

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108

JANE A. DOE¹,
Appellant
v.

G1-[REDACTED]

DEPARTMENT OF CORRECTION,
Respondent

Appearance for the Appellant:

Scott Lathrop, Esq.
Law Offices of Scott Lathrop
176 Fitchburg Road
Townsend, MA 01469

Appearance for Respondent:

Joseph Santoro, Labor Relations
Department of Correction
50 Maple Street, 1st Floor
Milford, MA 01757

Commissioner:

Paul M. Stein, Esq.

Summary of Decision

DOC was reasonably justified to conclude, based on credible opinions of two experienced mental health providers who conducted two (2) empirical tests and two (2) independent clinical interviews in compliance with the DOC’s Model Psychological Screening Plan, that the Appellant presented with serious psychological disorders or characteristics that would render her unable to perform with reasonable accommodations the essential functions of a correction officer.

DECISION

The Appellant, acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (“Commission”) contesting the decision of the Department of Correction (“DOC” or “Respondent”) to bypass her for original appointment to the position of Correction Officer I. ² A

¹ The Commission uses a pseudonym to protect the privacy of the Appellant.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

remote pre-hearing conference was held (Webex) and a full evidentiary hearing was also held remotely, which was audio video recorded.³ Both parties filed a Proposed Decision.

FINDINGS OF FACT

DOC submitted twenty-one (21) exhibits at the hearing labelled Resp. Exhs. 1-21. DOC also submitted one (1) post-hearing exhibit, labelled Resp. PH Exh. 25. The Appellant submitted three (3) exhibits at the hearing, labelled App. Exhs. 22-24. Based upon the evidence and the testimony of the following witnesses:

For DOC:

- Eugene Jalette, Supervising Identification Agent
- Michael Sacino, Correction Program Officer
- Dr. John Madonna, Ph.D.
- Dr. Kamlyn Haynes, M.D.

For Appellant:

- Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. The Appellant is a 2016 high school graduate. She works in the public health field as an entry-level direct service worker, a position she had held for four and a half years as of the date of the Commission hearing. (Resp. Exh.5; *Testimony of Appellant*)

2. As part of her duties as a direct service worker, the Appellant works directly with developmentally disabled adults who have been committed to a residential facility. On a typical day, the Appellant's duties range from cleaning, cooking, providing rides, assisting with money

³ A link to the digital recording of the full hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

management, assisting with hygiene, undertaking a suicide watch of a resident, or implementing restraints on a resident of the facility. Some of these persons in the facility are awaiting trial in court, have been convicted of crimes, and/or are on probation. (*Testimony of Appellant*)

3. In July 2020, the Appellant took and passed the civil service examination for Correction Officer I (COI). Her name was placed on the eligible list of candidates for Correction Officer I established by the Commonwealth's Human Resources Division (HRD) on September 1, 2020. (*Resp.Exh.18; Stipulated Fact*)

4. DOC Commissioner Carol Mici is the DOC's Appointing Authority. (*Testimony of Jalette*)

5. On or about September 24, 2020, HRD issued Certification #07349 ("certification") for appointment of candidates as Correction Officer I. The Appellant ranked #54 on the certification among those willing to accept employment. (*Resp.Exh.18; Stipulated Fact*)

6. Fifty-four (54) candidates were appointed as Correction Officer Is from certification 07349, including two candidates ranked below the Appellant. (*Resp.Exh.18; Stipulated Fact*)

7. By letter dated March 3, 2021, the Appellant was informed that she had been bypassed for appointment. As reasons therefore, DOC listed a psychological testing on December 15, 2020, a failed psychiatric testing on January 15, 2021, and a failed background investigation due to a significant number of incidents involving negative contact with the police. (*Resp.Exh. 2*)

8. The Appellant timely appealed to the Commission. (*Resp.Exh.1*)

The Appellant's Background Investigation

9. On or about September 25, 2020, the Appellant signed the COI certification, indicating her willingness to accept employment and signed a Background Information Request and Waiver, allowing the DOC to conduct a background investigation. (*Resp. Exhs. 7 & 18; Testimony of Jalette*)

10. All candidates on certification 07349 were required to undergo a background investigation by a trained DOC background investigator. The background investigator's job is to find facts and provide both positive and negative information discovered about each candidate. The investigator does not give his/her personal opinion about a candidate nor does the investigator determine whether or not a candidate will be hired. *(Testimony of Jalette)*

11. Correction Program Officer Michael Sacino was assigned to undertake the Appellant's background investigation by his supervisor, Supervising Investigative Agent Eugene Jalette. Investigator Sacino has been employed with the DOC for thirteen (13) years and is currently assigned to the Central Inmate Disciplinary Unit where he is a Hearing Officer. *(Testimony of Sacino)*

12. Investigator Sacino has been conducting background investigations intermittently for DOC for the past eight (8) years and has been trained to do so and undergoes continued training, as well. He has completed roughly two hundred (200) background investigations of candidates for appointment to DOC. *(Testimony of Sacino; Testimony of Jalette)*

