

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

SCOTT DEVEAU,
Appellant

v.

Case No.: G1-14-157

**WALTHAM POLICE
DEPARTMENT,**
Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) 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 in whole, thus making this the Final Decision of the Commission.

The decision of the Waltham Police Department to bypass Mr. Deveau for appointment as a police officer is affirmed and Mr. Deveau's appeal under Docket No. G1-14-157 is hereby ***denied***.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on August 20, 2015.

Civil Service Commission

/s/ Christopher C. Bowman
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. 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:

Robert H. Clewell, Esq. (for Appellant)

Luke Stanton, Esq. (for Respondent)

Edward B. McGrath, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Scott Deveau,
Appellant
v.

Docket Nos. **CS-14-526; G1-14-157** (Civil
Service Commission)

City of Waltham-Police Chief,
Respondent

Dated:

Appearance for Appellant:

Robert H. Clewell, Esq.
58 Main Street
Topsfield, MA 01983

Appearance for Appointing Authority:

Luke Stanton, Esq.
City of Waltham - Law Dept.
119 School Street
Waltham, MA 02452

Administrative Magistrate:

Sarah H. Luick, Esq.

Summary of Tentative Decision

The Waltham Police Chief had reasonable cause to bypass Scott Deveau for an original appointment to the position of Police Officer based on a series of incidents, including at work, where he was found to be argumentative or threatening, or not fully acknowledging of his wrongful conduct, and at times less than fully truthful in describing his conduct during his interviews. In addition to the circumstances of his termination from his last security officer job, the troublesome behaviors and incidents spanned time periods covered by his prior applications for Waltham Police Officer and Fire Fighter, and served as reasons for his being bypassed for these jobs. The Waltham Police Chief agreed with the recommendation of the hiring interview committee to bypass Mr. Deveau based on three background investigation reports done by three different Waltham Police Officers, his current application information, and his interview before a committee that included a Waltham Deputy Police Chief, the Waltham Personnel Director, and three Waltham Police Officers. I recommend that the Civil Service Commission affirm the bypass and dismiss the appeal.

TENTATIVE DECISION

Pursuant to G.L. c. 30, § 2(b), the Appellant, Scott Deveau, timely appealed to the Civil Service Commission, the decision of the Appointing Authority, the Waltham Police Chief, bypassing him for an original appointment to the position of Police Officer. (Exs. 1 & 2.) A pre-hearing conference was held before the Commission on August 5, 2014. A hearing was held on October 3, 2014 and February 6, 2015, at the offices of the Division of Administrative Law Appeals (DALA) at One Congress Street, 11th Floor, Boston, MA 02114.

At the DALA hearing, various documents were admitted into evidence. (Exs. 1 - 7.) Both hearing days were digitally recorded, and the parties received copies of the recordings. The Appointing Authority presented the testimony of Waltham Deputy Chief William M. Stanton¹ and Waltham Personnel Director Kristen Murphy. The Appellant testified on his own behalf and presented the testimony of Patrick Deveau who is his brother and a Waltham Police Officer, and Thomas Hylander, a retired Waltham Police Lieutenant. Both parties filed post-hearing briefs by April 27, 2015. (Exs. A & B.)

FINDINGS OF FACT

Based on the evidence presented and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. Scott Deveau, born in 1981, graduated from Waltham High School in June 2000 and enlisted in the U.S. Marine Corp (USMC) that same month. He completed his service in June 2004 having served as a Field Artillery Commander. From September 2006 until September 2012, he served in the Army National Guard. During his military career, Mr. Deveau was deployed to Iraq for nine months. He received a number of ribbons, awards, citations and

¹ Deputy Chief Stanton is not related to Appointing Authority's counsel Luke Stanton.

medals for his military service including a purple heart medal in 2010. He was never disciplined during his military service. He had an honorable discharge from the USMC. He has a disability rating from the Veterans Administration. The City of Waltham honored his military service in Iraq in 2005. (Exs. 4, 5 & 6. Testimony of Scott Deveau.)

2. Mr. Deveau has never married and has no children. He has had no long-term partner relationships. He has lived in Waltham from 1994 other than during his time in the USMC. Upon his return from the USMC, he has primarily been residing with his mother, and at times with one or two of his brothers in the same home. He has a pick-up truck and a motorcycle. He enjoys golfing, fishing, and riding his motorcycle. He has not had many ongoing close-friend relationships, but becomes friends with co-workers. He has volunteered for USMC charity functions to help USMC military families. His father passed away while he was serving in the USMC. His brother Patrick is a Waltham Police Officer, and applied for the position in 2011 when Scott was bypassed for the same position. Mr. Deveau has no history of alcohol or drug abuse, and no gambling problems. He has no criminal record. Mr. Deveau owns guns with licenses to use them issued by the Waltham Police Department, and is a member of a gun club where he does target shooting. (Exs. 4, 5 & 6. Testimony of Scott & Patrick Deveau.)

3. Mr. Deveau attended Middlesex Community College from September 2005-July 2007, working on a business management degree. In September 2007, he entered University of Massachusetts-Boston to gain a bachelor's degree, leaving there in June 2008, but resuming course work there in September 2013. (Ex. 6. Testimony of Scott Deveau.)

4. Mr. Deveau worked at McLean Hospital in Belmont as a security guard for Securitas Security from July 2004 to January 2006 when he left to work as a security guard for U.S. Protect at Hanscom Air Force Base in Bedford from May 2006 until November 2007 because

this job paid more. Mr. Deveau lost his job at Hanscom when the company he worked for went out of business and the security work was taken over by Pinkerton Security. He and the other security guards were able to apply to Pinkerton to keep their jobs and about half of them did. Mr. Deveau applied to keep his job, but was not kept on. He returned to work for Securitas Security at McLean Hospital as a security guard/shift commander from August 2008 to July 2012. He left work at McLean Hospital, Securitas's client, because employees of McLean did not want Mr. Deveau to continue to work there. Mr. Deveau understood he would be transferred to another Securitas jobsite, but after six weeks he received a termination letter explaining that Securitas had no available work for him to perform anywhere. From August 2013 into 2014, he worked as a doorman for a restaurant and bar in Salem. (Ex. 4, 5 & 6. Testimony of Scott Deveau.)

