

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200  
Boston, MA 02114  
(617) 979-1900

JESSICA D'ESPOSITO,  
*Appellant*

v.

CITY OF MALDEN,  
*Respondent*

**Case No.:** G1-22-064

**DECISION**

Pursuant to G.L. c. 31, § 43 and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA) was charged with conducting a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Acting Chief Magistrate issued the attached Tentative Decision to the Commission on September 22, 2023, and the parties had thirty days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate thus making this the Final Decision of the Commission.

For that reason, the City of Malden's decision to bypass the Appellant for appointment as a police officer is affirmed and the Appellant's appeal under Docket No. G1-22-064 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Stein and Tivnan, Commissioners [McConney – Absent]) on November 2, 2023.

Civil Service Commission

/s/ Christopher C. Bowman  
Christopher C. Bowman  
Chair

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. 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:

Joseph Sulman, Esq. (for Appellant)

Zaheer Samee, Esq. (for Respondent)

James P. Rooney, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Jessica D’Esposito,**  
Petitioner

v.

Docket No. G1-22-064  
DALA No. CS-22-0217

**City of Malden,**  
Respondent

**Appearance for Petitioner:**

Joseph Sulman, Esq.  
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**Appearance for Respondent:**

Zaheer Samee, Esq.  
Assistant City Solicitor  
City of Malden  
Malden City Hall  
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Malden, MA 02148

**Administrative Magistrate:**

James P. Rooney

**Decision Summary**

Appointing authority has shown sufficient justification for its decision to bypass an applicant for a position as a Malden police officer for her failure to be forthcoming about certain aspects of her prior employment. She had left off an earlier application that she had worked for a sub shop owned by a member of the Hell’s Angels and, when asked about it in her interview in 2022, gave two different reasons for why she left this job off. She was also asked about an incident that led to her firing at a cafeteria she worked at in college. When asked about it during an interview, she stuck with a version she had been telling from the start but when pressed by the interview panel who did not believe her, she ultimately agreed with their version of events. Although the first inconsistency may have simply been an instance in which the applicant misspoke and the second likely

involved the applicant's giving up in the face of persistent questioning, these inconsistencies provide sufficient reason for the bypass.

### **TENTATIVE DECISION**

Jessica D'Esposito timely appealed a decision of the City of Malden to bypass her in 2022 for a position as a police officer. The Malden Police Department's bypass decision was based on what she said or didn't say about her prior employment in an earlier job application and during interviews in 2020 and 2022.

I held a hearing on behalf of the Civil Service Commission on August 18, 2022 at the Commission's offices at One Ashburton Place, Boston, Massachusetts.

I admitted twelve documents into evidence. The parties stipulated to a few basic facts. I made a digital recording of the hearing. The City presented the testimony of Officer John Hussey, who was on the panel that interviewed Ms. D'Esposito, and Captain John Amirault, who was in charge of hiring for the Police Department. Ms. D'Esposito testified on her own behalf and presented testimony from two other Malden police officers: Officers Scott Moore and Matthew Quinn. The administrative record closed on September 20, 2022 when the parties filed post-hearing briefs.

### **Findings of Fact**

Based on the exhibits, testimony, stipulated facts, and reasonable inferences drawn from them, I make the following findings of fact:

1. Jessica D'Esposito is a Malden native. In 2019, she earned a criminal justice degree from UMass Lowell. (D'Esposito testimony.)

### D'Esposito Employment History

2. In 2016, she worked during the summer for J&M Sub Shop in Saugus. Her aunt was dating the owner of the sub shop at that time. The Malden Police Department knew the owner to be a local leader of the Hell's Angels. (D'Esposito testimony.)

3. In the summer of 2018, Ms. D'Esposito served as a swim instructor for Lifetime Fitness. She typically taught six children at a time. One day when she had eight children in her class, she lost track of a six-year-old who nearly drowned. The business issued her a written warning but did not send her home. The child returned to swim class the following week. (D'Esposito testimony.)

4. While a student at UMass, Ms. D'Esposito worked at a school cafeteria operated by Aramark. During one of her shifts, a student left behind a backpack containing a glass pipe in the shape of a scorpion, presumably a pipe for smoking marijuana. When the student did not return for the backpack, Ms. D'Esposito took the pipe from the backpack, brought it to her room, and put it on a desk. The next day, a campus police office came to the cafeteria and asked about the missing pipe. She told the officer that the pipe was in her room and turned it over to him. When asked by the officer why she took the pipe, she stated that "she knew the smoking pipe wasn't allowed on campus, and took it, in hopes of turning it over to her resident advisor." Aramark terminated her for theft. (D'Esposito testimony; Malden Ex. 1.)