13. Eugene Jalette is the Supervising Identification Agent ("Agent Jalette") with DOC and coordinates all the administrative functions relative to the hiring process at DOC, including background investigations. He has been employed by DOC for nine (9) years. Previous to that, Agent Jalette was a twenty-three (23) year veteran with the Woonsocket Police, RI Department, ultimately retiring as a Lieutenant Detective. *(Testimony of Jalette)*

14. As part of the Appellant's background investigation, Investigator Sacino checked the following: the Appellant's Criminal Offender Record Information ("CORI"); Board of Probation Record; Driver History; Fingerprints; Warrants; Professional Licenses/Firearms License;

Education; Past and Current Employment; Professional and Employer References; Home Visit/Applicant Interview; and Family Interview. (*Testimony of Sacino; Resp.Exh.5*)

15. On or about October 16, 2020, the Appellant received a CORI Information Letter from DOC which informed her that DOC reviewed her CORI and provided her with a copy of the document and advised her to carefully review the document prior to her discussion with her investigator about the contents of the CORI. She was advised that if she had any questions, she was to contact Eugene Jalette. The Appellant did not contact Supervisor Jalette to dispute the contents of her CORI. (*Testimony of Jalette; Resp Exh. 6*)

16. The Appellant's CORI printout is not in evidence. Investigator Sacino's Pre-Employment Background Investigation Report ("investigator's report") contains his summary of her CORI. (*Resp.Exh.5*)

17. According to the investigator's report, the Appellant's CORI had no adult appearances; only an entry from 2012 when the Appellant was fourteen (14) years old. (*Resp. Ex. 5, 9*)

18. On November 18, 2020, Investigator Sacino met with the Appellant at a Dunkin Donuts. There was no home visit due to COVID 19 restrictions. During the interview, the Appellant was given an opportunity to discuss any past incidents involving contacts with local police departments that were discovered by DOC in its background investigation, including a January 9, 2018 negligent driving incident. The investigator's summary report indicates that they discussed certain of these incidents. (*Resp.Exh. 5;Testimony of Sacino*)

19. DOC put into evidence numerous police logs. Investigator Sacino testified that he listed ten (10) instances of contact that the Appellant had with the local police in his report that he found significant, but DOC focused on four (4) police reports in which the Appellant was named:

- a. The Appellant was a passenger in the back seat of a vehicle in 2017 that was doing “donuts” in a circle on the field. The driver was charged with vandalism. The Appellant was not charged. She was eighteen (18) years old at the time. (*Resp. Exh. 10*)
- b. The Appellant was present during an argument in 2017 between a mother and son and the Appellant’s boyfriend relative to whether or not the boyfriend lived in the apartment at issue. The mother said he did not live there, but the son disagreed. The police were called. the Appellant was present during this commotion. She was eighteen (18) years old at the time. (*Resp. Ex. 11*)
- c. The Appellant was charged with Negligent Operation of a Motor Vehicle, Minor in Possession of Alcohol, Open Container of Alcohol, and Marked Lanes Violation in 2018.⁴ The police had stopped a different vehicle and the Appellant was alleged to have driven past the police repeatedly, erratically and an excessive rate of speed The officers stopped her vehicle and found an open container of alcohol. She was 19 years old. (*Resp. Ex. 12*)
- d. The Appellant was present on the side of the road during an altercation between the Appellant’s boyfriend and two other men (the Appellant’s brother and the father of her child) in 2019. The two (2) men were charged with Threats to Commit a Crime. The Appellant was not charged with a crime nor was her boyfriend. She was twenty (20) years old at the time. (*Resp. Ex. 13*)

(*Resp. Exhs. 5, 10 through 13 & 19; Testimony of Sacino*)

20. Investigator Sacino testified that he was concerned with one other instance in particular due to its very recent nature. On October 29, 2020, the Appellant was given information about how to obtain a restraining order to protect herself from a current boyfriend and just two days prior to that, on October 27, 2020, extra patrols were requested. Investigator Sacino testified that he realized that the Appellant was not the perpetrator in this instance but felt the need to alert DOC of the events that were unfolding at the time of her candidacy. He was concerned that DOC, which would ultimately issue her a firearm should she be hired, would need to know of the circumstances of her most recent contacts with the police to make an informed decision. (*Testimony of Sacino*)

21. On November 25, 2020, Investigator Sacino completed his investigation and submitted his report for review to his superiors. Supervising Identification Agent Jalette and Investigator Sacino

⁴ There is nothing in evidence to indicate, after her arrest, if she ever appeared in or was arraigned in any District Court relative to these charges; nor any indication, if she was arraigned, what the disposition of the charges were.

reviewed the report together to ensure the report and the investigation were thorough and complete. *(Resp. Exh. 5; Testimony of Jalette)*