5. A number of Mr. Deveau's co-worker security guards left their positions to apply to be Police Officers in greater Boston cities and towns. Mr. Deveau decided to seek the same employment. He passed civil service examinations for Police Officer and Fire Fighter. He applied to be a Waltham Police Officer in 2008. He completed part of the hiring process, including undergoing a background investigation conducted in May 2008 by Waltham Police Officer Danielle Hart. Due to a hiring freeze those openings were not filled. The certified list for the position expired. Mr. Deveau applied after this for the position of Waltham Fire Fighter. He went through another background investigation conducted in October 2008 by Waltham Police Officer Kristin Tracey. She had the benefit of seeing Officer Hart's investigation report. Mr. Deveau was bypassed for the position of Waltham Fire Fighter. (Exs. 4, 5 & 6. Testimony of Stanton, Murphy & Scott Deveau.)

6. In connection with his first effort at becoming a Waltham Police Officer in 2007, Mr.

Deveau met with Investigator Hart at the Waltham Police Station. At the time, he was not employed and was a student at University of Massachusetts-Boston. Officer Hart was aware of his military service and his employment history. She reported that Mr. Deveau was “somewhat ‘scripted’ in answering questions, making a very deliberate effort to maintain eye contact and answer directly.” (Ex. 4.)

7. Officer Hart investigated Mr. Deveau’s work as a security guard at Hanscom Air Force Base. She spoke to John Fader, a retired Police Officer who had been his supervisor and was Chief of Guards of Pinkerton Security at Hanscom. Mr. Fader told Officer Hart that when U.S. Protect was taken over by Pinkerton Security, Mr. Deveau had not been hired to stay in his job because he was assessed as “untrustworthy and not an honest person.” Mr. Fader related some incidents he felt showed short-comings in Mr. Deveau. One incident involved a fellow security guard who had to use Pepto-Bismol for a medical condition. According to Mr. Fader, Mr. Deveau and two other security guards “put pepper spray in the ... Pepto-Bismol.” When he learned of this, Mr. Fader spoke to all three guards. Mr. Deveau “denied any involvement, while the other two admitted to the prank and apologized.” The other two implicated Mr. Deveau as involved. Mr. Fader spoke again to Mr. Deveau with this new information and Mr. Fader told Officer Hart that Mr. Deveau admitted involvement even though by then he had produced a written statement denying any involvement. Mr. Fader told Officer Hart “that it was not so much the prank that bothered him, but Scott’s untruthfulness.” All three guards received suspensions that were placed in their work records, although U.S. Protect went out of business. Another incident Mr. Fader reported to Officer Hart involved Air Force personnel who reported seeing Mr. Deveau “speeding through the [Hanscom] base at 10:30 pm at an extremely excessive rate of speed.” They followed him until he left through a gate to exit the base. The Air Force personnel

explained to Mr. Fader that they knew it was Mr. Deveau's motor vehicle because they were familiar with the "distinctively loud truck ... everyone knows ... [and] especially at 10:30 pm when all is usually quiet." Mr. Fader explained to Officer Hart that he confronted Mr. Deveau about this complaint and Mr. Deveau "vehemently denied it ... making a number of comments about how ... [the Air Force personnel] could not have known that it was him speeding." Based on his long service as a Police Officer, Mr. Fader concluded Mr. Deveau was "lying." In a more general discussion about Mr. Fader's opinion on whether Mr. Deveau would be a good Police Officer, he opined that he was a "very aggressive, a 'scary man', and very argumentative ... always approaches a discussion with arms crossed and a stern face, and would often times have to be calmed down in order to continue the conversation." Mr. Fader gave the example of a confrontation he knew about when Mr. Deveau and another guard were verbally disagreeing about something. "[A] large senior guard who has a large physique, had to step in the middle to calm Scott down." Mr. Fader also told Officer Hart about "several informal complaints from co-workers about Scott's dislike of anyone who was not white," and that Mr. Deveau had made this remark near a black guard, although "[n]o formal charges were brought up on Scott for this." Mr. Fader was not in support of Mr. Deveau being a Police Officer. After her report of May 21, 2008, Officer Hart was given information on June 30, 2008 by Safety Officer Ann Frassica: "On Friday, June 27, 2008, she was working the Moody St. walking patrol detail and observed ... Scott ... (who she knows through prior police youth groups) walk out of the ... [bar] and have a cigarette outside." Officer Hart wrote in a note to her report: "Mr. Deveau indicated on his application and during my orientation interview with him that he had quit smoking in November 2007. (Ex. 4.)"

8. When she spoke with Mr. Deveau in connection with his application to become a

Fire Fighter, Officer Tracey had Officer Hart's report about Mr. Deveau's work history as a security guard at Hanscom Air Force Base and Mr. Fader's remarks. Officer Tracey met with Mr. Deveau in October 2008. She noted that he came early to their meeting, "dressed rather casual wearing jeans, an untucked polo shirt and black shoes." She brought him into a room.

[She] set up a desk and chair for myself and another single chair about 10 feet away from the table ... he pulled the chair forward, right against the desk where my files and notes were displayed ... Scott had a very comfortable and cocky attitude for this being a formal one on one interview.

Officer Tracey reported on her observations of Mr. Deveau during her interview:

[I found his] demeanor to be closed and guarded; sitting with his arms crossed most of the time ... flexing his biceps ... in attempts to intimidate me ... often appeared a bit uncomfortable and demonstrated negative body language when discussing issues involving his past employment. In regards to questions that I felt Scott was being untruthful, he did not maintain good eye contact and often looked to his left.

Officer Tracey found Mr. Deveau to be "rather cocky" in answering her question about the "5 traits that would best describe him." He said he was "motivated, hardworking, team player, friendly and easy to get along with." She asked him his "biggest weakness," and he told her he 'occasionally gets too wrapped up in work, pushing himself too far that he sometimes makes mistakes.' He did not give her an example of this. When Officer Tracey asked him how he handles himself in stressful situations, he said that every day was stressful during his military service. He explained that boot camp was "challenging and rewarding and getting back into his military shape as a present difficult challenge." Officer Tracey asked him about his father's passing and if it changed him. She reported her impressions of this response:

[He] seemed to be rather unaffected by this conversation and reported that his father passed away 8 years ago ... it motivated him to work harder and when the Marines had asked if he would like to be discharged, Scott replied, 'you're out of your mind.' Scott stated he does not feel obligated in any way to stay close to his mother because he 'has to do what he has to do.'