5. After college, Ms. D'Esposito worked as a security guard for New England Security, then was hired for an administrative position by the Franciscan Children's Hospital, a facility where she had served as a guard. (D'Esposito testimony; Malden Ex. 3.)

6. In March 2020, Ms. D’Esposito was hired as a police cadet by Malden. Her duties included:

assisting at the Police Department’s front counter, answering 911 calls, assisting with arrest paperwork including obtaining driving records and CORI reports (once she was authorized to do so), drafting complaints for court, checking on prisoners, handling restraining orders, and locating warrants.

(D’Esposito, Amirault, Mann, and Quinn testimony.) She left in June 2022 for a higher paying job with the Medford Police Department. (D’Esposito testimony.)

7. Officer Scott Mann, who is a dispatcher, and Officer Matthew Quinn, a patrolman who was assigned to the front counter, worked with Ms. D’Esposito in Malden when she was a cadet. They observed that she performed all the work expected of cadets, did whatever she was asked to do, did not need supervision to perform her tasks, and was trustworthy.<sup>1</sup> Officer Quinn thought she was the best cadet he had worked with. (Quinn and Mann testimony.)

#### First Malden Application

8. In 2019, Ms. D’Esposito took and passed a Civil Service exam to become a police officer. On her Civil Service application, she listed her jobs with J&M Sub Shops and Life Time Fitness. (Malden Ex. 2.)

9. After Ms. D’Esposito passed the Civil Service exam, she filled out an application with the Malden Police Department to become a police officer. The Malden application also asked her to list her prior employment. She did not list her job with J&M Sub Shop. She listed her work as a swim instructor for Life Time Fitness, but did not acknowledge, in response to a question asking whether she had received any discipline or warnings from this employer, that she

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<sup>1</sup> Early on, there was some confusion when Ms. D’Esposito thought Officer Mann had taken a call, when she was the one who answered the call. Officer Mann described this as a very minor incident. Ms. D’Esposito did not recall the incident. (Mann and D’Esposito testimony.)

had been given a written warning regarding the child in her class who nearly drowned. She listed the Aramark job, reported that she had been fired, and gave a brief description of the circumstances. She also listed that she had previously applied for jobs with the MBTA Transit Police and the Essex Sheriff's Department. (Malden Exs. 2 and 4.)

10. Ms. D'Esposito was not hired during this hiring cycle. She was interviewed in 2020, but not bypassed as all the individuals who were hired had higher scores on the Civil Service exam. Her interviewers were Officer Sean Hussey, who investigated her background, Sgt. Steven Fitzpatrick, and Lt. Richard Correale. Officer Hussey's investigator's report noted that Ms. D'Esposito had left her J&M Sub Shop employment off her Malden application. He also discovered that she had received a warning from Life Time Fitness, and that she had been bypassed by the Essex Sheriff's Department, in part, for leaving off her Aramark employment and her termination from that job. (Malden Ex. 3.) In the interview, Ms. D'Esposito stated that she left off the J&M Sub Shop job because she thought it would make her look bad.<sup>2</sup> (D'Esposito testimony.) Officer Hussey did not believe her story that she took the glass pipe in order to give it to her resident advisor. (Hussey testimony.)

#### Second Malden Application

11. Ms. D'Esposito took another Civil Service exam in 2021 to become a police officer. She again applied to become a Malden police officer and was listed as eighth on the Civil Service list issued for the Malden police officer position. On her application, she listed that she had been

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<sup>2</sup> Captain Amirault was concerned that Ms. D'Esposito had not listed on her 2020 police officer application that she had worked at a business owned by a member of the Hell's Angels. He worried that the Hell's Angels might find out what the police were doing and compromise investigations. He sent a lengthy email to the Chief of Police describing his concerns and asked that she be removed from her cadet position. The Chief did not act on his recommendation. (Amirault testimony.)

fired by Aramark and stated that she took the glass pipe to give to her resident advisor. She also described the written warning she received from Life Time Fitness and listed her job at J&M Sub Shop toward the end of her application. (Malden Exs. 5 and 7.)

12. Officer Hussey again investigated Ms. D'Esposito's background. He did not attempt to interview Ms. D'Esposito's supervisor at the Malden Police Department or any of the officers who worked with her, as he thought the Chief of Police would do that. Officer Quinn told Officer Hussey that Ms. D'Esposito would be a good hire and that other police officers agreed with him. (Hussey and Quinn testimony.)

13. Ms. D'Esposito was interviewed by the same panel that had interviewed her previously. Officer Hussey began the interview by focusing on her summer work at J&M Sub Shop and her 2020 application. The sub shop topic was fresh in his mind because, at first, he thought she had left this job off her application again, but realized it was listed on an additional sheet. Ms. D'Esposito was surprised at this question, and putting her actions in the best light, she misspoke and told the panel that she simply thought it was not relevant. After further questioning, she said she left it off because her father advised her to. (Hussey and D'Esposito testimony; Malden Ex. 8.)