22. In his report, Investigator Sacino noted that the Appellant's "positive employment aspects" were her experience working with adults with behavioral issues and positive employment and professional references. He indicated that the "negative employment aspects" relative to the Appellant's background are the significant number of contacts with the police. *(Resp. Exh. 5)*

23. On November 30, 2020, five days after the background investigation was completed, the Appellant received a Conditional Offer of Employment from DOC, contingent upon review of the full background investigation and pre-screening test results, which consist of a drug screening, a psychological screening, and a completed Industrial Health Questionnaire. *(Resp. Exh. 4; Testimony of Jalette)*

24. On or about December 1, 2020, the Appellant passed the required drug testing. *(Testimony of Jalette; Resp. Exh. 21)*

25. On December 9, 2020, DOC Commissioner Mici met with members of her command staff and Supervisory Identification Agent Eugene Jalette to discuss the background of some candidates on the certification. On this date, the Appellant's candidacy and background investigation were discussed. After review of Investigator Sacino's report and relevant police reports, the Commissioner's initial impression and review of the Appellant's background investigations was negative due to the Appellant's documented contacts with various local police departments. *(Testimony of Jalette; Resp. Exh. 21)*

26. Due to COVID 19 restrictions and the number of recruits allowed to attend training due to space requirements, DOC's human resources department split candidates into two (2) classes at the Academy; Class # 326 began on January 31, 2021 and Class # 327 and began on April 11, 2021. The

Appellant, whose background was assessed and viewed negatively by the Commissioner, was deferred for decision to be considered for second recruit training class and a further review of her background investigation. No notice of this decision was given to the Appellant. (*Testimony of Jalette*)

Psychological Screening

27. Some years ago, HRD developed a “Model Plan for Psychological Screening of Entry-Level Public Safety Positions” (“HRD Model Plan”), which was distributed to DOC for reference when creating their own official psychological screening plan. (*Resp. PH Exh. 25*)

28. DOC, in turn, developed its own “Model Plan for Psychological Screening of Entry Level COs” (“DOC Model Plan”), consistent with the HRD’s Model Plan. (*Resp. PH Exh. 25*)

29. The DOC Model Plan requires that psychological screening will be the last step in the hiring process and that, prior to the screening, the candidate must receive a conditional offer of employment from DOC. DOC must provide the candidate with a written description of the screening process along with notification and a brief explanation if the DOC finds the candidate unqualified. (*Resp. Exh. 2, 4; Resp. PH Exh. 25*)

30. For over eleven (11) years, DOC has contracted with Dr. John Madonna through his professional organization, Chandler Psychological Services, to conduct the psychological prescreening of all applicants to DOC for Correction Officer positions.⁵ (*Resp. Exh. 3; Testimony of Dr. Madonna*).

31. Under the DOC Model Plan a candidate who presents with “serious psychological disorders or characteristics that would render a candidate unable to perform with reasonable accommodation the essential functions of the public safety position for which the candidate is

⁵ Dr. Madonna has also assisted the DOC in developing its Model Plan for psychological prescreening of entry-level Correction Officer applicants. (*Resp. Ex. 3; Testimony of Dr. Madonna*)

being considered” will be found psychologically unsuitable for appointment. According to Dr. Madonna, non-accommodatable disqualifying serious psychological disorders and/or characteristics could include immaturity, dishonesty, emotional instability, lack of self-esteem, and low stress tolerance. (*Resp. PH Exh. 25; Testimony of Dr. Madonna*).

32. Stage I of the DOC Model Plan requires either Dr. Madonna, a clinical psychologist licensed by the Commonwealth and Rhode Island, or his associates to administer two tests: (1) the Minnesota Multiphasic Personality Inventory-2 (“MMPI-2”) and (2) the 16 Personality Factor Inventory. (*Resp. PH Exh. 25*)

33. The MMPI-2 is a forced-choice personality inventory. The candidate responds either “true” or “false” to 567 statements that are reflective of day-to-day concepts and issues that everyone confronts at one time or another. There are also statements that may seem unusual to the candidate because the test is used with a wide variety of people. It is designed to assess major personality characteristics that reflect the social and personal adjustment of individuals and that are commonly indicative of disabling psychological problems. (*Resp. PH Exh. 25*)

34. The MMPI-2 is a part of the evaluation because it is an objective diagnostic instrument with extensive literature documenting its use. The data generated results in a profile of the candidate that gives indications of his/her unique personality traits. Some examples of these traits include depression, psychopathic deviance, social introversion, and paranoia. This information is integrated with the other data gathered during the assessment process and used to arrive at a decision regarding the candidate’s suitability for law enforcement work. Checks are made of the applicant’s responses to ensure valid results. (*Resp. PH Exh. 25; Testimony of Dr. Madonna*).

