

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

VLADIMIR DAMAS,
Appellant

v.

BOSTON POLICE DEPARTMENT,
Respondent

G1-23-143¹

Appearance for Appellant:

James W. Gilden, Esq.
173 North Main St.
Sharon, MA 02067

Appearance for Respondent:

Joseph A. McClellan, Esq.
Office of the Legal Advisor
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Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the Appellant’s bypass appeal, concluding that the Appellant had no reasonable expectation of effectively overturning prior credibility assessments made by the Commission regarding whether he deliberately omitted information on a prior application and provided divergent accounts of past misconduct to paint himself in a more favorable light in his attempt to be appointed as a Boston Police Officer.

DECISION ON CROSS MOTIONS FOR SUMMARY DECISION

Procedural Background

On August 10, 2023, the Appellant, Vladimir Damas (Appellant), pursuant to G.L. c. 31, § 2(b), timely appealed to the Civil Service Commission (Commission) to contest his bypass by

¹ The Appellant filed this appeal as a non-bypass equity appeal which was docketed under the E1 prefix. As the Appellant’s non-selection constituted a bypass, it should have been filed as a bypass appeal. Thus, the docket number has been adjusted accordingly, with a G1 prefix.

the Boston Police Department (Department) for appointment as a permanent full-time police officer. On September 5, 2023, I conducted a remote pre-hearing conference. The parties subsequently filed cross motions for summary decision.

This is the seventh appeal that the Appellant has filed with the Commission to contest a decision by the BPD to not select him for appointment. Two of those appeals were dismissed after it was determined that the non-selections did not constitute a bypass. Three subsequent appeals were consolidated and heard by former Commissioner Cynthia Ittleman. In that decision, Commissioner Ittleman concluded that two of the reasons proffered by the BPD for bypass were valid.

Summary of Factual Dispute addressed in prior bypass appeals

As detailed in prior Commission decisions, the Appellant, more than 20 years ago, was expelled from Cathedral High School in the South End of Boston during his sophomore year for carrying a knife to school. Both bypass reasons previously upheld by the Commission relate to that incident. First, the Appellant failed to note on a BPD application that he attended Cathedral High School and Commissioner Ittleman concluded that the omission was not an oversight but, rather, an attempt to avoid painting himself in a bad light. Second, Commissioner Ittleman credited the background investigator's version of events regarding a conversation that the investigator had with the Appellant about how long he had been carrying the knife, which ultimately led the BPD to conclude that the Appellant was untruthful, as the Appellant's purported verbal statement conflicted with a subsequent written submission by the Appellant. Specifically, Commissioner Ittleman found in part that:

The Appellant explained to Det. Antunez that he was expelled for carrying a knife to school in response to someone who tried to rob him 2 years before he was expelled. When asked by Det. Antunez, “[D]oes this mean you were carrying that [knife] for two (2) years

before you were expelled from school?’ and he [the Appellant] said yes.” At the conclusion of Det. Antunez and the Appellant’s phone conversation, Det. Antunez asked the Appellant to provide a written statement describing his 2001 school expulsion and explaining why he did not include this information in his application. The Appellant produced the written statement as requested. Det. Antunez found that the Appellant wrote that the attempted robbery occurred *one day* before his expulsion instead of 2 years prior to his expulsion. (emphasis added)

The background investigator, as part of his report on the Appellant’s background, wrote the following regarding his conversation with the Appellant as it related to bringing the knife to high school:

Vladimir Damas informed me he grew up in the Heath Street Housing Development. On one occasion, he was near the Jackson Square MBTA Station. He observed an unknown male urinating in public. Once the unknown male noticed the applicant, the unknown male asked the applicant where he was going. As he asked, the unknown male adjusted his pants by putting his hands in his pockets. Vladimir Damas stated, "I knew what that meant, so I ran." When asked to explain, the applicant stated he knew the male wanted to rob him and was most likely reaching for a weapon.

The applicant stated in retrospect, it was not a robbery, but an attempted robbery. After the incident, he carried a knife on a daily basis. I asked the applicant if he recalled how long before his expulsion the attempted robbery occurred. Vladimir Damas stated about 2 years before the Cathedral High School expulsion. I asked the applicant to confirm if he carried the knife for about two years before his expulsion and he said, "Yes."

