

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503
Boston, MA 02108
617-979-1900

JOHNNY DENIS,

Appellant

G1-20-042

v.

CITY OF SOMERVILLE,

Respondent

Appearance for Appellant:

Johnny Denis, *Pro Se*

Appearance for Respondent:

Jason Piques, Esq.
Assistant City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Commissioner:

Paul M. Stein

Summary of Decision

The Appointing Authority had reasonable justification to bypass a candidate for appointment as a police officer who provided implausible, inconsistent and incomplete responses about his residency and employment history during the application process.

DECISION

On March 10, 2020, the Appellant, Johnny Denis, acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from the decision of the Mayor of the City of Somerville (Somerville) to bypass him for appointment as a full-time reserve police officer for the Somerville Police Department (SPD).¹ A pre-hearing conference was held via videoconference (Webex) on May 12, 2020, and a full hearing, which was digitally recorded,² was

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² The Commission sent the parties a copy of the digital recording. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to use the recording to supply the court with a written transcript of the hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

held on July 28, 2020 via video conference (Webex) before Commissioner Ittleman.³ Somerville filed a Proposed Decision but the Appellant did not. For the reasons set forth below, Mr. Denis's appeal is denied.

FINDINGS OF FACT

Nine (9) exhibits were introduced into evidence by the Respondent (Exh.1 through Exh.9).

Based on the documents submitted and the testimony of the following witnesses:

Called by Somerville:

- Skye Steward, former Chief of Staff, Mayor of Somerville
- SPD Deputy Chief Stephen Carrabino

Called by the Appellant:

- Johnny Denis, Appellant
- Sidney Lauture
- Malcom Ducasee
- Donald Mordan

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following facts:

1. On March 23, 2019, the Appellant, Johnny Denis, took and passed the civil service examination for entry-level police officer administered by the Massachusetts Human Resources Division (HRD). His name was placed on the eligible list for police officer established on September 1, 2018. (*HRD Submission dated May 12, 2019*)

2. On December 4, 2019, HRD issued Certification No. 06794 to Somerville to fill vacancies in the positions of permanent reserve SPD police officers. (*HRD Submission dated May 12, 2019*)

³ Commissioner Ittleman conducted the hearing in this matter, but she subsequently retired from the Commission prior to finalizing this decision. The case was subsequently re-assigned to me by the Chair. I have reviewed the entire record, including the recording of the hearing, all exhibits, briefs, and all other relevant documents.

3. On December 8, 2019, Mr. Denis submitted his application for appointment as an SPD police officer (SPD Application), claiming a preference as a Somerville resident. (*Exhs.1 & 3*)

4. At the time Mr. Denis submitted his SPD application, he stated that he had lived in Brockton from October 2017 until February 2018, moved to Somerville at the beginning of March of 2018, and moved back to Brockton at the end of March 2019. It was not disputed that Mr. Denis lived in Brockton at the time of the Commission hearing of his appeal in July 2020. (*Exhs 1 & 4; Testimony of Appellant*)

5. In order to be able to claim a residency preference in the hiring process involved in this appeal, Mr. Denis was required to have lived in Somerville continuously for one year prior to taking the civil service examination—i.e., after March 23, 2018 until, at least, March 23, 2019. (*Exhs 1 & 3*)

6. As part of its hiring process, Somerville retained an outside agency to conduct residency checks on all applicants. (*Exh.4; Testimony of Dep. Chief Carrabino*)

7. On January 15, 2020, the outside investigator sought to verify Mr. Denis's claim that he had resided in a Somerville Housing Authority (SHA) complex on Memorial Drive from February 2018 to March 2019. The investigator met with the SHA Manager on-site who searched his records and reported that there were no records of Mr. Denis ever living at that location and the only tenant associated with the address was a person with the last name "St. P [redacted]". (*Exh.4*)

8. On January 18, 2020, the investigator met with Mr. Denis at his residence in Brockton. He stated that he then lived with his girlfriend (Ms. J) and his daughter. Mr. Denis produced his current Massachusetts drivers' license, issued 10/15/2018, with a Somerville address (zip code 02145-1708) on the front and a Brockton change of address written on the back. (*Exh.4*)