35. The Sixteen Personality Factor Questionnaire (“16PF”) has been in use since 1949. The 16PF is an objectively scorable test devised by basic research in psychology to provide the most

complete coverage of personality possible in a brief time. Comprehensive coverage of personality rests upon measurement of sixteen (16) functionally independent and psychologically meaningful dimensions isolated and replicated in more than 40 years of factor analytic research on normal and clinical groups. The personality factors measured by the 16PF are not unique to the test, but rest within the context of a general theory of personality. (*Resp. PH Exh. 25*)

36. Stage II of the DOC Model Plan requires Dr. Madonna and the associates under his direction, who must be clinical psychologists licensed in the Commonwealth, to examine the MMPI-2 and 16 PF results, review the background information provided by the DOC (concerning criminal convictions, relevant medical information, if any, and information from interviews with employers, teachers, and associates), and conduct a Stage II clinical interview of the candidate, taking into consideration such factors as the candidate's personal history, age, education, occupation, ethnicity, and first language. (*Resp. PH Exh. 25*)

37. If, after evaluating the results of the psychological test and clinical interview, the Stage II psychologist decides that there is no clear evidence that the candidate has any psychological disorder or characteristic that will prevent the candidate from fulfilling the essential functions of the position with reasonable accommodation, the clinician will so report and the candidate will continue in the hiring process. (*Resp. PH Exh. 25*)

38. If the Stage II clinician finds that the candidate has a psychological disorder or characteristic that would prevent them from fulfilling the essential functions of the position, Dr. Madonna notifies DOC which, in turn, notifies the candidate how to proceed to a Stage III evaluation if s/he wishes to continue to be considered for appointment. (*Resp. PH Exh. 25*)

39. Stage III of the DOC Model Plan requires one of three designated board-certified psychiatrists licensed by the Commonwealth of Massachusetts⁶ to review the candidate's file, conduct a clinical interview, and evaluate the candidate. (*Resp. PH Ex. 25*)

40. If the psychiatrist concurs with Dr. Madonna and/or the associate under his direction, DOC must be notified by means of a written report agreed to and signed by both Dr. Madonna and the psychiatrist. The report will describe why the candidate is unqualified for appointment as a public safety employee and will be sent to DOC, who in turn, is responsible for sending written notification to all candidates. DOC will also send HRD a statement that the candidate has been found unqualified for appointment based on the results of the psychological screening and that no reasonable accommodation is possible.⁷ (*Resp. PH Ex. 25*)

The Appellant's Psychological Screening – Stage I - Testing

41. In December 2020, the Appellant took the MMPI-2 and the 16PF psychological tests, per the DOC Model Plan. Her MMPI-2 responses produced twelve (12) content themes and individual MMPI-2 subtest ratings that, according to Dr. Madonna, displayed a “concerning profile,” especially in the areas of *social facility* (knowing what is appropriate/when to intervene in a difficult situation) and *stress tolerance*, which was low. She showed content themes suggesting difficulty relating to others, difficulty with overall adjustment, and being able to respond in a deliberative way, rather than in an impulsive manner. (*Resp. Exh. 3; Testimony of Dr. Madonna*)

42. The Appellant's profile on the 16PF profile was “relatively good”. The 16PF is a less difficult test to read, is more transparent, and people tend to do better on this test. The test helps

⁶ By HRD policy, only a board-eligible or board-certified psychiatrist licensed in the Commonwealth will conduct this clinical interview. (*Resp. PH Ex. 25*)

⁷ The DOC may not appoint any candidate who withdraws from the screening before completing it or who is found unqualified for appointment after Stage II and Stage III evaluations under the DOC Model Plan. (*Resp. PH Ex. 25*)

psychologists because it is expected that candidates will do better on it, so if issues arise, that becomes significant, especially if it correlates with MMPI-2 results. (*Testimony of Dr. Madonna*)

43. Dr. Madonna noted one such noteworthy finding on the Appellant's 16PF regarding impulsivity. Specifically, the 16PF found that the Appellant may not be "a particularly organized or orderly person. She does not always bother with details", "she may be too susceptible to the influence of recent events" and "may have a tendency to make decisions before all of the facts are in" and "fall back on when necessary can leave her vulnerable to emotional distress." (*Resp Exh.3*)

Stage II – Clinical Interview with Psychologist

44. After reviewing the MMPI-2 and 16PF results, Dr. Madonna conducted a Stage II clinical evaluation of the Appellant. Dr. Madonna noted that the Appellant's demeanor in the interview was cautious and she was not impulsive with her answers. The Appellant self-reported that she had suffered a panic attack in 2019 and was taking an anti-anxiety prescription medication. She disclosed her long-term, recently ended, abusive relationship. She also acknowledged that she was also taking two (2) psychotropic medications for binge eating. (*Testimony of Dr. Madonna*)

45. Dr. Madonna found the information the Appellant self-reported significant because it substantiated the psychological test findings of low stress tolerance. A panic attack is unregulated anxiety that disables a person. Binge eating is eating when one does not need to eat – eating when one is not hungry – and carries a psychiatric diagnosis and is a subclass of Anxiety. These concerns, taken with the test results, reveal real life difficulties with stress tolerance for the Appellant and the recency of certain of these events made it apparent to him that the anxiety she suffered was still present in her life in when he examined her. (*Testimony of Dr. Madonna*)

46. Dr. Madonna noted that the Appellant had not been out of the abusive relationship for more than two (2) months at the time of her December 2020 clinical interview and she clearly had not

had a sufficient amount of time to heal, to gain strength, to develop an understanding of herself, and to be in better control. Furthermore, a lack of maturity and fear were both psychologically concerning characteristics that Dr. Madonna found present in his evaluation of the Appellant.

