

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

SCOTT CROTEAU,
Appellant

v.

G1-06-96

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Pro Se
Scott Croteau

Respondent's Attorney:

Tara Chisholm, Esq.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120
(617) 343-5034

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Scott Croteau (hereafter "Croteau" 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 him for original appointment to the position of police officer. A full hearing was held on April 4, 2007 at the offices of the Civil Service Commission. One tape was made of the hearing.

FINDINGS OF FACT:

Five (5) 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:

- Scott Croteau, Appellant;

I make the following findings of fact:

1. The Appellant is a thirty-four (34) year old male from Boston. He graduated from Don Bosco Technical High School in 1991 and attended Wentworth Institute of Technology from 1991 to 1993. (Testimony of Appellant; Exhibit 3)
2. The Appellant joined the Marine Corps in 1995 and was honorably discharged in 1999. (Testimony of Appellant; Exhibit 3)
3. The Appellant has been married for eleven (11) years and has a [REDACTED] son. The Appellant coaches his son's Pop Warner Football League team. (Testimony of Appellant)
4. The Appellant has been employed full-time as a truck driver for an electrical contractor for the past four (4) years and has been employed part-time as a Security Shift Coordinator for a local hospital for the past five (5) years. (Testimony of Appellant; Exhibit 3)
5. The Appellant took an open examination for the position of police officer in 2003. (Stipulated Fact)

6. On June 8, 2005, the Appellant's name appeared on Certification 250537 for the position of permanent police officer for the Boston Police Department. (Stipulated Fact)
7. The Boston Police Department filled 43 police officer positions from Certification 250537. All 43 of the candidates selected for appointment were ranked below the Appellant on the above-referenced Certification. (Stipulated Facts)
8. On October 31, 2005, the Boston Police Department notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment for the following reason: In November of 1994, Mr. Croteau had a one-year restraining order (209A) taken out on him by his ex-girlfriend. (Exhibit 1)

1994 Restraining Order

9. Exhibit 2 is a copy of the 1994 restraining order and application against the Appellant. (Exhibit 2)
10. There is no dispute that an initial 10-day restraining order did not issue in this case. Rather, the only restraining order, issued on November 14, 1994, was for one year.
11. The Appellant testified that sometime in November 1994 he received a letter to appear in Brighton District Court on November 14, 1994. When he arrived at the court on November 14, 1994, the then-pro se defendant and the complainant, accompanied by her counsel, met with a magistrate. (Testimony of Appellant)
12. According to the Appellant's testimony before the Commission, the magistrate in November 1994 read the affidavit of the complainant which is part of Exhibit 2, but the Appellant never saw the affidavit until a pre-hearing before the Civil Service Commission regarding the instant appeal in 2006. (Testimony of Appellant)

13. According to the Appellant, he voluntarily agreed to the restraining order and decided to forego a hearing before a judge because, at that point, he wanted the complainant to stay away from him as well. Again according to the Appellant, he disagreed with the allegations contained in the complainant's affidavit, but decided not to dispute the issuance of restraining order. (Testimony of Appellant)
14. The complainant in the 209A restraining order case was the Appellant's then ex-fiancé. They met in 1990 and became engaged in 1992 and then subsequently broke up sometime in 1994. (Testimony of Appellant)
15. The Appellant acknowledged during the Commission hearing that it was an acrimonious break-up initiated by his then-fiancé. (Testimony of Appellant)
16. The affidavit submitted by the complainant as part of the 1994 209A application states in relevant part, "ever since the break-up he [the Appellant] will not leave me alone, constantly calling and following me. He threatens to kill me, rape me, hurt my family, burn my car and send his girlfriends and friends to find me. I am in serious fear of the defendant, because I know what he is capable of. I am afraid to go anywhere because he always finds me." (Exhibit 2)
17. According to the Appellant, he was notified to appear before the magistrate two days after an incident in 1994 with his then ex-fiance's new boyfriend. According to the Appellant, his ex-fiancé, several months after the relationship ended, would regularly call the Appellant and ask him to follow her home from her boyfriend's house on her drive home as she had an aversion to driving on the expressway. (Testimony of Appellant)