9. Mr. Denis claimed that he had lived in a two-bedroom apartment with his mother (Ms. St. P) and his nephew (Malcolm Ducasse), from February 2018 until April 1, 2019. Mr. Ducasse was on the lease but Mr. Denis's name was not, because, as they both testified, "they never properly reported that he was residing there with his mother." (*Exh.4; Testimony of Appellant & Ducasse*)

10. Mr. Denis did not have his own room at his mother's apartment. Both he and Mr. Ducasse said Mr. Denis slept "more on the couch." (*Exh.7; Testimony of Appellant, Dep. Chief Carrabino, Ducasse & Lauture*)

11. Mr. Denis produced two (2) bank statements, one dated 8/8/2019 and another covering the period 3/7/2019 to 4/5/2019 in his name with the Somerville address (02145-1702). (*Exh.4*)

12. After interviewing Mr. Denis, the SHA manager, and "neighbors", the investigator concluded that Mr. Denis met the one-year period required to claim residency preference. (*Exh.4*)

13. Due in part to dissatisfaction with its report on Mr. Denis (among others), Somerville concluded that the outside agency's performance during the hiring process involved in this appeal was "sub-standard" and decided it would not use the agency in the future to verify residency. (*Exh 4; Testimony of Dep. Chief Carrabino*)⁴

14. Dep. Chief Carrabino personally conducted further investigation into the matter of Mr. Denis's claim to residency preference. He spoke with an SHA investigator who reported that he was "aware of this individual [Mr. Denis] and had personal knowledge that he [had] not lived [t]here [SHA property] for many years" although he was unable to determine the "exact date he [Mr. Denis] was taken off the lease." (*Exh. 9; Testimony of Carrabino*)⁵

⁴ In fact, the NWI investigator did not interview any of Mr. Denis's neighbors (*Exh.4*).

⁵ At the Commission hearing, Mr. Denis's explanation for why the SHA officer didn't see him in 2018-2019 was that he was in Boston working during the day (although he was terminated from the Boston job in May of 2018). (*Testimony of Appellant & Ducasse*)

15. Dep. Chief Carrabino also noted that certain information provided by Mr. Denis raised questions about Mr. Denis's claim to being a Somerville resident during the relevant time frame (March 2018 to March 2019). This information included:

- Mr. Denis's 2018 tax returns listed Brockton as his place of residence.
- Mr. Denis claimed a maximum rental deduction of \$9,000 for rent paid in 2018.
- He claimed his daughter (born in February 2018) lived with him "the whole year" of 2018, in order to obtain the maximum 12 months' tax benefit.
- An unemployment claim filed in 2018 (covering May 2018 to April 2019) listed Brockton as his residence.⁶

(Exhs.1, 5 & 6; Testimony Appellant & Dep. Chief Carrabino)

16. On February 10, 2020, Mr. Denis was interviewed by a three-member panel that included SPD Dep. Chief Stephen Carrabino (who was the primary officer responsible to oversee the hiring process); Skye Steward, the Mayor's former Chief of Staff (who was asked to fill in for the absence of the City's Personnel Director); and Nancy Bacci, the City's Deputy Director of Health and Human Services. The interview process was semi-structured, with each candidate asked a standard set of questions and other questions focused on information developed about the candidate during the application process. The interviews were audio recorded. Mr. Denis's interview lasted an hour and a half. The panel members took notes during the interviews but the candidates' performances were not scored or ranked. *(Exhs.2 & 7; Testimony of Dep. Chief Carrabino & Steward)*

17. Mr. Denis provided inconsistent answers at the interview panel (and before Commissioner Ittleman) in response to questions about his residency. He explained that he used Brockton as his residence on his tax returns because his girlfriend and daughter were living there and he was "going back and forth" and had been spending "more time" in Brockton. He said he did not pay rent while