(Testimony of Dr. Madonna)

47. Dr. Madonna concluded that the Appellant suffered a psychological condition, specifically the disorder of Anxiety, at the time of her candidacy in December 2020. The Appellant's anxiety manifested itself in the form of the 2019 disabling panic attack, for which she was hospitalized. The binge eating was also a result of the anxiety she suffered. *(Testimony of Dr. Madonna)*

48. Dr. Madonna based his opinion on the psychiatric testing *and* elements of her life, to include a lack of judgment and an inability to extricate herself from a dominant and controlling man. Characteristics of fear and stubbornness and the inability to control the situation to her own benefit were concerning to the doctor seeing as how she would find herself in situations as a CO that would demand an ability to handle stressful situations. He would have been more encouraged if the Appellant was in treatment for the binge eating, which is anxiety driven – anxiety that still lingered as of December 2020 *(Testimony of Dr. Madonna)*

49. Dr. Madonna opined, to a reasonable degree of medical certainty, that the Appellant would not “be able to effectively perform the essential duties of a corrections officer in a manner that would ensure her safety, that of her co-workers, or the inmates themselves. Testing indicates that her psychological adjustment is likely to be poor. Individuals with this pattern of scores tend to encounter problems as a result of their poor judgment, impulsivity, and aggressiveness, especially in a position that requires consistent and substantial performance, conscientiousness, or attention to detail.” *(Resp. Ex. 3; Testimony of Dr. Madonna)*

50. Dr. Madonna did not base his opinion solely on the psychological tests results. He indicated that he juxtaposes the results of the testing with behavior. The behavior, reflected in real life experiences, is “finding herself . . . fairly recently out of a long-term abusive relationship, having suffered significantly, having anxiety, on medication, emotionally binge eating, and having a panic attack. . . .” (*Resp. Exh.3; Testimony of Dr. Madonna*)

Stage III – Clinical Interview with Psychiatrist

51. Dr. Kamlyn Haynes is a board-certified psychiatrist employed by UMass Medical School, the Department of Mental Health, and maintains her own private practice. She received her medical degree from Boston University in 2001. She is licensed to practice in Massachusetts and her subspecialty is in Child and Adolescent Psychiatry. She has clinical experience in psychiatry since 2001 and child psychiatry since 2003. (*Testimony of Dr. Haynes*)

52. Dr. Haynes has done general psychiatric evaluations for the Department of Mental Health, the Department of Youth Services, at UMass Medical, in the emergency room, in her own private practice, etc. for the past 22 years. She has performed second opinion psychiatric screenings, subcontracted by Dr. Madonna and Chandler Psychological Service, since 2014. In that time, she has performed ten (10) second opinion evaluations for original appointment to public safety positions and approximately thirty (30) fitness for duty evaluations. Roughly fifty (50) percent of the time, she has disagreed with Dr. Madonna’s first opinion regarding a candidate’s psychological health as it relates to original appointment. (*Testimony of Dr. Haynes*)

53. Prior to the Stage III psychiatric interview, Dr. Haynes reviewed the one-page letter that Dr. Madonna wrote wherein he did not find her eligible to work for the DOC and the summaries of the psychological testing. Dr. Haynes used the psychological testing briefly to see what stood out to focus or follow up on those issues. (*Testimony of Dr. Haynes*)

54. Upon meeting the Appellant, Dr. Haynes told her of her role in the process and warned her of the limits of confidentiality, explaining that if the Appellant did not want people to know certain information, then she should explain to the doctor that she would not want to discuss any issue – but Dr. Haynes warned her not to lie in order to avoid discussing a topic. (*Testimony of Dr. Haynes*)

55. Dr. Haynes asked the Appellant about any previous treatment or counselling to establish her current psychiatric health, since her past history is very important in making that determination. The Appellant reported that she had been bullied as a child when she was pregnant at thirteen (13) years old and had counselling for that and that she recently had one panic attack as a result of a situation with her ex-boyfriend. (*Testimony of Dr. Haynes*)

56. The Appellant denied taking any medication, past or present, told Dr. Haynes that she had not had therapy, and does not think she needs to be in counselling. The Appellant denied ever being suicidal. She also denied being psychiatrically hospitalized. (*Resp. Exh. 3; Testimony of Dr. Haynes*)