The Appellant’s written statement, submitted shortly after the above-referenced phone call with the background investigator stated in part that:

In 2001, I, Vladimir Damas was expelled from Cathedral High School located in Boston Ma. I was living In Boston's Heath Street Housing Projects at the time, one of the towns roughest areas. I often had after school activities that ran until after sundown. One night on my way home, I noticed a man in a hoodie who appeared to be urinating outside in a dark corner. The man noticed me approaching his area he quickly turned around and proceeded asking me who i

was, if I was from the area, and where I was going. He appeared to be reaching for a weapon from his waistline and told me to come here.

I assumed it was an attempted robbery so I quickly on pure instincts ran away from the hooded man to my apartment. I was able to out run him and reach my apartment without harm. I never reported this to the authorities because that was highly frowned upon in the neighborhood and I was extremely afraid of how my peers would react.

In fear that the incident may happen again I brought a knife to school the following day. Being very young and immature I thought it would be cool to show some classmates the knife I brought. One of them were not too happy about the knife and secretly reported me to the Dean of Students. I was pulled from class towards the end of the day to speak with her. I was questioned immediately about the knife and its location. I cooperated and pulled it out of my backpack. I was told of how serious it was to have in school which at the time I was a bit ignorant to the severity of the issue.

Shortly after a Boston Police Officer came to the school and questioned me on what was happening. I explained my situation to the officer and he seemed very sympathetic of my story and also acknowledged that there was a string of robberies in my neighborhood at the time. The knife was confiscated by the officer and I was driven home with no further incident. I started school in South Boston High shortly after.

Commissioner Ittleman offered the following analysis regarding the alleged conflict between what the Appellant told the background investigator and his above-referenced written statement:

The background investigator has a specific memory, as noted in his testimony and his written summary completed at the time, that the Appellant acknowledged carrying a knife to high school for two years. Thus, the background investigator was surprised to read the Appellant's written statement stating that he had only brought a knife to school on one occasion. I credit the background investigator's testimony in this regard. He appeared to have a firmer recollection of the conversation and was genuinely surprised, at the time, when he read the Appellant's written statement in this regard.

To ensure clarity, particularly on whether the investigator recalled the Appellant telling him that *the incident which prompted him to carrying a knife* occurred two years *prior to the expulsion*, I reviewed the background investigator's testimony before Commissioner Ittleman. During his testimony, the background investigator did not testify that the Appellant told him verbally that he had been carrying a knife *to high school* for two years, but, rather, that the incident which prompted him to start carrying a knife occurred two years prior to the expulsion. In short, the background investigator's *testimony*, which Commissioner Ittleman credited, was consistent with the background investigator's *report* regarding the alleged discrepancies between the Appellant's written and verbal statements.

The Commission urged the BPD to conduct a discretionary interview of the Appellant on a going forward basis

Although the Commission affirmed the bypasses based on the Appellant's alleged untruthfulness, the Commission stated that, going forward, it would be prudent for the BPD to grant the Appellant a discretionary interview, so that members of the BPD command staff could decide whether the Appellant poses too high of a risk to appoint as a police officer.

When the BPD then bypassed the Appellant again, without granting him a discretionary interview, he once again filed an appeal with the Commission. The Commission, in August 2022, *allowed* the appeal of the Appellant. In allowing the appeal, the Commission stated in part that:

The Commission has long held that candidates for police officer must be honest and truthful, including during the hiring process and the relief here does not necessarily require the appointment of the Appellant. It does, however, explicitly require that the BPD, once and for all, conduct a thorough review that includes a recorded discretionary interview afforded to other candidates, to fully address whether the Appellant has been untruthful, or whether there has been some understandable confusion regarding an incident that occurred so long ago.

With his name at the top of the next certification to ensure his reconsideration, the Appellant was considered as part of the most recent BPD hiring cycle that is the subject of

the instant appeal and he was granted a discretionary interview, a recording of which was provided to the Commission.

During the discretionary interview, the Appellant maintained, as he has for years now, that he never told the background investigator that he had carried the knife for two years prior to his expulsion. Regrettably, it is evident that the BPD panelists conducting the discretionary interview did not understand the nuances of the alleged contradictory statements at issue here. However, the Appellant, during that interview, did emphatically state that the background investigator's report and testimony before the Commission as they related to the conversation between the two of them were simply wrong.