Officer Tracey reported on Mr. Deveau's discussion of his personal references:

[Mr. Deveau stated] that he does not have many friends and doesn't hang out with too many people ... [M]ost of his friends are co-workers from Mclean Hospital that have moved onto police jobs in other cities or towns.

(Ex. 4.)

9. Officer Tracey reported on her talk with Mr. Fader about Mr. Deveau's Hanscom Air Force Base employment. He told her that Mr. Deveau had not been "rehired when a new security company ... had taken over ... due to Scott being less than truthful on several issues and aggressive towards the public and his co-workers." Mr. Fader told Officer Tracey that he had "a bit of a different perspective since ... [Mr. Deveau] is now applying for a Fire Fighter position and doesn't feel as though it is as much of an authoritative position [as a Police Officer]." Mr. Fader told her that Mr. Deveau is a 'guy that came in and did his job,' but can become 'surly' which is a concern when dealing with the public. Mr. Fader told Officer Tracey there were occasions when Mr. Deveau was 'not as truthful with me as (he) wished,' so that he came to have no "trust" in Mr. Deveau. Mr. Fader referred to Mr. Deveau as a 'wanna-be,' and a person who "abused his power of the badge and wouldn't always obey the laws himself." Mr. Fader told Officer Tracey that Mr. Deveau "was observed speeding around the base and driving erratically." When confronted about this or any issue, Mr. Fader said that Mr. Deveau would get into "an aggressive stance and become easily argumentative." Nevertheless, Mr. Fader told Officer Tracey that he would not have many issues with Mr. Deveau working as a Fire Fighter and that "Scott presents himself well to the public and does his job well;" that he just has to 'keep his aggressive attitude and confrontational way out of the job.' (Ex. 4.)

10. In Officer Tracey's investigation report, she reported on her discussion with Mr. Ralph Mauro about Mr. Deveau. She had worked with Mr. Mauro as a fellow Waltham Police Officer before his retirement. When she spoke to him, Mr. Mauro was working at Hanscom as a

supervisor-security guard. Mr. Mauro worked with Mr. Deveau at Hanscom.

Ralph [Mauro] stated that he was aware that I had contacted John Fader and stated that he also agreed with his recommendation and believed ... [Mr. Deveau's] "people skills" are a bit rough. Ralph was Scott's supervisor ... and did not approve of the way he interacted with the public while doing his job. Ralph stated that he would show up every day and do his job, however, could not let go of the Marine mentality and often times "could not learn to turn off the switch." Ralph reported that Scott does not have the right mentality to be a cop, however, believes he may be very good at being a fireman since you do not need to interact too much with the public. "The guys in the firehouse is a different story."

(Ex. 4.)

11. Officer Tracey's report addressed an omission in Mr. Deveau's application where he failed to answer three questions about his employment history: if his present employer knew he had applied for the position; if he had "ever been fired or asked to resign due to misconduct or unsatisfactory employment;" and if he had "ever been subject to disciplinary action" at work.

Officer Tracey asked Mr. Deveau about these missing answers:

[H]e replied that his current employer knows he has applied and has stated they will give him a good recommendation ... [H]e does not know why he skipped [answering] them and it must have been an oversight.

Officer Tracey reported that having viewed Officer Hart's report on Mr. Deveau's prior employment, she concluded "this omission was intentional, as he did not wish to answer these questions." In terms of the issue of Mr. Deveau and his smoking history, Officer Tracey reported that Mr. Deveau's application listed him as having quit smoking in November 2007 and that he confirmed this when she initially interviewed him. She was aware of Officer Hart's report about Mr. Deveau being found smoking in June 2008. In regard to Mr. Deveau securing licenses to use his firearms, she reported on an incident she learned about from Officer Caitlin MacPherson when Mr. Deveau was initially only given a Class A Target and Hunting permit; that he "created a scene in the front lobby [of the Police Station] demanding that he be

issued a license for all lawful purposes for his job.” Officer Tracey wrote in her report that a Police Department policy is to initially issue this limited level of a license to use firearms and after six years to issue at renewal the expanded license to use firearms for “all-lawful purposes.” Officer Tracey wrote in her report that an exception is “if a job supervisor contacts the department in writing requesting such exception be made.” At the time, Mr. Deveau had not presented that supervisor’s written request. Officer Tracey reported that Mr. Deveau was at a later time given the full license to carry. (Ex. 4.)

12. In her report’s final note, Officer Tracey concluded that Mr. Deveau’s information was often “conflicting.” She found he “was less than truthful ... regarding his employment at Hanscom AFB as well as his smoking habit.” She felt she provided “him several opportunities to further explain these situations and emphasized the importance of being honest and truthful throughout this process.” Officer Tracey reported that “several of his references stated that they are not aware of any friends or girlfriends of Scott’s ...[and he] does not socialize with a large group.” She noted that Mr. Deveau had trouble “coming up with (3) references he has known for over 5 years.” Officer Tracey reported that Mr. Deveau has troublesome conduct due to “his temper and anger management.” She noted Mr. Fader’s remarks that he “does not deal well with discipline and becomes argumentative,” and noted a reference’s remark that “he can be egotistical and has a ‘Marine mentality’.” She concluded that these traits “are a major flaw and concern for hiring ... for the position of Fire Fighter.” Officer Tracey also concluded that Mr. Deveau was “motivated and dedicated” but “his immaturity is an issue” especially in his “dealings with the public.” She opined that “he would not represent this city in a good light at this time.” (Ex. 4.)

13. Mr. Deveau was bypassed for the position of Fire Fighter. (Exs. 2 & 2A. Testimony

of Stanton, Murphy & Scott Deveau.)