57. The Appellant told Dr. Haynes about her abusive boyfriend,, oftentimes the abuse would occur in the presence of the Appellant’s young daughter. DCF was involved and the daughter lived with the Appellant’s parents for several years because the Appellant did not leave her abusive boyfriend. The boyfriend has assaulted the Appellant’s mother, father, and uncle when he tried to break it up. The boyfriend has been in many bar fights but has not been incarcerated. (*Resp. Exh. 3; Testimony of Dr. Haynes*)

58. In March 2019, the abusive boyfriend showed up at a party at the Appellant’s cousin’s house and he threatened to kill everyone. The Appellant reported to Dr. Haynes that she went out the back door and was very scared and physically not feeling well. She was taken by ambulance to the emergency room and was diagnosed with a panic attack. Despite this and losing custody of

her daughter, she did not leave the boyfriend for another eighteen (18) months. (*Resp.Exh.3; Testimony of Dr Haynes*)

59. Dr. Haynes testified that the Appellant sounded very resilient as a teenager, given that she was a teen mother who withstood bullying. Dr. Haynes was concerned that the Appellant stayed in an abusive relationship for as long as she did. (*Resp.Exh.3; Testimony of Dr Haynes*)

60. In her discussion with Dr. Haynes, the Appellant was unable to speak with any insight about how her past abusive relationship might make being a CO difficult. Dr. Haynes was concerned because the Appellant had only left her boyfriend of five years just three (3) months prior to their conversation. She had suffered a panic attack just 18 months prior to this psychiatric evaluation as well. She clearly had not had a chance to think about how being with an abusive, manipulative man might have made being a CO more difficult. (*Testimony of Dr. Haynes*)

61. Dr. Haynes explained that, when people are in prison, they have a lot of time on their hands and one way to manipulate a person who has a history of domestic violence is to test and re-test the boundaries. The Appellant, unfortunately, was not able to talk to Dr. Haynes about that and Dr. Haynes “grew very concerned about it.” Given the recent panic attack and leaving the relationship just months prior, Dr. Haynes was troubled by a lack of follow up or counselling since she knows those situations can be very difficult for anyone to deal with. (*Testimony of Dr. Haynes*)

62. Dr. Haynes opined, within a reasonable degree of psychiatric certainty, that the Appellant was not qualified to be a correction officer because she lacked insight into how working in that job managing abusive inmates would be complicated by her very recent abusive history. She opined that the Appellant likely had Post Traumatic Stress Disorder (PTSD), although the Appellant denied any symptoms. It concerned Dr. Haynes that the Appellant was not working with anyone

to understand how the symptoms could trigger her in the future. (*Testimony of Dr. Haynes; Resp. Ex. 3*)

63. Dr. Haynes' report notes that the Appellant appeared to have "a superficial knowledge of why she stayed with an abusive boyfriend for so many years." Dr. Haynes did "not believe she currently possesses the psychological mindedness about what might get in the way of her performing her duties as a correction officer. She does not currently possess the psychological qualifications needed to be a correction officer as evidenced by her lack of insight into how being around cognitively intact abusive inmates might trigger her. She is unable to reflect on why she stayed with (Mr. S) when everyone in her life, including her young daughter, knew he was abusive. She has made tremendous progress in extricating herself from the abusive relationship, however has not yet realized the importance of examining the reasons she stayed." (*Resp. Exh. 3*)

64. Dr. Haynes noted that working in a prison environment, alongside domineering and controlling male inmates could trigger a similar vulnerability to psychological and emotional manipulation that would prove dangerous. Dr. Haynes differentiated between experiencing verbal abuse by developmentally disabled adults and being subject to abuse and manipulation by cognitively intact inmates, some of whom have been convicted of heinous, violent crimes. (*Resp.Exh.3; Testimony of Dr. Haynes*)

65. When Dr. Haynes suggested to the Appellant that she may be triggered by abusive inmates, the Appellant did not think that would be an issue and noted her success working with verbally abusive men at her current job at DDS. Dr. Haynes explained that she found a difference in her ability to successfully deal with developmentally disabled adults and that of inmates at the prison since it is obvious when a developmentally disabled adult is trying to manipulate someone. Inmates are sometimes psychopathic, with an inclination to abuse and humiliate people. Some get an

intrinsic pleasure in that. Inmates have a lot of time to figure out how to humiliate people, most especially new hires who are particularly susceptible, which can be very stressful. Oftentimes, an inmate will ingratiate himself with a new officer, which seems innocuous, but the correction officer must know what is going on and that the inmate is attempting to manipulate the correction officer both psychologically and emotionally. A correction officer must be able to deter those attempts because it can end badly, sometimes with blackmail. This type of situation can be similar to an abusive relationship. (*Resp. Exh.3; Testimony of Dr. Haynes*)

66. Dr. Haynes did not discount the possibility that the Appellant might someday be ready to assume a CO position after attaining a degree of mindfulness into her disqualifying characteristics and disorders and achieving a significantly higher level of maturity. (*Testimony of Dr. Haynes*)