Current Appeal

Thus, what the Appellant is effectively seeking here as part of his current appeal is a re-hearing to determine whether the Commission, based on essentially the same evidence, will reach different credibility assessments regarding witness testimony on the material issue of whether the Appellant ever told the background investigator that the feared robbery took place two years prior to his expulsion, as opposed to one day, as stated in the Appellant's written statement.

Summary Decision Standard

When a Respondent before the Commission is of the opinion there is no genuine issue of disputed material fact relating to the Appellant's stated claim, no viable ground of appeal on the facts stated, and the Respondent is entitled to prevail as a matter of law, this party may move, with or without supporting affidavits, either to dismiss the entire appeal or for summary decision on a particular claim. 801 CMR 1.01(7)(h). Such motions are decided under the well-recognized standards for summary disposition as a matter of law—i.e., “viewing the evidence in the light most

favorable to the non-moving party,” the substantial and credible evidence established that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case,” and has not rebutted this evidence by “plausibly suggesting” the existence of “specific facts” to raise “above the speculative level” the existence of a material factual dispute requiring an evidentiary hearing. *See, e.g., Nigro v. City of Everett*, 30 MCSR 277 (2017); *Lydon v. Massachusetts Parole Bd.*, 18 MCSR 216 (2005). *Accord Milliken & Co., v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 249 (2008). *See also Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-36 (2008) (discussing standard for deciding motions to dismiss); *cf. R.J.A. v. K.A.V.*, 406 Mass. 698 (1990) (factual issues bearing on plaintiff’s standing required denial of motion to dismiss). *See also Zachary v. Civ. Serv. Comm’n & Dept. of Correction*, Suffolk Sup. Ct. No. 07-3197 (2008) (Commission was justified in upholding a 5-day suspension without a full hearing when the Appellant admitted that he engaged in the alleged misconduct.)

Analysis

As stated in a prior Commission decision, the Appellant, a Black male who is now approximately 39 years old, is a longtime resident of Boston. He is married with three children and has been employed as a correction officer for over 10 years, with a spotless record. I first met the Appellant several years ago during a pre-hearing conference before the Commission and he has appeared before me multiple other times during subsequent pre-hearings. To me, the Appellant appears to be a model citizen, a good employee, and exactly the type of candidate the BPD would want among its ranks, particularly given the BPD’s commitment to ensuring that the composition of the City’s police force reflects the diverse population it serves.

I have also reviewed and/or re-reviewed all the Appellant's testimony and statements, as well as those of the background investigator who first flagged an alleged material inconsistency between the Appellant's verbal statement to the investigator and a written statement submitted by the Appellant shortly thereafter. Commissioner Ittleman's credibility assessment in this regard appears to be well-grounded. In short, the Appellant first told the background investigator that he carried a knife because of a potential robbery two years prior to his expulsion from high school. In his written statement, he claimed the potential robbery occurred one day prior to the expulsion. This is not a minor difference, but rather a material difference that significantly alters the context in which the expulsion came about.

It is not lost on me that the underlying event here relates to misconduct that occurred over *two decades ago while the Appellant was in high school*. However, it is not the misconduct or the expulsion from high school that the Commission found to be a valid reason for bypass. Rather, it was the fact that, during a pending hiring cycle, the Appellant, within days, provided two divergent accounts regarding the context in which that long-ago misconduct occurred. That is a legitimate concern for any police department charged with ensuring that its police officers are not prone to fudging the truth, particularly when doing so appears to be designed to paint the candidate in a more favorable light.

Compounding the problem for the Appellant is that, as part of an initial application process, he completely omitted the fact that he even attended Cathedral High School and then offered implausible and contradictory reasons for the omission.

The Commission's most recent order was meant to ensure that the BPD provided the Appellant with a fair, impartial, and thorough review, including a discretionary

interview. The BPD has complied with that order and there is nothing in the record, nor is there any reasonable expectation, that the Appellant would be able to show that the prior credibility assessments of the Commission should be reversed or overturned.

Conclusion

For all the above reasons, the BPD's Motion for Summary Decision is allowed and the Appellant's appeal under Docket No. G1-23-143 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on November 30, 2023.

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 the 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his/her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

James W. Gilden, Esq. (for Appellant)
Joseph McClellan, Esq. (for Respondent)