

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**WILLIAM CURRAN II,**  
*Appellant*

v.

**Case No.:** G1-12-97

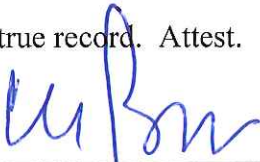
**DEPARTMENT OF  
CORRECTION,**  
*Respondent*

**DECISION**

The Civil Service Commission (Commission) voted at an executive session on April 4, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated January 23, 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 April 4, 2013.

A true record. Attest.



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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:

William A. Curran II (Appellant)  
Kerry A. Rice (for Respondent)  
John Marra, Esq. (HRD)  
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

**Division of Administrative Law Appeals**

William A. Curran II,  
Appellant

v.

Docket No. G1-12-97

DALA No. CS-12-485

Dated: January 23, 2013 *JB*

Department of Correction,  
Appointing Authority

**Appearance for Petitioner:**

Pro Se

13 Reservoir Street  
Leicester, MA 01524

**Appearance for Appointing Authority:**

Kerry A. Rice  
Department of Correction  
P.O. Box 946  
Industries Drive  
Norfolk, MA 02056

**Administrative Magistrate:**

Judithann Burke

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CIVIL SERVICE COMMISSION

**CASE SUMMARY**

The Appointing Authority, Department of Correction, had reasonable justification to bypass the Appellant for appointment to the position of Correction Officer I, by virtue of an unsatisfactory criminal history report and an extensive record of motor vehicle offenses.

### **RECOMMENDED DECISION**

The Petitioner, William A. Curran II, is seeking review of the decision of the Department of Correction (DOC) not selecting him for original appointment to the position of Correction Officer I when he was bypassed on January 18, 2012. (Exhibit 2.) He appealed in a timely fashion pursuant to the provisions M.G.L.c. 31 s. 2(b). (Exhibit 1.) A hearing was held on September 7, 2012 at the offices of the Division of Administrative Law Appeals, One Congress Street, Boston, MA.

At the hearing, eleven (11) exhibits were marked. The Appellant testified and argued in his own behalf. The Appointing Authority presented the testimony of James O’Gara, Personnel Officer II in the Human Recourses Department at DOC. The hearing was digitally recorded.

### **FINDINGS OF FACT**

1. The Appellant, William Curran, Jr., 28 y.o.a., applied for a position as a Correction Officer I with the Appointing Authority, Department of Correction, in October 2011. His name appeared on certification no. 4011045. His Civil Service test score was “96.” (Exhibit 3.)

2. The DOC performed a background check on the Appellant and other applicants during October 2011. (Exhibits 4-7.)

3. During the background check, it was discovered that the Appellant had several misdemeanor criminal charges and court appearances over the previous ten (10) years. These included:

**April 2, 2010** – arraignments in Westborough District Court:

Operating After Suspension of Motor Vehicle Registration  
Dismissed: May 13, 2010 after court costs paid

Compulsory Insurance Violation  
Dismissed: May 13, 2010  
**June 2, 2005**-arraignment in Westborough District Court:

Operating After Suspension of Driver's License  
Dismissed: September 1, 2005 after court costs paid

**October 15, 2004**- arraignment in Milford District Court:

Operating After Suspension of Driver's License  
Dismissed: November 30, 2004 after court costs paid

**August 6, 2002**- arraignment in Westborough District Court:

Malicious Destruction of Property  
Dismissed: September 27, 2002

(Exhibit 5.)

4. The background investigation revealed further that the Massachusetts Registry of Motor Vehicles Driver History pertaining to the Appellant includes seventy (70) minor motor vehicle offenses between June 26, 2001 and September 24, 2010. These infractions also include failed court appearances in New Hampshire. (Exhibits 6-7.)

5. As a member of the United States Army Reserves Military Police, the Appellant was placed on active duty on April 18, 2004 and deployed to Iraq where he served for nine (9) months and thirteen (13) days. He was honorably discharged from active duty on April 25, 2009. (Exhibits 8-10 and Appellant Testimony.)

