

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

CHETAN DIR,
Appellant

v.

**MALDEN POLICE
DEPARTMENT,**
Respondent

Case No.: G1-13-115

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).

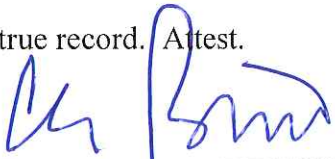
Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No written objections were received.

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 Appointing Authority to bypass the Appellant is affirmed and the Appellant's appeal is *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on December 19, 2013.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Chetan Dir (Appellant)

Thomas E. Brennan, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals
1 Congress Street, 11th Floor
Boston, MA 02114
www.mass.gov/dala

Chetan Dhir,
Appellant

v.

DALA Docket No. CS-13-389
CSC Docket No. G1-13-115

Malden Police Department,
Appointing Authority

Appearance for Appellant:

Chetan Dhir
[REDACTED]
[REDACTED]
[REDACTED]

Appearance for Appointing Authority:

Thomas E. Brennan, Esq.
Assistant City Solicitor
Office of the City Solicitor
City of Malden
200 Pleasant Street
Malden, MA 02148

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION

The Malden Police Department had reasonable justification to bypass the Appellant for the position of police officer, because he had been arrested for assault and battery on his girlfriend, and was untruthful about whether he had injured her. I therefore recommend that the Civil Service Commission dismiss the appeal.

RECEIVED
2013 OCT 25 P 3:22
COMMONWEALTH OF MASS.
CIVIL SERVICE COMMISSION

RECOMMENDED DECISION

The petitioner, Chetan Dhir, appeals the bypass of his application to be a Malden Police Department officer.

I held a hearing on July 26, 2013, which I recorded digitally. Mr. Dhir testified and called no other witness. The Appointing Authority called the following witnesses from the Malden Police Department: Sergeant Michael Goodwin, Officer Michael Polston, and Captain Kevin Sheridan.

I accepted into evidence 20 exhibits.¹ Both parties submitted post-hearing briefs.

Findings of Fact

1. When Mr. Dhir applied to be a Malden police officer in October 2012, he was 26 years old, a banker at Citizens Bank in Boston, a Boston University student, and a Malden resident.

(Ex. 1.)

2. On August 20, 2006, an Arlington woman told an Arlington police officer that she had argued with Mr. Dhir, her boyfriend, that day in Davis Square, Somerville. The Somerville Police Department had responded. She inquired about how to obtain a restraining order against Mr. Dhir. The Arlington officer provided information to her. (Ex. 4.) (This recommended decision refers to the same woman again and calls her Mr. Dhir's girlfriend, as a shorthand expression, whether or not they were in a dating relationship on the relevant date.)

3. On September 14, 2006, an Arlington police officer went to the home of Mr. Dhir's father, who reported that Mr. Dhir was depressed and had not come home. (Ex. 5.)

¹ Mr. Dhir's comments during the hearing led me to suspect that the Appointing Authority gave him their exhibits on the morning of the hearing. I recommend either that the Appointing Authority give exhibits to petitioners well before hearings or that it make it clearer at hearings that it has done so. It is not simply an issue of whether a petitioner is familiar with documents that become exhibits, or familiar with the facts or allegations in the documents; he or she should have the exhibits well before the hearing.

4. According to the police report, Mr. Dhir was depressed over the death of his brother from cancer; had been diagnosed that day with depression; and told his girlfriend that he wanted to crash his car and kill himself, and take all of his medication and kill himself. (Ex. 5.)

5. Mr. Dhir returned home later that day. (Ex. 5.)

6. On October 8, 2006 at approximately 12:40 a.m., Arlington police investigated an argument occurring outdoors at the intersection of Everett Street and Purcell Road. When police arrived, they located Mr. Dhir on Everett Street and his father on Purcell Road. They had argued about various issues. Mr. Dhir's father had followed Mr. Dhir, with whom he lived, asking him to come home. Mr. Dhir was walking to a friend's house to let the situation calm down. The argument did not involve violence or threats of it. (Ex. 6.)

7. On January 23, 2007, an Arlington police officer was dispatched to the emergency room of Mount Auburn Hospital in Cambridge. There, Mr. Dhir's girlfriend said that Mr. Dhir had forced his way into her apartment, choked her, and punched her in the nose. (Ex. 7.)

8. Mr. Dhir's girlfriend's nose was fractured. (Ex. 7.)

9. The Arlington police later arrested Mr. Dhir. After being booked and receiving his *Miranda* rights, Mr. Dhir stated that he had hit his girlfriend in the face by accident. (Ex. 7.)

10. The assault and battery charge against Mr. Dhir was dismissed. (Ex. 7, p. 1.)

11. On January 24, 2007, Mr. Dhir's girlfriend obtained a one-year restraining order against him. (Ex. 8, last p.; Ex. 17.)