14. Later in the interview, she was asked about the glass pipe she took when working for Aramark. She again stated that she took the pipe to avoid getting the student who left it in the cafeteria in trouble and had intended to give the pipe to her resident advisor, who might handle the situation so that the student would not get into trouble. She did not give it to him because she could not find him. The panelists told her they did not believe her. They questioned why she did not take the entire backpack and not just the scorpion-shaped pipe. They questioned why, when she couldn't locate her resident advisor, she did not bring the pipe back to the cafeteria. They



also wondered why, if she thought the student whose pipe it was would get in trouble for it, she put the pipe out in the open on a desk rather than concealing it in a drawer. They suggested that she probably took the pipe because it looked cool and wanted to show it to her roommates. After thirteen minutes of questioning, Ms. D'Esposito conceded that they were right, and that she had taken the pipe because she thought it looked cool. (Hussey and D'Esposito testimony; Malden Ex. 8.)

15. Ms. D'Esposito testified that during the interview, when she could not convince the panelists that she was telling the truth about the glass pipe, she eventually gave in to their view because she thought the panel would not give up until she agreed with them and she just wanted to end the interview. She also testified that she thought the unknown student might be kicked off campus if the backpack with the pipe was given to school authorities, which is what her boss at the cafeteria intended to do. (D'Esposito testimony.)

16. At the end of the interview, the panelists told her they had problems with her lack of truthfulness, and even got her to agree that she had not been truthful. They urged her to keep taking the Civil Service test, told her they thought she had made some progress and that she did not have a bad reputation, but concluded that she needed to establish herself as a truthful person and needed to grow up a bit more. (Hussey testimony; Malden Ex. 12.)

17. On April 1, 2022, the City of Malden sent Ms. D'Esposito a letter signed by Police Commissioner Salvatore Gennetti explaining that she had been bypassed because she had given inconsistent stories about why she left the J&M Sub Shop job off her 2020 application and because she had been untruthful about the reason she took the glass pipe while working for

Aramark.<sup>3</sup> (Malden Ex. 9.)

### Discussion

The issue in this appeal is whether the City of Malden was justified in bypassing Jessica D'Esposito based on its impression that during the application process to become a police officer she had been untruthful about negative aspects of her employment history. As with all bypass appeals, the City had to prove by a preponderance of evidence that its decision was justified. M.G.L. c. 31, § 2(b). That is, the appointing authority must have “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 Comm'n*, 31 Mass. App. Ct. 315, 321 (1991). The issue before the Civil Service Commission is “not whether it would have acted as the appointing authority

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<sup>3</sup> The bypass letter also mentions Ms. D'Esposito's failure in her earlier application to disclose the discipline she had received while working for Lifetime Fitness. The letter includes references to this in the 2022 interview. (Malden Ex. 9.) Officer Hussey testified that Life Time Fitness did not come up in the 2022 interview. (Hussey testimony.)

The bypass letter does not mention anything about the ownership of the sub shop as a reason for the bypass. Counsel for Ms. D'Esposito suspects that Capt. Amirault, who had wanted to discharge Ms. D'Esposito from her position as a cadet and who he thought drafted the bypass letter, worded the latter in such a manner to find a plausible way to prevent Ms. D'Esposito's hiring and that the panel picked up on this by beginning their questions to Ms. D'Esposito by focusing on the sub shop.

I credit Officer Hussey that he started off questioning Ms. D'Esposito about the sub shop because at first he had thought she left this job off her 2022 application just as she had in her earlier application. (Hussey testimony.) Capt. Amirault denied drafting the letter. He was indisputably concerned about Ms. D'Esposito having worked for a member of the Hell's Angels, but his level of concern does not seem to have been shared by higher authorities as his request that she be terminated from her cadet position was not acted on. (Amirault testimony.) Moreover, there is no evidence that Ms. D'Esposito had any contact with this individual after she left her summer job in 2016. The record is devoid of any evidence that by the time she began working as a cadet almost four years later that this individual was still dating Ms. D'Esposito's aunt or that he had any knowledge that she was working for a police department. The only evidence on this score is from Ms. D'Esposito that he had not contacted her about the work she was doing for the police and that she understood he now lives in California. (D'Esposito testimony.)

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.”<sup>4</sup> *Watertown v. Arria*, 16 Mass. App. Ct. 331, 332 (1983).