⁶ I note that Mr. Denis's SPD employment application stated that he lived with his mother and nephew Malcom Ducasse in "2018-2019", but also stated that he lived with his girlfriend from "2016-current". *(Exh.1)*

living in Somerville, and the rental deduction he claimed was for “expenses” he paid on his girlfriend’s behalf while she lived in Brockton with their newborn daughter. He claimed to have lived “the whole year” with his newborn child since he felt as if they were living together because he saw his daughter regularly after she was born. (*Exhs.2, 5 & 7; Testimony of Appellant & Steward*)

18. The interview panel also raised questions about Mr. Denis’s omission from his application requiring information about his employment history (including an explanation for his two terminations)⁷, questionable deductions on his tax returns, and failing to list all persons with whom he had lived with over the past ten years. Mr. Denis explained that he had to “hurry” to get the application in on time and agreed he probably forgot and/or left out some things because he didn’t have all the information at hand. (*Exhs 1, 2 & 7; Testimony of Appellant, Dep. Chief Carrabino & Steward*)

19. Somerville eventually appointed nine (9) candidates from Certification 06794 to the positions of SPD reserve police officers, all of whom had established a Somerville residency preference. The names of four of the appointed candidates were ranked below Mr. Denis on the Certification. (*Stipulated Facts; HRD Letter dated May 12, 2020*)

20. By letter dated March 3, 2020, Somerville Mayor Curtatone informed Mr. Denis that he had been bypassed for appointment as an SPD reserve police officer. The reasons stated for the decision to bypass him included untruthfulness in statements claiming a Somerville residency preference as well as his carelessness and lack of attention to detail as evidenced by his answers

⁷ The employer who terminated Mr. Denis in May 2018 from his job as delivery driver stated in conjunction with Denis’s SPD application (contrary to Denis’s statements during his panel interview) that Denis would not be eligible for rehire and answered “NO” to the question: “In your opinion, is the applicant qualified to be a Police Officer?” (*Exhs.1, 2 & 7*)

to questions about his prior negative employment history and his failure to list all persons with whom he previously lived. (*Exh.3; Testimony of Steward*)⁸

21. This appeal duly ensued. (*Stipulated Facts; Claim of Appeal*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Original appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing

⁸ The interview panel had serious doubts about Mr. Denis’s residency but did not explicitly decide whether or not he had claimed a Somerville residency to which he was not entitled. Rather, the panel concluded that it was the substantial inconsistencies in his application and interview responses that led to a conclusion that all of his responses could not possibly be true. (*Testimony of Dep. Chief Carrabino & Steward*)

on the candidate's present fitness to perform the duties of the position. Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 461, 474-78 (2019); Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law’”. Brackett v. Civil Service Comm'n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

The governing statute, G.L. c. 31, gives the Commission's de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). The commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*,” then the occasion is appropriate for intervention by the commission.” Id. (*emphasis added*). See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission's jurisdiction to enforce basic merit principles under civil service law).

Law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., Police Comm'r v. Civil Service Comm'n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986). The duty imposed upon a police officer to be

truthful is one of the most serious obligations he or she assumes. “[P]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” Falmouth v. Civil Service Comm’n., 61 Mass. App. Ct. 796, 801 (2004), citing City of Cambridge v. Civil Service Comm’n., 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997) (“The city was hardly espousing a position devoid of reason when it held that a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.”) See, e.g., Desmond v. Town of West Bridgewater, 27 MCSR 645 (2014); Ung v. Lowell Police Dep’t, 24 MCRS 567 (2011); Gallo v. City of Lynn, 23 MCSR 348 (2010). See also Minoie v. Town of Braintree, 27 MCSR 216 (2014); Everton v. Town of Falmouth, 26 MCSR 488 (2013) and cases cited, aff’d, SUCV13-4382 (2014); Gonsalves v. Town of Falmouth and cases cited, 25 MCSR 231 (2012), aff’d, SUCV12-2655 (2014); Keating v. Town of Marblehead, 24 MCSR 334 (2011) and cases cited.

Providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” Kerr v. Boston Police Dep’t, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016). Moreover, a bypass letter is available for public inspection upon request, so the consequences to an applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L. c. 31, § 27, ¶ 2. Thus, the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness require that any such charges must be carefully

scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. See, e.g., Boyd v. City of New Bedford, 29 MCSR 471 (2016); Morley v. Boston Police Dep't, 29 MCSR 456 (2016); Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history).