14. Mr. Deveau took another civil service examination for Police Officer in 2009 and passed. When a certified list was established, he sought to become a Waltham Police Officer, submitting his application in July 2011. Waltham Police Officer Jeffrey Fogg conducted another background investigation on Mr. Deveau. Officer Fogg reviewed the prior applications and the prior investigation reports of Officers Hart and Tracey, both from 2008. Mr. Deveau initially caught the attention of Officer Fogg on August 20, 2011 when job candidates were arriving at the Police Station for an orientation meeting. “[M]y attention was drawn to a m/v. I observed a gray pickup truck attempting to pull into a parking spot with the music still playing loudly.” He saw Mr. Deveau exit the truck and go into the Police Station. Officer Fogg “found the volume of the music to be inappropriate.” He met Mr. Deveau who was “wearing a suit and was well groomed ... [and] shook my hand and greeted me with confidence.” He found Mr. Deveau when they conversed to be making good eye contact while answering questions with little hesitation. Mr. Deveau came with his application and Officer Fogg told him he could make additions or changes to it if necessary to have it be fully truthful and complete. Mr. Deveau began to tell Officer Fogg that he had been involved in an incident “where he played a joke on a co-worker with pepper spray.” Officer Fogg stopped him and told him they would address this incident at another time. Officer Fogg entered all this information into his investigation report. (Ex. 5.)

15. Officer Fogg met with Mr. Deveau at a later date at a Waltham Police Station. Mr. Deveau was in his work pants and a polo shirt having come straight from work. Officer Fogg asked Mr. Deveau about the pepper spray incident. Mr. Deveau explained that this was only meant to be a joke but “it went too far” and that he had thought the victim was his friend. When Officer Fogg asked Mr. Deveau why he had not initially admitted “putting the pepper spray in

the bottle,” Mr. Deveau “looked at me and didn’t answer.” Officer Fogg “asked why he made a written statement ... denying his actions.” Mr. Deveau responded that “his old boss said that the statement was going to stay in a file and not be released.” After Officer Fogg told him he had a copy of the statement, Mr. Deveau told him, “he was scared and nervous when he wrote the statement.” Officer Fogg asked him if he felt his conduct showed he had questionable “integrity.” Mr. Deveau repeated that he had been “nervous about the situation.” Officer Fogg told him he also has the victim’s written statement. To Officer Fogg, Mr. Deveau’s written statement went beyond denying involvement and “confronts other employees about the incident.” Officer Fogg had attempted to reach Mr. Fader about Mr. Deveau, but Mr. Fader had passed away. His replacement provided the reports about the incident to Officer Fogg. Officer Fogg contacted Mr. Burns, the victim, who told him Mr. Deveau never apologized for the incident. He told Officer Fogg that he and Mr. Deveau “never got along and always butted heads,” and that Mr. Deveau “was quick to ‘fly off the handle.’” Mr. Burns “laughed” when Officer Fogg asked him if he would want Mr. Deveau to be a Police Officer. Officer Fogg wrote all this information in his investigation report. (Ex. 5.)

16. Officer Fogg also asked Mr. Deveau about an incident involving his motor vehicle being towed for street cleaning. Waltham Police Officer MacPherson told him that Mr. Deveau had called the Police Station to talk to her after he found his vehicle missing from outside his home. She told him “it was towed to a local tow yard due to street sweeping and that the street was properly posted.” She told Officer Fogg:

[Mr. Deveau] became argumentative and stated he was going to report his m/v stolen. Officer MacPherson advised him if he did so he could possibly be charged for filing a false report due to him being advised where his m/v was. He threatened to sue the city and continued to argue with Officer MacPherson.

When Officer Fogg asked Mr. Deveau about this incident he noticed that “he broke eye contact

with me and stated he first thought his car was stolen.” He denied that his inquiries with Officer MacPherson were argumentative. Officer Fogg concluded that Mr. Deveau had “down played the incident.” Officer Fogg wrote this account in his investigation report. (Ex. 5.)

17. Officer Fogg spoke to Mr. Deveau’s supervisor at McLean Hospital in 2011, Andrew Wiland, who called Mr. Deveau, “his right hand man.” In response to being asked for Mr. Deveau’s weaknesses, Mr. Wiland told Officer Fogg that sometimes he “doesn’t know what is appropriate.” Mr. Wiland gave an example. Mr. Deveau was new on the job and responded to a call with a group of guards. He “made a ‘joke/comment’ that the group found inappropriate for somebody to say for not knowing any of them.” Mr. Wiland told Officer Fogg that Mr. Deveau “at times may not give a good first impression but he is a good guy.” Officer Fogg wrote up this account in his investigation report. (Ex. 5.)

18. In his investigation report, Officer Fogg acknowledged that Mr. Deveau had told Officer Hart he had stopped smoking and yet had been seen smoking outside a bar. Mr. Deveau told Officer Fogg that he had stopped smoking in June 2011, and Officer Fogg “spoke to several people and ... did not get any indication” that Mr. Deveau was still smoking. He wrote this in his investigation report. (Ex. 5.)

19. Officer Fogg was aware of Mr. Deveau’s military service including his National Guard service, his honorable discharge from the USMC, and his receipt of the purple heart medal. He wrote this in his investigation report. (Ex. 5.)

20. Officer Fogg wrote a summary of his impressions of Mr. Deveau. He reported Mr. Deveau’s “references to be hesitant to describe his demeanor or get more in depth with defining what they believe it to be. Throughout the three investigations ... there is a trend in his questionable integrity.” Officer Fogg also concluded that his list of friends and references has

been people who are “more ... a co-worker/acquaintance.” Officer Fogg concluded that Mr. Deveau’s accounts about incidents such as the towing of his motor vehicle was very different from Officer MacPherson’s version of what happened, and that from his body language in explaining his account of the incident, Officer Fogg felt “he was being less than truthful.” He mentioned information in Mr. Deveau’s 2008 application where “he listed Officers MacPherson and Hache as Waltham Police Officers he knows,” but on the 2011 application he failed to list any Waltham Police Officers he knows. When Officer Fogg asked him why he did not list these officers in his 2011 application, Mr. Deveau told him “he no longer speaks to them so he didn’t list them.” Officer Fogg questioned this reasoning, telling Mr. Deveau that the question on the application asked who he knew who were Waltham Officers and there was no instruction to exclude any Officer he was not speaking to anymore. In response Mr. Deveau said “he misunderstood” the question. Mr. Deveau had not been able to file a sealed credit report with his 2011 application and he told Officer Fogg this was because the company he had previously used would not provide him with another credit report within the same year time period. Officer Fogg told him “he was provided with three companies with his application” that could produce a credit report. Officer Fogg reported that in Officer Hart’s investigation report, she had discussed “an incident on [the Hanscom] base where he was speeding and left the base prior to a traffic stop,” and Mr. Deveau denied it was him driving. (Ex. 5.)