No one disputes that police officers are required to be honest and forthcoming or that when evaluating candidates to become police officers an appointing authority may consider whether it believes the applicant has been truthful. Bypasses have been held to be justified when an applicant failed to be truthful on a job application. *See Escobar v. Boston Police Department* (April 10, 2008) (applicant bypassed for position as Boston police officer because in an earlier application to another community he was untruthful about his current residence), and *Aponte v. Boston Police Department* (September 20, 2007) (applicant bypassed because he was evasive about what appeared to be a sham marriage). However, as spelled out in a 2022 decision:

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);

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<sup>4</sup> This particular standard is especially pertinent here. I would have thought that when Ms. D’Esposito applied to be a police officer in Malden, the city where she had worked as a police cadet, the first thing the City would have focused on was how well she had performed as a cadet, and then, when it looked at her other employment, it would have been most interested in the employment she had as an adult, not as a teenager, particularly her employment as a security guard and then at a hospital that had thought so highly of her work as a hospital guard that it hired her away from the security company.

Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history).

*Denis v. City of Somerville*, case no. G1-20-042 (May 5, 2022).

The City of Malden bypassed Ms. D'Esposito because of concern about her lack of truthfulness about aspects of her employment history as a teenager. Regarding her work in the summer of 2016 for J&M Sub Shop, there is no dispute that she left this job off her 2020 application to become a Malden police officer. Her explanation in her 2020 interview was that listing that job could have potentially made her look bad because she worked for a business owned by a member of the Hell's Angels. In the 2022 interview she was more specific, saying her father had told her to leave off the job from her application because of the Hell's Angels association.<sup>5</sup> But before that, she first said in 2022 that she had left the job off her 2020 application because she did not think a 2016 summer job was relevant. That is not the same thing as deliberately leaving off the job from the application because she thought it would make her look bad. This inconsistency provides a potentially valid reason for the City to question her willingness to tell the truth. I credit that she was nervous during the interview and that she did not expect a question about her 2016 summer job, but the topic had come up before and, as she knew she had deliberately left that job off her 2020 application, she should have been able to answer the question consistently with her prior answers.

The issue around the glass pipe incident is not as straightforward. For most of the time, Ms. D'Esposito has been fairly consistent in claiming that she took what appeared to be a

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<sup>5</sup> While I am loath to discourage someone from seeking advice from her parents, Ms. D'Esposito should have been guided by the directions on the 2020 application that required her to "answer any and all questions truthfully, accurately or completely." (Malden Ex. 4.)

marijuana pipe a student had left at the cafeteria where she worked because she feared the student would get into trouble with the school administration if the pipe was connected to him. The only time when she stated otherwise was under intense questioning by the panel in her 2022 interview when the panelists made clear that they did not believe her explanation. She eventually gave in and agreed with their version that she had taken the scorpion-shaped pipe because she thought it looked cool.

Which version is correct is not the central question. Officer Hussey and the other panelists had reason to question her version that she intended to help the student out by giving the pipe to her resident advisor. They could not understand why she took only the pipe and not the whole backpack that might have contained some information that could identify the student. They also did not understand why she held onto the pipe for a day when she could not find her resident advisor. They were also puzzled why, if the pipe was not allowed on campus and could get a student in trouble for possessing it, she left the pipe out in the open on her desk. These are fair observations, but they also reflect the knowledge of adult police officers on how to handle situations. I am inclined to believe Ms. D'Esposito's version that she took the pipe to give to her resident advisor. While her actions might not have made sense to experienced police officers, they are not implausible from the perspective of a teenager who feels a fellow student is about to get into trouble.

But this does not help Ms. D'Esposito because at the end of the 2022 interview, she agreed with the panelists that she took the pipe because it was cool. I can certainly see that, after thirteen minutes of intense questioning in which the questioners make it clear they do not believe her story, she wanted the questioning to end and she agreed with them solely to achieve that

goal. Of course, that led them to conclude that she had not told the truth in the first place, and thus led to the bypass based in part on her lack of truthfulness about the glass pipe incident.

Yet, if she had been telling the truth all along about why she took the glass pipe, her failure to stick with her version of events because others did not find it credible is troubling. Deviating from the truth to please others just as much involves the City's concern with her ability to be truthful. It is important that police officer be honest and forthcoming, whether those to whom they speak believe them or not. There may be circumstances in which something unusual happens during the course of police work; the officer involved will be expected to tell the truth about what happened even if other police officials who were not there are skeptical of the report. As the City stated in its closing brief, an officer is expected to tell the truth not only when it is convenient, but when it is not. Unfortunately, her change of story about the glass pipe provides another sufficient reason for the Police Department's decision to bypass her on this occasion.

I agree with the panelists who encouraged her to apply again to be a police officer. Inevitably, questions about the incidents that were of concern to the Malden Police Department may come up in any future interviews, and she will have to be prepared for those questions and answer them truthfully. I wish her well, but for now, I affirm the City of Malden's decision to bypass her.

DIVISION OF ADMINISTRATIVE LAW APPEALS

***James P. Rooney***

James P. Rooney  
Acting Chief Administrative Magistrate

Dated: September 22, 2023