18. Again according to the Appellant, he would, at the request of his then ex-fiancé, park one block away from her boyfriend's house after being paged in order to meet her and follow her home in his car. (Testimony of Appellant)
19. According to the Appellant, on one night in 1994, he was sitting in his car one block away from the boyfriend's house after receiving a page from his then ex-fiancé when her boyfriend came around the corner with a pipe, smashed his car window and struck the Appellant in the head with the pipe. (Testimony of Appellant)
20. Asked on cross-examination how the boyfriend knew the Appellant was sitting in his car one block from his house, the Appellant testified that it was his understanding that the boyfriend's friends had alerted him. (Testimony of Appellant)
21. Asked to explain why he would go along with this purported arrangement, in which he would meet up with his ex-fiancé and follow her home, allegedly at her request, after she left her new boyfriend's house, the Appellant lamented that he was being strung along and agreed to these requests because he wanted to reconcile with her. (Testimony of Appellant)
22. During his testimony before the Commission, the Appellant acknowledged that in the midst of emotional arguments regarding the break-up, he "said bad things" to her but never made the threats referenced in the complainant's 209A affidavit. (Testimony of Appellant)
23. The Boston Police Department detective who conducted the background check regarding the Appellant's application for employment interviewed the Appellant's ex-fiancé and asked her if the Appellant would make a good police officer. The ex-fiancé responding by saying, "yes, if he can control his temper." (Testimony of Hill)

24. According to Boston Police Department HR Director Robin Hunt as well as Sergeant Detective Norman Hill, the Commander of the Recruit Investigations Unit, the Department, when reviewing an applicant's criminal history, considers the "severity" and "recency" of the underlying incidents. Both of these witnesses testified that the "severity" of the allegations (i.e. – death threats) superseded any consideration that the incident occurred over 10 years ago. (Testimony of Hunt and Hill)
25. Sergeant Hill was not able to recall during his tenure any recruit being hired with a history that included a one-year restraining order having been issued against them. (Testimony of Hill)
26. Hunt and Hill stressed the awesome responsibility of police officers and the fact that police officers are issued firearms, which justified their joint conclusion during a roundtable discussion not to recommend the Appellant. The other members of the BPD roundtable, that reviews all police candidates, unanimously agreed. (Testimony of Hunt and Hill)
27. The Appellant testified that the restraining order represents a one-time mistake and that the City should review applications on a case-by-case basis and weigh other factors, including his exemplary employment, military and personal history over the past 11 years since the restraining order issued. (Testimony of Appellant)
28. On March 16, 2006, the state's Human Resource Division (HRD) approved the reasons proffered by the City in bypassing the Appellant. (Stipulated Fact)
29. On May 18, 2006, the Appellant filed a timely appeal with the Civil Service Commission regarding HRD's decision. (Stipulated Fact; Exhibit 5)

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.

Mr. Croteau is a long-time resident of Boston; a graduate of Don Bosco Technical High School; and holds down a full-time and part-time job to help support his family. He has been married for eleven years, has a ten-year old son and speaks with justifiable pride about his accomplishments, ranging from his commendable military service to his tenure as coach and proud father. He is a likeable, well-mannered man with a sincere desire to serve his community as a police officer.

Unfortunately, however, the Appellant was the subject of a restraining order in 1994, which he did not contest, that contained as part of its application, an affidavit from the Appellant's then ex-fiancé. The seriousness of the allegations in that affidavit can not be understated. According to the complainant, "ever since the break-up he (the Appellant) will not leave me alone, constantly calling and following me. He threatens to kill me, rape me, hurt my family, burn my car and send his girlfriends and friends to find me. I am in serious fear of the defendant, because I know what he is capable of. I am afraid to go anywhere because he always finds me."

The Appellant testified that although he has always disputed the allegations in the affidavit, he didn't contest the one-year restraining order as he wanted his ex-fiance to stay away from him as well. It appears from the Appellant's testimony that the 209A application was triggered after an altercation the Appellant had with his then-ex-fiance's new boyfriend, who allegedly smashed the Appellant's car window with a pipe and then

struck the Appellant in the head with the pipe. Notwithstanding the disturbing nature of this violent incident as recounted by the Appellant, the Appellant's explanation as to why he was parked one block away from the house of his ex-fiance's new boyfriend is incredulous and actually supports the allegations contained in the complainant's 209A affidavit, in which she stated, in part, that she was afraid to go anywhere because the Appellant would always find her. Even eleven years after the issuance of the 209A restraining order, the complainant, when interviewed by the Boston Police Department, referenced the Appellant's "bad temper".

Two members of the City's roundtable, which was assembled to review the application of all police officer candidates, testified before the Commission that the severity of the allegations involved outweighed any consideration that may be given to the fact that the 209A order was issued over ten years ago. Moreover, neither of these witnesses, could recall any instance in which the City hired an individual with a record that included the issuance of a one-year restraining order.

After considering all the testimony and evidence in the record, I conclude that the Boston Police Department had sound and sufficient reasons for bypassing the Appellant for selection as a police officer in the City of Boston and there is no evidence of inappropriate motivations or objectives that would warrant the Commission's intervention in this matter.

For all of the above reasons, the appeal under Docket No. G1-06-96 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin and Marquis, Commissioners [Taylor, Commissioner – Absent]) on April 5, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Scott Croteau, Esq. (Appellant)

Tara Chisholm, Esq. (for the Appointing Authority)

John Marra, Esq. (HRD)