21. Mr. Deveau continues to insist that he did not taint the Pepto-Bismol with pepper spray, the guard involved never stated he had consumed the product, and the Pepto-Bismol was never analyzed. When Mr. Fader asked for a written report, Mr. Deveau produced one, denying any involvement. Mr. Deveau felt Mr. Fader had jumped to the conclusion that he had done this. He disputed what Mr. Fader reported of an admission of his involvement. He did not fight the

suspension because he felt it would not be an issue to impact his continued or future employment. Mr. Deveau knew that Mr. Fader was “not a fan of me.” (Testimony of Scott Deveau.)

22. Mr. Deveau understood that he was not hired by Pinkerton Security to remain at his Hanscom job, but not due to the pepper spray incident. He understood only about half of the security guards were rehired. He knew Mr. Fader felt he had been speeding inside Hanscom when the Air Force personnel felt he was in his truck at 10:30 pm. Mr. Deveau denies he was involved in any speeding incident; that this claim was made in October 2007 when he would leave the base by 9:45 pm, and that the gate he was accused of using would have lengthened his trip home. He denied ever telling Mr. Fader the Air Force personnel should have reported seeing dents he had on his vehicle if they were able to identify his vehicle. (Testimony of Scott Deveau.)

23. By letter of Mr. Deveau’s counsel of November 13, 2008, Pinkerton Governmental Services/Securitas Services was informed that “defamatory information” had been “provided to his prospective employers by Pinkerton ... at Hanscom Air Force Base” that had “damaged his opportunity for employment.” He demanded “that such false communications immediately *cease and desist*.” In its January 12, 2009 response, Pinkerton/Securitas emphasized that it “was not responsible for any damage incurred” regarding Mr. Deveau seeking other employment: “Nothing of a defamatory nature was stated ... it appears that ... [Mr. Deveau’s] reference list includes a former U.S. Protect employee (over which we have no control) who has, historically, had conflicts with ... [Mr. Deveau].” (Ex. 7.)

24. Mr. Deveau admits that he resumed smoking when he was observed by Officer Frassica on June 30, 2008, but this was at a time between hiring processes for the Fire Fighter

and Police Officer jobs. He maintains that he never intended to be untruthful when completing his applications. He feels these hiring processes have helped him tackle ending cigarette smoking, but that it can be hard. Mr. Deveau denies ever causing any kind of a scene at the Police Station when he was seeking licenses/permits for carrying/using his firearms. (Testimony of Scott Deveau.)

25. Mr. Deveau had known Officer MacPherson from attending high school together in the late 1990's. He does not understand why she described his conduct the way she did concerning the gun licenses/permits and about the towing of his car. She started working as a civilian with the Waltham Police Department in June 2002, and became a Waltham Police Officer in July 2005. (Stipulation. Testimony of Mr. Scott Deveau.)

26. Mr. Deveau was bypassed for appointment for Police Officer. He received notice of this by letter of November 25, 2011 from Chief Thomas M. LaCroix. The reasons for the bypass were discussed in the letter:

Your current employment application was incomplete and inconsistent when compared with prior applications submitted. These inconsistencies and omissions, combined with an employment history of mixed and sometimes negative reviews from supervisors and references, as outlined in your background report [done by Officer Fogg who referenced the two prior investigation reports] were the reasons you were not selected.

The letter discussed specific incidents such as the "Pepto-Bismol" matter that Mr. Deveau referred to as a joke but which this letter noted "could have been considered criminal behavior ... [and] unprofessional," including submitting "a false written report." Also mentioned were the opinions of Mr. Fader and Mr. Mauro who were both retired Police Officers who worked with Mr. Deveau at Hanscom who did not recommend Mr. Deveau for a Police Officer appointment due to this incident as well as due to "other incidents" that arose while Mr. Deveau worked at Hanscom. Another reason discussed in the letter was Mr. Deveau's omission of the

two Waltham Police Officers he listed as knowing in the earlier application but not in the 2011 application, and that this was wrong because he knew at least Officers Hart and Tracey from the prior investigations, as well as Officers Frassica, Hache and MacPherson. The failure to file a credit report as required was cited in light of Mr. Deveau being aware of the need to do this, including being reminded to do this by Officer Fogg during his investigation. Another reason cited was being untruthful within a prior application concerning a smoking history; that despite listing having quit smoking in November 2007, Mr. Deveau was seen by Officer Frassica smoking in June 2008. The bypass letter summed up the reasons for the bypass:

Unfavorable work reviews, your responses to criticism of your performance by co-workers, supervisors and investigators, including denial, implausible excuses, and untruthfulness are the reasons you were not selected ... Integrity is a must for Police Officers and it is felt that you have not fit that category very well in the past, nor do you fit the integrity category at this time.

(Ex. 2A.)

27. Mr. Deveau's younger brother, Patrick Deveau, had taken the 2009 civil service examination for Police Officer and passed it. He applied to be a Waltham Police Officer in 2011 and was appointed. He was one of the appointments involved in his brother's bypass. Officer Patrick Deveau does not know and has not worked with Officer Fogg. He does not recall his brother Scott was playing loud music from his truck when he drove with Scott to the Police Station for their 2011 hiring process orientation meeting. In the bypass reasons letter to Scott Deveau, his brother's profile to support the bypass read as follows:

Mr. [Patrick] Deveau is a high school graduate and U.S. Marine Corps veteran with an exemplary record. His military, professional and personal references were all excellent with comments about his honesty, loyalty, and dedication. He was described as a hard worker, who takes initiative putting others or his work ahead of himself. Further descriptions from a current supervisor indicate Mr. Deveau is "someone who should be a police officer and will be missed at his current work place." Patrick is considered an excellent candidate as a Waltham Police Officer.

(Ex. 2A.)