The Appellant's Medical Records (2016-2019)

67. Dr. Haynes did not have access to any medical records of the Appellant before she conducted her December 2020 psychiatric interview or wrote her report regarding her opinion about the Appellant's psychological suitability to become a CO. (*Testimony of Dr. Haynes*)

68. On the first day of the Commission hearing, the Appellant produced copies of some of her medical records from 2016 to 2019. Dr. Haynes had not had access to the records before and she was recalled a week later after having reviewed them. (*Resp. Exh. 20; Testimony of Dr. Haynes*)

69. Dr. Haynes' opinion of the Appellant's psychological suitability to become a CO did not change after she thoroughly reviewed the Appellant's medical records. The medical records contained previously unreported, recent incidents of troubling psychological characteristics, including a history of cutting herself, migraines, suicidal ideation, prescriptions for three different anti-depressants, declining to take medications as prescribed, and a specific diagnosis of an Adjustment Disorder. These facts about the Appellant's history and current condition only

strengthened Dr. Haynes' opinion that the Appellant's history of psychological disorders and characteristics could not be considered purely situational as they have lasted since childhood and are not related to any one stressor. (*Testimony of Dr. Haynes*)

APPLICABLE CIVIL SERVICE LAW

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

Basic merit principles in hiring and promotion call for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences. Appointments are then made, generally, in rank order, from a “certification” of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. In order to deviate from that formula, an appointing authority must provide specific, written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

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

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

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

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The commission

“. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*, then the occasion is appropriate for intervention by the commission.”

City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997) (*emphasis added*). However, the governing statute, G.L. c. 31, § 2(b), gives the Commission's de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

ANALYSIS

Psychological Screening

DOC proved by a preponderance of the evidence that the Appellant's bypass was based on reasonable justification after an impartial and thorough review of her present suitability to serve

as a DOC correction officer. In particular, DOC was reasonably justified to conclude, based on credible opinions of two experienced mental health providers, who conducted two (2) empirical tests and two (2) clinical interviews in compliance with the DOC Model Plan, that the Appellant presented with “serious psychological disorders or characteristics that would render her unable to perform with reasonable accommodations the essential functions of [a correction officer].”⁸

Dr. Madonna, the first level screener, opined that the psychological profile presented by the results of the two standardized tests (the MMPI-2 and the 16PF), included low scores in the areas of social facility and stress tolerance. The Appellant showed a lot of content themes suggesting difficulty relating to others, difficulty with overall adjustment, and being able to respond in a deliberative, rather than impulsive, manner. Although he would not make a disqualification solely on the tests results, his clinical interview with the Appellant, during which she revealed that she was taking prescription Zoloft for anxiety and that she recently suffered a panic attack in 2019, added to Dr. Madonna’s concerns. The Appellant also shared that she had been in a long-term abusive relationship that she just recently ended less than two months prior to the interview and was taking two (2) psychotropic medications for binge eating. In Dr. Madonna’s opinion, these reveal real life examples of difficulty with stress tolerance that substantiated the test findings of low stress tolerance.

Dr. Madonna was hesitant to “diagnose” the Appellant after only one clinical interview, but he testified that her panic attacks, binge eating, and enduring a long-term abusive relationship were sufficient indications that she suffered a psychological disorder, specifically the disorder of

⁸ The law applied to police and fire fighter psychological bypasses provides guidance here, even though the standards for disqualification, although comparable, are not identical. Compare St. Amand v. Department of Correction, 27 MCSR 515 (2014) with Boston Police Department v. Kavaleski, 463 Mass. 680 (2012). See also Carleton v. Commonwealth, 447 Mass. 791, 808 (2006); Salazar v. Dedham Fire Dep’t, 29 MCSR 309 (2016); Kaufman v. New Bedford Police Dep’t, 26 MCSR 169 (2013).

Anxiety, that falls within the scope of “serious psychological disorders or characteristics” described in the DOC Model Plan. Should the Appellant find herself in situations as a correction officer that would call on her abilities to handle stressful situations with male inmates who are prone to manipulation and abuse, she would not be able to perform the essential duties of a correction officer in a manner that would ensure her safety, that of her co-workers, or the inmates.

The second level screener, Dr. Kamlyn Haynes, M.D., a board-certified psychiatrist, independently interviewed the Appellant on January 15, 2021, and reached the same conclusion about the Appellant as had Dr. Madonna.⁹ The Appellant informed Dr. Haynes that she had been in an abusive relationship in the recent past and that the abuse would occur in front of her young daughter, of whom she lost custody because she was unable to extricate herself from the abusive relationship. The Appellant admitted that she had a 2019 panic attack but denied undergoing any therapy for the abuse she suffered and indicated that she did not think she needed to be in counselling; moreover, she was unable to reflect on why she stayed in relationships when she knew she was being abused.