12. On May 10, 2007, at the request of Mr. Dhir's girlfriend, the Cambridge District Court lifted the part of the restraining order barring Mr. Dhir from contacting her, leaving in place the order that he not abuse her and that he stay away from her residence. (Ex. 17.)

13. On February 6, 2008, Mr. Dhir obtained a restraining order against his girlfriend. (Ex. 18.)

14. On July 1, 2009, Mr. Dhir's girlfriend obtained a restraining order, ordering him to stay away from her workplace in the Natick Collections mall. It expired on July 9, 2009, because Mr. Dhir's girlfriend was unable to prove that she feared he would cause her imminent physical harm. (Ex. 19.)

15. On May 9, 2008, Mr. Dhir contacted the Natick Police Department to report that he had received a possibly suicidal text message from his girlfriend, with whom he had just broken up. A Natick police officer located the girlfriend inside her vehicle, which was in her driveway. She appeared to be in fine spirits and denied wanting to hurt herself. She offered to let the officer inspect her cell phone, he viewed about 10 text messages between her and Mr. Dhir, and determined that none of them were threatening or possibly suicidal. (Ex. 11.)

16. On March 18, 2010, Mr. Dhir received a speeding ticket in Milton. (Ex. 15.)

17. On May 6, 2011, Mr. Dhir was cited for failing to yield to a pedestrian in Cambridge. (Ex. 15.)

18. On March 7, 2013, Mr. Dhir had a surchargeable traffic accident. (Ex. 15.)

19. On April 30, 2011, Mr. Dhir took and passed the civil service examination to be a police officer. (Ex. 20.) His score was 97. (Stipulation.)

20. On October 3, 2012, Mr. Dhir applied to be an officer with the Malden Police Department. (Ex. 1.)

21. Later in October 2012, Mr. Dhir and other candidates attended a group meeting and briefing on the application process where, among other things, he was told to be honest during the process. (Sheridan testimony.)

22. On November 1 and 2, 2012, members of the Malden Police Department interviewed Mr. Dhir. (Sheridan testimony.)

23. The interviews were contentious, with the interviewers shouting questions, sometimes two overlapping questions, at Mr. Dhir and interrupting him. (Goodwin, Dhir testimony.) The interviewers intended the interview to be contentious, to see how Mr. Dhir reacted under stress. (Goodwin testimony.)

24. At one of the interviews, Sergeant Goodwin asked if anyone had been injured during the domestic violence incident with his girlfriend. Mr. Dhir said no. A minute or so later, Sergeant Goodwin showed Mr. Dhir the police report of the incident. (Ex. 7.) Mr. Dhir then said that his girlfriend had fallen on furniture. (Goodwin testimony.)

25. Sergeant Goodwin and other interviewers decided that Mr. Dhir was not a good candidate, because he had lied, his lie was documented, and he would not make a credible witness in court as a police officer. (Goodwin testimony.)

26. The primary factors for bypassing Mr. Dhir were his arrest for assault and battery, and his lie about it. (Sheridan testimony, Ex. 12.)

27. Officer Polston and Captain Sheridan were unaware of any successful candidate to be a police officer who had been arrested for domestic violence. (Polston, Sheridan testimony.)

28. On March 19, 2013, Police Commissioner Salvatore Gennetti sent Mr. Dhir three letters (Ex. 12), which this recommended decision refers to as the first, second, and third letters.

29. The first letter was a bypass letter. It stated that the required background investigation had located "numerous police reports" with his name.

Among these was an arrest on January 23, 2007 by the Arlington Police Department. You were charged with Assault and Battery on your girlfriend. During an interview with Malden Police investigators, you were asked if anyone had been injured in this incident. You replied "No". During the initial meeting,

you were warned several times that untruthfulness would result in termination of your selection process....[T]he incident report...indicated that the victim...had sustained a broken nose. This violent domestic incident, combined with the untruthfulness[,] resulted in a finding that you are an unsuitable candidate to be a Police Officer....

(Ex. 12.)

30. The second letter named and described the qualifications of the two candidates for whom the Arlington Police Department had bypassed Mr. Dhir. Commissioner Gennetti noted explicitly that both candidates did not have criminal histories. (Ex. 12.)

31. The third letter read in part: "Enclosed please find a copy of a letter from the Appointing Authority for the Malden Police Department stating the selection reasons...." (Ex. 12.). This may have been a cover letter to the first letter.

32. The third letter continued: "In addition, correspondence stating the reasons *associated* with your non-selection has been included." (Ex. 12 (emphasis added).) Although it is unclear, the reference to "correspondence" may have been to the second letter.