28. Mr. Deveau applied to be a Waltham Police Officer in 2013. He was on the certified list and indicated his willingness to accept the appointment. At the time, there were about 147 sworn Police Officers in the Department. The goal was to make 12 original appointments for Police Officer. Deputy Chief William M. Stanton, a Waltham Police Officer with 35 years with the Department who had risen through the ranks, was put in charge of the hiring process. He had been involved in prior hiring processes. He worked with the Police Chief to finalize this hiring process. This process involved filing the application at the Police Station and receiving the drug test at that time. The next step was to reach an interview with a hiring committee. This was different from the prior two hiring processes because the interview was occurring prior to any background investigation check. This change was done to save money to avoid having to do background investigation checks on candidates who would not have passed the interview portion of the hiring process. On the interview committee was Deputy Chief Stanton who chaired the committee, Personnel Director Kristin Murphy, and three Waltham Police Officers. Deputy Chief Stanton had not been involved in recommending Mr. Deveau's 2008 bypass. The Personnel Director, Kristin Murphy, was also not involved in the 2008 or 2011 hiring processes. Each committee member had a vote on whether the candidate should continue to the next step in the hiring process. At the interview, each committee member asked some similar questions of all the candidates but the questions were not fully scripted. Follow-up questions were asked. The candidates were asked about hypothetical situations. Each candidate was asked some open-ended questions. Each interview lasted 45-60 minutes. The committee members discussed and voted on each candidate for continuing onto the background investigation check. A few candidates did not go beyond the interview stage, including Mr. Deveau. After the background

check and investigation report was produced on each candidate, the committee met again and voted on its recommendations for the Personnel Director to present to the Police Chief in terms of final appointments. (Testimony of Stanton & Murphy.)

29. The interview committee had the prior three investigation reports on Mr. Deveau. One other interviewed candidate had a prior investigation report available to the committee. 22 candidates were interviewed over a two week time period on Tuesdays and Thursdays. The interviews were videotaped. (Testimony of Stanton & Murphy.)

30. Mr. Deveau was given the opportunity to explain his view on why he was terminated from the McLean Hospital Securitas Security job in 2012. He told the interview committee that he did not believe the termination was due to a lack of work. Instead, he explained it was due to two incidents that occurred close in time. He told the committee that the first incident involved a suicide attempt by a McLean Hospital client. Upon arriving at the scene, he felt the situation involved a very serious attempt to commit suicide with many significant self-inflicted wounds. At the scene, he felt the incident was being downplayed by his supervisors. He told the McLean Hospital official that he would not sign-off on any report of the call about this suicide attempt that would downplay its seriousness. He acknowledged that he did not call the local police about the incident. Mr. Deveau told the committee that about a week later, he was told of a need for a security guard to stand watch inside a building due to its sprinkler system not operating despite the fire alarm in working order that had a direct link to the Belmont Fire Department. Mr. Deveau agreed to take this assignment but questioned the McLean Hospital official about why this had to be done; that standing guard like this had not been done before. He did not receive any explanation, but fulfilled the assignment anyway. He felt his conduct in questioning the need for this guard duty was well within his rights to ask. When within days he was told he was

no longer wanted by McLean Hospital to be working on the campus and would need to work elsewhere, Mr. Deveau felt he was being punished for doing the right thing concerning the suicide attempt and concerning questioning the post assignment within the building. (Testimony of Deveau.)

31. Thomas Hylander is a Waltham resident and a retired career Waltham Police Officer who rose to the rank of Lieutenant. He worked at Hanscom Air Force Base part-time, about 25 hours per week for about seven years starting in and around 2004 or 2005 following his retirement. Working with him was a retired Waltham Police Officer, Ralph Mauro, who had retired about one or two years prior in about 2002 or 2003. He and Mr. Mauro were in the same Police Academy class. Mr. Hylander also worked with Mr. Deveau and with Mr. Fader at Hanscom who was the Chief of the Security Guards. He, Mr. Mauro and Mr. Deveau all held the same position of security guard, but at some point, Mr. Mauro became a supervising security guard. There were about 35 security guards when Mr. Hylander worked at Hanscom and he knew some of them better than others. He was working there when the “Pepto-Bismol” incident occurred. He was aware that Mr. Deveau and some other guards were accused of putting the pepper spray into the Pepto-Bismol, but understood that no one person was ever “tagged” with having done the deed. Mr. Hylander spoke to Mr. Deveau at the time of the incident. Mr. Deveau denied having done this or being at all involved in the incident. When Pinkerton took over from U.S. Protect, Mr. Hylander was again hired, but he knew Mr. Deveau was not hired even though a “good majority” of the security guards were retained. (Testimony of Hylander.)

32. Mr. Hylander had left work at Hanscom by the time Mr. Deveau asked him to be a reference for his 2011 effort to become a Waltham Police Officer. Mr. Hylander supported him for the position. Mr. Hylander had never worked with Officer Fogg. In Officer Fogg’s

investigation report, he reported Mr. Hylander as a retired Waltham Police Lieutenant who had “worked with ... [Mr. Deveau] and believes he would be a good cop and that he has had no issues with him.” Mr. Hylander in his interactions with Mr. Deveau at Hanscom found him to be professional and courteous. He opined he did his job well. He found his military service record to be impressive, including having received a purple heart medal. In all his interactions with Mr. Deveau he had found him truthful and never dishonest. Mr. Hylander learned that Mr. Mauro felt Mr. Deveau would not be a good candidate for Fire Fighter when he was questioned by Officer Tracey during her background investigation of Mr. Deveau. Mr. Hylander had not had any issues with Mr. Mauro when they had worked together as Waltham Police Officers, and had always found him to be honest. While at Hanscom, Mr. Hylander never saw Mr. Deveau interact with Mr. Mauro. Other than a few security guards, the majority of the guards, in Mr. Hylander’s opinion, respected Mr. Mauro as their supervisor. Mr. Hylander understood that Mr. Mauro at one time had “lost his temper” and “dressed down” a security guard who quit, and that he had been observed “screaming” at a female guard. Mr. Hylander has not stayed in touch much with Mr. Mauro since leaving his Hanscom job. (Ex. 5. Testimony of Hylander.)

