the Appellant, her then-three-year old son was at his father's house as part of an informal visitation agreement. The Appellant walked to the father's apartment at approximately 8:00 P.M. to pick up her son and discovered that he "had a female occupant in the back room; he was supposed to be spending quality time with our son. He then pushed and shoved me while I was holding our son and his sister slapped me at the time...I did not fight back...I did try to get a restraining order that day but I got to the court and they said, no its dismissed." (Testimony of Appellant)
23. The above-referenced restraining order, taken out against the Appellant by her son's father, was vacated twelve (12) days after it was issued. (Exhibit 6)
24. Asked by this Commissioner to elaborate on what transpired on February 22, 2000, the Appellant testified that her son's father did not know that she was coming over to his apartment that night. According to the Appellant, the buzzers on the first floor entrance were not working, so she proceeded inside the building and walked up to the third floor where the father's apartment was located. The Appellant knocked on the door and "the door was open; I'm not sure who opened it; it might have been my son's father." The Appellant first testified that, "I was met by my son's father at the door who was like pushing and shoving me...the minute I got in." The Appellant later testified that when she first entered the apartment, "I want to say he was verbally abusive toward me. I was trying to gather my son's things to go" followed by "he was

verbally abusive toward me and pushing on me while I had my son in my hands.”

Asked by this Commissioner if she was upset that a woman was in the apartment, the Appellant contradicted her prior testimony and stated that she was only upset that her son’s father was being verbally and physically abusive toward her. (Testimony of Appellant)

Termination from previous employment

25. The Appellant worked for Harvard Vanguard Medical Associates between December 9, 2002 and December 22, 2003. During this time, the Appellant’s mother was diagnosed with terminal cancer. As her mother lived in Texas, the Appellant used up all of her available time, including sick time, to be with her mother. On December 22, 2003 the Appellant reported to work despite being ill. According to the Appellant, upon arriving to work, she was told by a manager to go home immediately so she would not infect her co-workers. Again according to the Appellant, she was fired the next day as a result of her “unexcused absence.” (Testimony of Appellant; Exhibit 10)

26. When contacted by the Boston Police Department, Harvard Vanguard confirmed that the Appellant was terminated, but also noted that, “she did her work; never got into trouble” and had a good working relationship with her co-workers. (Exhibit 9)

27. HRD Director Robin Hunt testified that, at the time of the roundtable discussion, she believes that she (Hunt) was aware that the Appellant’s absences from Harvard Vanguard related to her mother’s terminal illness and that the termination was only a “secondary” reason for bypassing the Appellant. (Testimony of Hunt)

Decision to Bypass

28. This Commissioner asked Sergeant Detective Hill, who was part of the roundtable discussion for all 84 individuals selected for appointment, if any of the 84 candidates had a similar background to the Appellant. Mr. Hill responded, “what you asked me is if any of the candidates had a similar background as Jennifer Crosby, not a restraining order or not a police report, but a similar background, a culmination of all the facts before me, meaning, one, two police incident reports and a court docket and a restraining order, the answer is no.” (Testimony of Hill)
29. Both Hill and Hunt acknowledged that the mere existence of a 209A restraining order against an applicant or a criminal record is not an automatic disqualifier. Rather, the BPD reviews applications on a case-by-case basis and considers the “recency” and “severity” of the underlying incidents and charges. Neither of them was able or willing to divulge how many of the 84 selected candidates in this hiring cycle had a 209A restraining order taken out against them at some point and/or if any of the 84 selected candidates had a criminal record. (Testimony of Hill and Hunt)
30. On June 15, 2006, the state’s Human Resource Division (HRD) approved the reasons proffered by the City in bypassing the Appellant. (Stipulated Fact)
31. On May June 30, 2006, the Appellant filed a timely appeal with the Civil Service Commission regarding HRD’s decision. (Stipulated Fact)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the

Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. 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 Service Commission, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. City of Cambridge, 43 Mass. App. Ct. at 304.

Ms. Crosby is a long-time resident of Boston and attended Boston High School. She has a ten-year old son and currently works as a medical secretary at an area hospital. Notwithstanding her lack of candor during key parts of her testimony before the Commission, Ms. Crosby is a compelling witness. She struck this Commissioner as a strong-willed individual who has maintained a positive outlook despite having to overcome a series of obstacles that have come her way. I don't doubt her commitment to her family nor her sincere desire to serve the City of Boston as a police officer.

Unfortunately, however, the Appellant's background provides the City of Boston with reasonable justification for bypassing her for appointment as a police officer. In 1995, she was arrested for being a disorderly person after charging at two officers who were in the process of arresting her younger brother. Ms. Crosby's account of what happened that night was not credible and her testimony was further diminished by her failure to acknowledge that the charge was dismissed on the condition that she perform 25 hours of community service, an undisputable fact shown in Exhibit 3, a court record of the proceeding.

In 1998 and 2000 respectively, the Appellant was the subject of assault and battery charges and a 209A restraining order. Ms. Crosby's account of the underlying 2000 incident was, once again, contradictory and less than candid. Moreover, her testimony, particularly in regard to the 1995 incident and the 2003 termination from her employment, lacked any sense of personal responsibility for the incidents in question.

While an underlying basis of the Appellant's appeal was that racial bias may have led to the decision to bypass her for appointment, the Commission accepts the credible

testimony of Sergeant Detective Norman Hill that none of the 84 candidates selected in this hiring cycle, regardless of their racial profile, had a similar background to the Appellant, which included: criminal charges relating to 2 separate incidents; a 209A restraining order and an employment record which included a termination.

While the Commission accepts the testimony of Sergeant Detective Hill, this Commissioner was disappointed by the City's reluctance to be more transparent regarding the issue of how many of the candidates selected during the hiring cycle in question had some type of criminal record. This lack of transparency is unnecessary and only serves to further the suspicions that surfaced in this appeal. Further, the Commission would encourage the City to develop a more objective process to determine which police officer applicants are afforded the opportunity for a discretionary interview, an opportunity that was not afforded to the Appellant.

On a final note, Ms. Crosby indicated that she is scheduled to take the next civil service examination and re-apply for a position as a police officer in the City of Boston. While the City has shown reasonable justification to bypass Ms. Crosby in the 2006 hiring cycle, there is nothing preventing them from giving Ms. Crosby a second look in the next hiring cycle, including the opportunity to participate in a discretionary interview, assuming she scores high enough on the exam

For all of the above reasons, the appeal under Docket No. G1-06-149 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners) on April 26, 2007.

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. 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:

Tsuyoshi Fukuda, Esq. (for Appointing Authority)

Alexandra Deal, Esq. (for Appellant)

John Marra, Esq. (HRD)