In common with Dr. Madonna, Dr. Haynes was deeply concerned that the Appellant would downplay her need to take medication and say she never needed therapy, then or now. Dr. Hayes was also concerned that the Appellant was incapable of speaking with any insight about how her past abusive relationship might make being a correction officer difficult. Based on the clinical interview, Dr. Haynes formed the opinion that the Appellant’s current lack of insight into how being around cognitively intact, abusive inmates might trigger her problematic psychological characteristics.

⁹ Dr. Haynes relied on her clinical interview skills and does not take account of the empirical testing, as she is a psychiatrist who is not trained to interpret psychological tests such as the MMPI-2 or 16 PF.

Dr. Haynes did not discount the possibility that the Appellant might someday be ready to fulfill a correction officer's position, but as of January 2021, she had not attained the coping skills and degree of mindfulness into her disqualifying characteristics and disorders that would enable her to effectively manage similarly overwhelming stressful and potentially abusive circumstances that are oftentimes part of the life of a correction officer.¹⁰

Although Dr. Haynes' opinion to DOC was based solely on her clinical interview, her review of the medical records that she obtained after the first day of her testimony did not change her opinion. Indeed, the evidence of previously unreported incidents of troubling psychological characteristics, including cutting herself, migraines, and suicidal ideations, as well as prescriptions for anti-depressants, sometimes declining to take them as prescribed, and a specific diagnosis of Adjustment Disorder, only strengthened Dr. Haynes' opinion that the Appellant's history of psychological disorders and characteristics could not be considered purely situational as they have lasted since childhood and are not related to any one stressor.

Negative Involvement with Police – Second Reason for Bypass

I address the second reason provided by DOC for the decision to bypass the Appellant; namely, a "significant number of incidents involving negative contact with the police". Although it is true that the Appellant's name appears in many police reports, she does not appear to have ever been convicted of or admitted to committing any crimes. The one incident report cited by the DOC that indicates she was ever charged with a crime occurred in 2018, but there is no record, other than her arrest, to indicate that she was arraigned in court or what became of the charges. The Appellant

¹⁰ It must be emphasized that DOC did not disqualify the Appellant, and it would not be appropriate to disqualify her, solely because she had a history of involvement as a victim of domestic abuse. Rather, the justification for her bypass turns on the expert opinions that her overall psychological limitations and lingering doubt that she is coping with them means that placing her in the highly stressful environment of a prison, as of the time of her application, presents an unacceptable risk that she will be unable to perform the duties required of a correction officer.

makes a fair point that mere “contacts” with police are a problematic reason to bypass her. As I have concluded that there was reasonable justification to bypass the Appellant on the basis of the credible determination that she was found psychologically unsuitable for appointment after a proper psychological screening process, the Commission does not need to decide whether it was proper for DOC to rely upon the Appellant’s contacts with law enforcement in bypassing her.

It must be r noted, however, that DOC’s reliance on the background investigation as a reason for bypass is flawed as a matter of procedure. The Appellant’s background investigation was completed by DOC Investigator Sacino on November 25, 2020. The Appellant was given a conditional offer of employment on November 30, 2020. As Massachusetts law requires, the DOC Model Plan (Resp. PH Exh. 25) prescribes that a firm conditional offer is necessary before a candidate can undergo medical or psychological screening. See G.L. c. 151B, § 4(16); MCAD Guidelines at V(A), <https://www.mass.gov/doc/mcad-guidelines-on-disability-discrimination-in-employment/download?ga=2.112866242.799171292.1648579032-704349555.1617471922>. See also Boston Police Department v. Kavaleski and Civ. Serv. Comm’n, Suffolk Sup Crt. No. 09-4978 (2014), citing Leonel v. American Airlines, Inc., 400 F. 3d 702, 708 (9th Cir. 2005); Rogers v. Boston Police Dep’t, 33 MCSR 244 (2020); Morley v. Boston Police Dep’t, 29 MCSR 456 (2016).

Here, DOC claims that the decision to bypass the Appellant based on her background check was made by Commissioner Mici during a roundtable discussion on December 9, 2020, but she was not officially bypassed at that time and continued to be processed for possible inclusion in the following Academy class. Although COVID was certainly impacting DOC’s operations in December 2020, it is unclear why, if a determination of unsuitability had been made, DOC did not end her candidacy once the December 9, 2020 decision to bypass was made rather than proceeding

to order her to undergo medical and psychological examinations. This appeal does not turn on whether the background investigation could have been used as an independent reason for bypass, In the future, however, prior to making a conditional job offer DOC must take care to evaluate all relevant non-medical information and only issue a conditional offer and further process the candidate if the background investigation has not produced any reasons for non-selection or bypass.

CONCLUSION

For the above stated reasons, the bypass appeal of the Appellant is hereby **denied**.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein & Tivnan, Commissioners) on May 20, 2022.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

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Joseph Santoro (for Respondent)