33. The interview committee reviewed the prior investigations reports on Mr. Deveau and his current application. They believed the information they reviewed in these investigation reports. They reached a consensus that Mr. Deveau’s reasons why he was dismissed from the McLean Hospital job for taking the right actions in regard to the suicide attempt and in regard to questioning the need for standing guard inside a building with an operating fire alarm, were not credible. For instance, the interview panel was troubled by his failure to contact the Belmont Police over the suicide attempt incident if he felt it was being wrongfully handled, or if standing guard inside the building was improper why he did the task without challenging through his

employer, Securitas, the ability of the McLean Hospital official to give that assignment to him. The interview committee reached a consensus that through the time of their interview and going back in time when he had previously applied to be a Police Officer and Fire Fighter, Mr. Deveau continued to exhibit troublesome behaviors while always denying any issues concerning his conduct. They found he never changed his denials of engaging in any troublesome conduct during incidents as described in the investigation reports. The interview committee reached a consensus that Mr. Deveau's responses to questions asked in his application, and his responses about his conduct at work and during some other incidents, were less than truthful and purposely evasive. To the interview panel, Mr. Deveau's interview responses and explanations about his conduct showed a lack of integrity in how he behaves at times, a trait very important in police work. The interview panel was not swayed by Mr. Deveau's constant full denials about any incidents where there were quite opposite assessments of his conduct in the investigation reports. The interview panel unanimously supported recommending that Mr. Deveau be bypassed for appointment without moving onto the background investigation stage in the hiring process. (Testimony of Stanton & Murphy.)

34. Mr. Deveau was informed that he was being bypassed for appointment by letter of May 16, 2014 sent by Chief Keith D. MacPherson. Twelve candidates received appointments who were below him on the certified list. The letter named each appointed candidate and included a paragraph of information that supported their appointments. The letter then discussed specific reasons for the bypass. The letter listed Mr. Deveau's responses to the interview committee about work incidents and other incidents. The letter cited Mr. Deveau's answer to the interview committee that he was terminated from the McLean Hospital job "for insubordination," because he had complained about an assignment from his supervisor and

because about a week prior he had refused “to falsify a report on an attempted suicide at the hospital.” The letter cited Mr. Deveau’s responses about his conduct during some incidents where he continued “to maintain ... that in all of the incidents ... [he was] not responsible and wrongly accused” of misconduct. The letter cited Mr. Deveau’s response concerning his work at Hanscom, where he questioned “the integrity of our officers as to their investigations and the integrity of ... co-workers at U.S. Protect.” The letter noted:

The allegations made against your most recent employer, Securitas at McLean Hospital combined with your continued position and attitude with regard to past incidents did nothing to enhance your opportunity for employment at the Waltham Police Department ... Your statements and responses only reinforced the idea that findings ... are accurate and that your attitude to those findings is unchanged.

The letter cited how the interview committee reviewed Mr. Deveau’s “investigatory reports” from his prior applications. Mr. Deveau’s current application was found to be, incomplete and inconsistent when compared with prior applications ... These omissions combined with an employment history of mixed and sometimes negative reviews from supervisors and references ... were reasons you were not selected.

The bypass letter went into further detail. The Peto-Bismol incident during the U.S. Protect employment at Hanscom that Mr. Deveau had described as a joke, was taken more seriously:

This “joke” could have been considered criminal behavior in and of itself unprofessional and disqualifying. Subsequent investigation by supervisors resulted in your untruthfulness and submission of a false written report to them. Two of your supervisors from this company, Mr. John Fader and Mr. Ralph Mauro both retired police officers would not recommend you as a police officer because of this and other incidents.

The matter of Mr. Deveau not listing the names of Waltham Police Officers in his current application was found to be a wrongful omission:

You told Officer Fogg that you misunderstood the question yet on a prior application you had listed officers’ names. It is clear from reports submitted that you knew at least Officers Frassica, Hache, MacPherson and K. Tracey.

The matter of having been seen smoking after informing the investigating officer that you had quit was addressed as follows:

Untruthfulness ... You were observed smoking by Officer Frassica on 6/27/2008, months after the date (November 2007) you had indicated you stopped smoking in your submitted application.

The matter of the claim of the motor vehicle being stolen was addressed as follows:

Your threat to have your vehicle reported stolen when told your vehicle had been legally towed for street cleaning: Your version of the facts ... conflict significantly with Officer MacPherson's, again indicating questionable integrity on your part.

The matter of no credit report filed was addressed as a fault by Mr. Deveau:

Your failure to submit a credit report as required by the Department's application even after being reminded by Officer Fogg conducting your background check.

The letter contained a summary section to support the bypass:

Unfavorable work reviews, your responses to criticism of your performance by co-workers, supervisors and investigators, including denial, implausible excuses, and untruthfulness are the reasons you were not selected to participate further in the hiring process in 2011. Your recent work history, past background checks, and responses during your February 2014 interview are the reasons for your current non-selection and bypass.

(Exs. 1 & 2.)

35. The bypass letter listed the positive traits that the 12 candidates who were appointed each possessed and addressed their honesty and integrity. (Ex. 2.)

36. The bypass letter contained appeal rights for a review of the decision by the Civil Service Commission. Mr. Deveau filed a timely proper appeal with the Commission on July 7, 2014. (Exs. 2 & 3.)

Conclusion and Recommendation

Legal Standard

When an Appointing Authority bypasses an otherwise eligible candidate it must provide both a reasonable justification for doing so, as well as proof that such a justification could be applied fairly to all candidates. *Brackett v. Civil Service Commission*, 447 Mass. 233, 241 (2001); *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). In hearing bypass appeals, the Civil Service Commission must determine whether the Appointing Authority has “sustained its burden of proof that there was reasonable justification for the action taken.” *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 304. Reasonable justification requires that the Appointing Authority based its actions on adequate reasons, supported by creditable evidence, guided by common sense, and weighed by an unprejudiced mind. *See Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 189, 190-91 (2010); *Civil Service Commission v. Municipal Court of Boston*, 359 Mass. 214 (1971); *Wakefield v. First District Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928). In sustaining its burden of proof, the Appointing Authority must prove its justification by a preponderance of the evidence. G.L. c. 31, § 2(b). The Court in *Boston Police Department v. Kavaleski*, 463 Mass. 680, 688 (2012), citing *Massachusetts Association of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001), explained: “The commission’s primary concern is to ensure that the appointing authority’s action comports with ‘basic merit principles,’ as defined in G.L. c. 31, § 1.” G.L. c. 31, § 1 defines basic merit principles in pertinent part as follows:

(a) recruiting, selecting ... employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; ... (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.