6. The Appellant is presently employed as a security guard in Natick. He attends Nichols College and is the father of a thirteen (13) month old daughter. He also continues to serve as a military police officer in the Army Reserves. (Appellant Testimony.)

7. At the time of the nine (9) motor vehicle offenses displayed on the Appellant's Driver History report for the dates February 22, 2010, May 4, 2010, June 8, 2010 and September 24, 2010, the Petitioner was operating the vehicle that he had sold to his brother, Robert Curran, on February 7, 2010. (*Id.* and Exhibits 7 and 11.)

8. The six (6) motor vehicle offenses on the Appellant's Driver History report on June 4, 2008, June 5, 2008 and November 5, 2008 all occurred while the Appellant was away on active duty. His brother was operating his vehicle during that period. The Appellant was cited for speeding in Grafton, MA on January 20, 2008 and for default on a suspension payment on February 25, 2008. (Appellant Testimony and Exhibit 7.)

9. On January 18, 2012, the DOC informed the Appellant that he failed to meet the eligibility criteria for the position of Correction Officer I by virtue of an "unsatisfactory criminal history report (CORI)." (Exhibit 2.)

10. The Petitioner filed a timely appeal. (Exhibit 1.)

#### **CONCLUSION AND RECOMMENDED DECISION**

The issue for determination in this appeal is "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken". *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304

(1997). “Reasonable justification” is defined as “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 District Court of East Middlesex*, 262 Mass. 477, 482 (1928) and *Commissioners of Civil Service v. Municipal Court of Boston*, 359 Mass. 214 (1971). Pursuant to G. L. c. 31 § 2(b), the Appointing Authority must prove by a preponderance of the evidence that the reasons assigned for the bypass were “more probably than not sound and sufficient”. *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991).

The Civil Service Commission owes “substantial deference” to the Appointing Authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Such deference is especially appropriate with respect to the hiring of public safety personnel. In light of the high standards to which public safety personnel are appropriately held, Appointing Authorities are given significant latitude in screening candidates. *City of Beverly v Civil Service Commission*, 78 Mass. App. Ct. 182, 188 (2010), citing *City of Cambridge*, supra at p. 305.

After a careful review of all of the testimonial and documentary evidence in this case, I have concluded that the Appointing Authority has met its burden of proving that its reasons for the bypass of the Appellant were “more probably than not sound and sufficient”.

The Appellant’s history reflects episodes of immaturity, lack of self-discipline, lack of attention to detail, and poor judgment. These are unacceptable characteristics in a

public safety employee who is required to respond to stressful situations and readily make decisions affecting public safety.

With his background taken as a whole, the picture that emerges is one of a person, notwithstanding his record of military service, who lacks direction and responsibility. Even with fewer actual incidents than what the Driver History report revealed, the Appellant's driving record, which includes criminal violations, demonstrates that he has issues with focus, self-control and follow-through. Moreover, the less than stellar driving history denotes issues with responsibility, accountability and any willingness to adhere to the Massachusetts motor vehicle laws.

It is also noteworthy that the Appellant apparently did not learn from his prior string of mistakes and run-ins with law enforcement dating back to 2001. Given that Correction Officers are compelled to adhere not only to federal and state laws, but also to the rules and regulations of the DOC, as well as exhibit sound judgment and self-control under all circumstances, the bases for the Appointing Authority's bypass do not seem trivial, arbitrary or capricious.

In conclusion, the Civil Service Commission cannot substitute its judgment for that of the Appointing Authority. *Cambridge v. Civil Service Commission, supra*, p. 304. I recommend that the Civil Service Commission deny the Appeal, affirm the action of the DOC, and uphold the bypass.

Division of Administrative Law Appeals,

BY:



Judithann Burke, Administrative Magistrate

DATED: January 13, 2013 