33. Mr. Dhir timely appealed on May 6, 2013. (Ex. 13.)

Discussion

The Malden Police Department's bypass letter informed Mr. Dhir that the department had bypassed him because of the "violent domestic incident, combined with the untruthfulness." (Ex. 12.) The letter mentioned in passing that "numerous police reports that included your name were located." (Ex. 12.) The bypass letter *mentions* other police reports but does not ascribe the bypass to them.

The passing reference in the bypass letter to other police reports does not allow the Appointing Authority to rely on them in the hearing to justify the bypass. Yet, the Appointing Authority introduced other police reports as exhibits (Exs. 4, 5, 6, 8, 9, 10, and 11) and offered

testimony about their contribution to the bypass. (Goodwin, Polston, and Sheridan testimony.) In addition, the Appointing Authority introduced evidence of Mr. Dhir's driving history (Ex. 15) *and* testimony that his driving history was worrisome, but *not* a factor in the bypass. (Goodwin testimony.)

The Respondent's Pre-Hearing Conference Memorandum relied on Mr. Dhir's arrest and his answer, during the application process, to a question about his arrest. The memorandum did not rely on other police reports. This, combined with the possibility that the Appointing Authority did not give Mr. Dhir the exhibits until the morning of the hearing (see note 1 above), means that as Mr. Dhir was appealing his bypass, the Appointing Authority's reasons for the bypass expanded.

The Appointing Authority's approach to Mr. Dhir's appeal raises a few issues. One entails the fairness and possible due process implications of the Appointing Authority's expanding the reasons for the bypass after sending the bypass letter.

Another issue is that for the Appointing Authority to introduce exhibits (Exs. 4, 5, 6, 8, 9, 10, and 11) that were not the subject of the bypass letter, and offer testimony on them (Goodwin, Polston, and Sheridan testimony), is a questionable use of DALA's resources during and after the hearing. So is introducing an exhibit, Mr. Dhir's driving record (Ex. 15), whose substance was not a factor in the bypass.

If factors were important enough to bypass Mr. Dhir, the Appointing Authority should have taken a few minutes to include them in the bypass letter. If factors were not important enough for the bypass letter, the Appointing Authority should not have offered evidence on them at the hearing.

What remains for my consideration are the two factors that the Appointing Authority did put in the bypass letter: his arrest for domestic violence on January 23, 2007; and his untruth that no one had been injured on that date, even though he had broken his girlfriend's nose.

The Appointing Authority was reasonably justified in bypassing Mr. Dhir for these factors. *See Town Of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004) ("The issue for the commission is not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority....")(citations and internal quotation marks omitted).

"Reasonable justification in this context 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." *Police Department of Boston v. Kavaleski*, 463 Mass. 680, 688 (2012)(citations and internal quotation marks omitted).

In determining whether the department has shown a reasonable justification for a bypass, the commission's primary concern is to ensure that the department's action comports with "[b]asic merit principles," as defined in G.L. c. 31, § 1.

Id. (citation omitted).

The Malden Police Department has apparently not in memory hired a candidate for police officer who had been arrested for domestic violence. The fact that criminal charges against Mr. Dhir's case were dismissed and the reason or reasons for the dismissal are not highly significant. In *Campbell v. Boston Fire Dept.*, CSC No. G1-08-46, DALA No. CS-08-419, 22 MCSR 489, one reason that an applicant to the Boston Fire Department was bypassed is because of his criminal history, including dismissals.

Furthermore, the Department has an interest in hiring police officers (1) whom it trusts to tell the truth internally; and (2) whose credibility cannot easily be challenged in court. Both are important fora –the station house and the courthouse – for a police officer to be truthful.

The Appointing Authority's two reasons for bypassing Mr. Dhir were done upon adequate reasons, were supported by credible evidence, were guided by common sense, and otherwise met the criteria in *Kavaleski*. The primary concern is that the Appointing Authority's "action comports with "[b]asic merit principles...." *Id.* (citations and internal quotation marks omitted). It did. Mr. Dhir

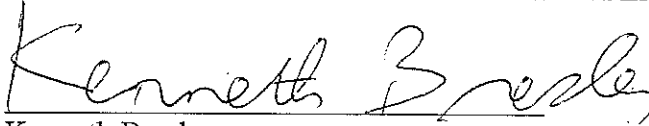
has not demonstrated that the reason[s] offered by [the Department were] untrue, appl[y] equally to the selected and bypassed candidate[s], [are] incapable of substantiation, or [are] a pretext for other impermissible reasons.

Buckley v. Boston Police Department, CSC No. G1-12-110, DALA No. CS-12-624 (2013).

Conclusion and Order

The Appointing Authority had two reasonable justifications to bypass the appellant. I recommend that his appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth Bresler
Administrative Magistrate

Dated: **OCT 25 2013**