ANALYSIS

The SPD established reasonable justification to bypass Mr. Denis for appointment as a SPD reserve police officer based on the preponderance of the evidence presented that led Somerville to doubt the veracity of the statements he made to support his claim that he continuously resided in Somerville from March 2018 through March 2019, together with his lack of candor in providing information about his employment record.

Somerville made a reasonably thorough review of Mr. Denis's claim to a residency preference. Although there were some indicia that might tend to support the claim that he had resided continuously in Somerville during the relevant one-year period from March 2018 to March 2019, the preponderance of the evidence presented to the Commission established that Somerville was reasonably justified to conclude that Mr. Denis, at a minimum, provided inconsistent or implausible answers in his application and to the interview panel regarding that claim.

The documentary evidence Mr. Denis provided to support his residency claim consisted of a driver's license issued in October 2018 with a Somerville address⁹ and two bank statements in his name with Somerville address. He provided no evidence where he registered to vote or voted in 2018 and 2019, registered his motor vehicle or paid excise taxes. His name was not on the lease

⁹ I note that Mr. Denis did live in Somerville at some point prior to 2018, and his 2017 tax return listed his residence in Somerville. (*Exhs. 1, 4 & 9; Testimony of Dep. Chief Carrabino*). Thus, the fact that his license renewal showed a Somerville address and was changed to Brockton at some unknown date after it was renewed in October 2018, is not conclusive of residency as of October 2018.

for his mother's SHA apartment, he had no room of his own, slept on the couch, and paid no rent to her. Mr. Denis provided information on his tax returns and unemployment application inconsistent with his claim to Somerville residency, representing that he lived in Brockton with his girlfriend and daughter throughout 2018. I concur with the conclusion of the interview panel that did not find credible Mr. Denis's irreconcilable explanations about where he resided, apparently using a Somerville residence when it gained him an advantage for purposes of his civil service status, while claiming a different residence to take advantage of other benefits. Somerville is justified to decline to appoint a candidate to serve as a municipal police officer who has been less than candid about such a critical and material matter as his residency.¹⁰

I also concur with the conclusion of the interview panel that, at best, Mr. Denis was less than candid about his employment record. His omissions and inconsistent responses, especially about a recent termination from his May 2018 position as a parts delivery person, and his equivocation about whether he was eligible for rehire when confronted by the interview panel, cannot be excused as a good faith mistake or honest misunderstanding.

The SPD's reliance on Mr. Denis's neglect in providing the names of everyone with whom he resided in the past ten years is a closer call. I can appreciate that, when living with an extended family, it might be understandable that not everyone who comes in and out of the home would be considered a person who lived together with him. As there are other sound and sufficient reasons

¹⁰ Based on a de novo review of the evidence in this record, Somerville also would have had a strong basis on which to conclude that Mr. Denis was not, in fact, a Somerville resident during the relevant period, which would have meant that he would not have been placed high enough on the certification to have been within the group of candidates eligible for consideration under the 2n+1 formula, and, therefore, he would not have had any recourse to appeal to the Commission from his non-selection as he would not have been "bypassed". As Somerville's bypass letter did not assert that failure to establish residency was a reason for his non-selection, I have reviewed this appeal as a bypass on the merits and make no explicit finding about the residency preference.

that require denial of this appeal, I draw no conclusions about that additional basis originally stated as a reason for the Appellant's non-selection.

In sum, Mr. Denis's lack of candor concerning his residency claim and his employment history demonstrate that Somerville was reasonably justified to conclude that Mr. Denis was unsuitable to be appointed as a Somerville police officer at the time of his bypass.

CONCLUSION

For all of the above stated reasons, the appeal of Johnny Denis, under Docket No. G1-20-042 is *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein & Tivnan, Commissioners) on May 5, 2022.

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)(1), 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. 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:

Johnny Denis (Appellant)

Jason Piques, Esq. (for Respondent)

Alexis Demirjian, Esq. (for HRD)