Appointing Authorities can exercise reasonable discretion when choosing individuals from a certified list of eligible candidates. The Civil Service Commission cannot substitute its views and preferences for those of the Appointing Authority. The Civil Service Commission's role is to "protect against overtones of political control ... and assure neutrally applied public policy." *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 303. So long as the Appointing Authority provides a sound and sufficient reason for the bypass and applies its policies equally, the Civil Service Commission should not intervene. In *Beverly v. Civil Service Commission*, 78 Mass. App. Ct. at 188, the Court addressed the role of the Commission in reviewing a bypass involving appointment of police officers:

Such deference [to the Appointing Authority's bypass decision] is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police officers appropriately are held, ... appointing authorities are given significant latitude in screening candidates, and "[p]rior misconduct has frequently been a ground for not hiring or retaining a police officer." *Cambridge v. Civil Serv. Commn.*, 43 Mass. App. Ct. at 305, and cases cited.

Bypass Decision

I conclude that the findings made support the decision of the Appointing Authority to bypass Mr. Deveau.

The parties do not dispute the general legal standards to employ in determining the propriety of a bypass decision. Rather, Mr. Deveau contends that there is too much speculation involved in the reliance by the Waltham Police Chief and the interview committee on prior background investigation reports along with a failure to sufficiently credit Mr. Deveau's veracity in his explanations about his alleged misconduct. The Waltham Police Chief and the interview committee acknowledge that to support the bypass decision they relied on the conclusions

reached by the three investigating Police Officers, and within their reports on the version of events described by work supervisors, especially Officer MacPherson, and Mr. Fader and Mr. Mauro who had served as Waltham Police Officers before retiring.

Mr. Deveau does not question the independence of the investigating Officers but he does question Officer MacPherson's independence of judgment; that she had been a friend from high school days when she made the claims she did about his conduct to the investigating Officers and did not acknowledge that they were having private friendship conversations that she misconstrued as threatening concerning the towing incident. Mr. Deveau does not understand why Officer MacPherson misconstrued his conduct at the Police Station regarding the firearms licenses/permits because he did not argue with anyone.

Mr. Deveau contends that Mr. Fader simply never liked him and rushed to judgment in always finding wrongful conduct while ignoring his denials of wrongdoing. Mr. Deveau felt Mr. Fader rushed to judgment when he concluded that he had been speeding through Hanscom even though his practice was to leave the site before 10:30 pm and not leave by a gate that would lengthen his trip home. Mr. Deveau felt Mr. Fader rushed to judgment when he refused to believe that he had not added pepper spray to Mr. Burns's Pepto-Bismol. Mr. Deveau maintains that he never did this conduct. He did not fight the suspension because he understood it would remain in his file and not impact his future employment.

Mr. Deveau denies he was insubordinate in his conduct at McLean Hospital by questioning the assignment of standing guard inside the building, conduct that shortly preceded his termination. He viewed the conduct of his colleagues at McLean Hospital as wrongful when they faced the client's suicide attempt. If the situation was as badly dealt with as Mr. Deveau contends, then he should have contacted the Belmont police as he contends his supervisors should have done. To

claim part of why he was terminated was due to a proper and brave refusal to agree to the intentionally untrue reports of his colleagues, has not been sufficiently proven by Mr. Deveau's account.

Mr. Deveau denies he ever engaged in significant argumentative behaviors at work or made disparaging remarks for co-workers to hear, or that he was rough at times in talking with the public. Mr. Fader gave examples of what were Mr. Deveau's unacceptable behaviors with co-workers, not all of which Mr. Deveau addressed at the hearing or with the interview committee. These conducts included becoming argumentative in a dispute with a co-worker that was stopped by a physically large intervening security guard and making a remark about non-white security guards in their presence, both occurring when he worked at Hanscom.

Mr. Mauro agreed with Mr. Fader in terms of Mr. Deveau not being able to work well with his co-workers at times. Mr. Deveau never acknowledged that the way he treats others at times is argumentative, threatening or disrespectful. His hearing testimony to defend against these behaviors was not believable. There are too many examples of this kind of conduct involving too many different people corroborating this conclusion to make such a conclusion far-fetched and not credible. No evidence showed that any of the persons who were the sources of negative information about his behaviors had motives to invent falsehoods about his conduct and behaviors.

When they probed the information listed in Mr. Deveau's job applications, the Waltham Police Officers did not need to do as thorough an investigation as they would investigating for criminal conduct. I found their reviews of Mr. Deveau's conduct to be understandable, thorough and useful for their intended purposes. The Appointing Authority provided sufficient proof to support the decision that Mr. Deveau is unfit to be a Police Officer due to a lack of integrity and

honesty in his dealings with others with no appreciation on his part that he has such shortcomings.

No evidence shows that Mr. Deveau had to defend against totally fabricated accounts of his conduct, or that Deputy Chief Stanton or Personnel Director Murphy in their testimony were not honest about what happened during Mr. Deveau's interview. The negative conducts to support the bypass involved co-workers, the public, friends such as Officer MacPherson, Officer Tracey feeling threatened during their interview by his posturing with her, Mr. Burns, Mr. Fader, Mr. Mauro, and others like his supervisors at McLean Hospital. Even some of his supportive references acknowledge his conduct at times can seem imposing and argumentative. The bypass is supported by taking a full view of all the concerns about Mr. Deveau's behaviors and conduct as set forth in the findings.

Mr. Deveau's work record shows he fulfills his job duties. Mr. Wiland referred to Mr. Deveau as his right hand man. Mr. Hylander had no reservations about Mr. Deveau working as a Police Officer having worked at times as a co-worker security guard with him. Mr. Mauro and even Mr. Fader acknowledged that Mr. Deveau did his assigned duties. He has a very admirable military record. He has no criminal history, no drug or alcohol or gambling issues. He has pursued a college education. There is much for him to be proud of and the investigation reports reflect this positive information. Nevertheless, the record shows that Mr. Deveau engages in troublesome conduct often enough in his dealings with others, and that such conduct shows traits that need not be tolerated in a Police Officer. The Appointing Authority's emphasis on the importance of personal integrity, honesty, and the avoidance of argumentative or threatening conduct as qualifications for being a Waltham Police Officer were criteria used in assessing all the candidates who were appointed but who were ranked below Mr. Deveau on the certified list.

For these reasons, I recommend that the decision of the Waltham Police Chief to bypass Mr. Deveau be affirmed, and his appeal be dismissed.

**DIVISION OF ADMINISTRATIVE
LAW APPEALS**

Sarah H. Luick, Esq.
Administrative Magistrate

Dated: