

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

JOHN A. DOE,  
*Appellant*  
v.

**Case No.:** [Redacted]

DEPARTMENT OF  
CORRECTION,  
*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 and the parties had thirty days to provide written objections to the Commission. No objections were received in a timely fashion.

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

The decision of the Department of Correction to bypass the Appellant for original appointment to the position of Correction Officer I is affirmed and the Appellant's above-captioned appeal is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on November 17, 2022.

Civil Service Commission

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

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

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

Notice to:

John A. Doe (*pro se*)

Joseph Santoro (for Respondent)

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

COMMONWEALTH OF MASSACHUSETTS

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Docket Nos: [Redacted]

**JOHN A. DOE<sup>1</sup>,**  
*Appellant*

v.

**DEPARTMENT OF CORRECTION,**  
*Respondent*

**Appearance for Appellant:**

John A. Doe, *pro se*

**Appearance for Respondent:**

Joseph S. Santoro, Labor Relations Advisor  
Department of Correction  
50 Maple Street, 1<sup>st</sup> Floor  
Milford, MA 0175

**Administrative Magistrate:**

Angela McConney Scheepers, Esq.

**SUMMARY OF RECOMMENDED DECISION**

The Department of Correction had reasonable justification for bypassing the Appellant for original appointment to the position of Correction Officer I. I recommend that the Civil Service Commission dismiss the appeal.

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<sup>1</sup> The Civil Service Commission has determined that this decision references matters, including the Appellant's mental health history, that could constitute an unwarranted invasion of the Appellant's privacy. For that reason, the Appellant is identified as "John A. Doe".

## TENTATIVE DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), John A. Doe (Appellant), timely appealed the Department of Correction (the Department or Appointing Authority)'s February 4, 2022 decision<sup>2</sup> to bypass him for original appointment as a permanent, full-time Correction Officer I (CO I). In the bypass letter, the Department cited the reason of a failed background investigation due to the Appellant's involuntary civil commitment to the Massachusetts Alcohol and Substance Abuse (MASAC) Center, police reports documenting threats to his family upon release from the facility; sporadic work history and tardiness at work. (Exhibit 16.)

The Civil Service Commission (Commission) held a pre-hearing conference on February 8, 2022 via the Webex platform.<sup>3</sup> The Commission then assigned the matter for hearing before a Division of Administrative Law Appeals (DALA) administrative magistrate.

On April 25, 2022, the Department filed a Motion for Summary Decision based on the Appellant's ineligibility for a firearm identification card or firearm license as a result of his civil commitment. G.L. c. 123, § 131; c. 140, §§ 129B, 131, 131F.<sup>4</sup> As this was not the stated reason

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<sup>2</sup> In a December 16, 2021 electronic mail message, the Department informed the Appellant that the hiring committee had deemed him ineligible to continue in the hiring process. The Department advised that the Appellant would receive further notification by electronic mail and USPS mail after the DOC class was hired in January 2022. (Exhibit 1.)

<sup>3</sup> Telecommunications. The Presiding Officer may designate that all or a portion of a hearing be conducted with one or more participants situated in different locations and communicating through the medium of one or more telecommunication devices, including telephone and video conferencing, unless the Respondent or Petitioner lacks access to sufficient Electronic Medium. 801 C.M.R. § 1.01(12).

<sup>4</sup> G.L. c. 123, § 35 provides that:  
"After 5 years from the date of commitment, a person found to be a person with ... substance use disorder and committed pursuant to this section may file a petition for relief with the court that ordered the commitment requesting that the court restore the person's ability to possess a firearm, rifle or shotgun. The court may grant the relief sought in accordance with the principles of due process if the circumstances regarding the person's disqualifying condition and the person's record and reputation are determined to be such that: (i) the person is not likely to act in a manner that is dangerous to public safety; and (ii) the granting of relief would not be contrary to the public interest. In making the determination, the court may consider evidence from a

for the bypass, the Commission denied the Motion on May 2, 2022. *Antunez v. Department of Correction*, 32 MCSR 282 (2019).

On May 5, 2022, I conducted a hearing at the offices of the Commission.<sup>5</sup> I recorded the hearing via digital audio, which serves as the official recording of the hearing.<sup>6</sup>

The Appellant testified on his own behalf. The Department called Eugene T. Jalette, Deputy Chief of the Office of Investigative Services and Lt. John Haskell, Background Investigator.

I marked the Appellant’s Memorandum as “A” for identification, and marked the Department’s Pre-Hearing Memorandum as “B” for identification. I admitted sixteen exhibits into evidence (Exhibits 1-16). I admitted the Stipulated Facts as Exhibit 17. The Appellant submitted his Post-Hearing Brief on May 30, 2022. The Department submitted its Post-Hearing Brief on June 7, 2022, whereupon the administrative record closed.

#### FINDINGS OF FACT

From the stipulated facts, testimony and the exhibits submitted into evidence, and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

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licensed physician or clinical psychologist that the person is no longer suffering from the disease or condition that caused the disability or that the disease or condition has been successfully treated for a period of 3 consecutive years.” G.L. c. 123, § 35 ¶ 10.

<sup>5</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01 (Formal Rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>6</sup> Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that he/she/it wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission’s official recording.

1. The Appellant (born 1992) graduated from high school in 2011. He holds an Associate's Degree in Criminal Justice. (Testimony of Appellant.)

2. In April 2018, the Appellant began his current position as a seasonal employee at pest control company. His job duties were spraying properties for ticks and mosquitoes. (Exhibit 5; Testimony of Appellant.)

*Background*

3. In March 2021, the Appellant took the civil service examination for Correction Officer I and received a score of 96. (Exhibit 17.)

4. On July 1, 2021, the Appellant's name ranked 34<sup>th</sup> on Certification No. 08017, from which the Department ultimately appointed one-hundred and thirty-eight (138) candidates as CO Is, one hundred and seventeen (117) of whom were ranked below the Appellant. (Exhibit 17.)

5. The Department of Correction Commissioner assembled a hiring committee to review candidates from Certification No. 08017. On September 11, 2021, the Appellant signed a waiver authorizing the Department to conduct a background investigation. He also completed an "MA DOC Application for Employment History" form. (Exhibits 3, 4, 5 and 6; Testimony of Haskell.)

6. The hiring committee assigned the Appellant's application to Lt. John Haskell to conduct a pre-employment background investigation and submit a report of his findings. The lieutenant has over twelve years of experience in conducting background investigations. (Exhibits 3, 4, 5 and 6; Testimony of Haskell.)

7. Lt. Haskell conducted a criminal history check, contacted the Kingston and Plymouth Police Departments, performed employment checks, checked personal references, conducted a home visit and a spouse/partner interview. (Exhibit 3.)

8. The Criminal Justice Information Service (CJIS) check produced no criminal record. (Exhibit 3; Testimony of Haskell, Testimony of Jalette.)

#### Reasons for Bypass

##### *I. Department of Correction Reasons for Bypass*

###### *a) MASAC Commitment*

9. The Appellant's name appeared when Lt. Haskell searched the Department's in-house database, the Inmate Management System (IMS). The IMS showed that the Appellant had been committed to the Massachusetts Alcohol Substance Abuse Center (MASAC) at the Bridgewater State Correctional Facility (Bridgewater) from November 2016 until January 2017.<sup>7</sup> Although IMS records are maintained in the Department's database, IMS attendance is civil. G.L. c. 123, § 35. (Exhibits 3 and 12; Testimony of Appellant, Testimony of Jalette.)

10. The Appellant was upset because the courts accepted his parents' petition for him to be involuntarily committed. Upon arrival at the MASAC program for a ninety-day commitment, he was reluctant to participate in a treatment program. He argued that his commitment was unlawful, and denied drug use. He was placed in solitary confinement for two days before he was allowed to make a phone call. (Testimony of Appellant.)

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<sup>7</sup> On November 29, 2016, the Appellant's parents had applied to the Plymouth District Court for a warrant of apprehension, stating that their son was abusing steroids and that they were afraid of him. The Court issued the warrant for substance abuse/steroid use. On the same day, the Kingston Police Department took the Appellant into custody without incident. He was booked at the station and transported to the Court. (Exhibit 13.)

*b) The Appellant's Threats to his Parents*

11. On December 2, 2016, the Appellant called his mother and his stepfather via a collect call from the MASAC program, and threatened to kill them. Bridgewater Lt. Mike Dantuono contacted the Kingston Police Department (Kingston PD). The Kingston PD dispatched Officer Richard Allen to MASAC. Officer Allen filed a report. (Exhibits 3, 10 and 11; Testimony of Jalette.)

12. Because the Appellant's release was scheduled for within 30 – 40 days, Officer Allen advised the Appellant's parents of their rights to a restraining order or a stop to the phone calls from MASAC. The parents elected not to proceed with any further action at the time. (Exhibit 11.)

13. On January 5, 2017, Lt. Dantuono contacted the Kingston PD to advise that the Appellant would be released the next day, due to his December 2, 2016 threats against his parents. MASAC had already advised the parents of the imminent release. (Exhibit 9.)

14. On January 6, 2017, the Appellant's mother contacted the Kingston PD to get advice on a 209A restraining order due to her son's imminent release. She was concerned that her son would skip further treatment and return immediately to the family home. Officer Robert Gallo gave her detailed instructions on how to obtain the order from the Plymouth District Court. He advised her that she could request a police officer at any time.<sup>8</sup> (Exhibit 10.)

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<sup>8</sup> The Appellant testified that he had checked with the Kingston PD, and that they had "nothing on record." However, on September 7, 2013, the Massachusetts State Police (Middleboro Barracks) contacted the Kingston PD after a 911 hang up. When the Kingston PD contacted the Appellant's parents, they stated that he had made suicidal statements the day before, and was not at home. (Exhibits 3 and 15.)

On September 17, 2014, the Kingston PD tried to locate the Appellant when the South Shore Medical Center/Norwell asked for assistance because of suicidal ideation. The Appellant



*c) Sporadic Work History*

15. On the Department's Employment History form, the Appellant submitted that he had begun his current position at the pest control company in April 2018. However, when he spoke to the employer on October 18, 2021, Lt. Haskell learned that the Appellant had started working there in May 2019. Further, the Appellant was a seasonal employee, and had been laid off the previous Thursday. (Exhibits 3 and 5; Testimony of Haskell.)

16. In an October 18, 2021 electronic mail message, Lt. Haskell informed the Appellant that he had learned that he had been laid off from the pest control company. The lieutenant inquired whether the Appellant had received unemployment benefits. The Appellant responded that he received unemployment benefits each off-season when he was laid off from the pest control company. He submitted his Massachusetts Department of Unemployment Assistance 1099s for 2019 and 2020. (Exhibits 7 and 8.)

17. On the Employment History form, it appeared that the Appellant had worked continuously as a fire sprinkler apprentice from September 1, 2015 until November 1, 2017. However, this time period overlapped with the Appellant's MASAC commitment. (Exhibits 3 and 5; Testimony of Haskell.)

18. On October 15, 2021, Lt. Haskell spoke to the Operations Manager at the fire sprinkler company. The Operations Manager stated that the Appellant got along well with his coworkers, had no job performance issues, but was late once a month. Mr. Lazinsky stated that the Appellant's employment had lasted approximately two years, but could not provide any dates. (Exhibit 3.)

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had been suicidal for a "couple of days," and refused treatment after a referral to behavioral health. (Exhibits 14 and 15.)

19. According to the Employment History form, the Appellant worked for a retail store as a deli associate from September 15, 2011 to August 1, 2015. (Exhibit 5.)

20. Although these three positions left an employment gap between November 2017 (a year after his involuntary commitment) until May 2019, the Appellant did not proffer an explanation as required in the application. In the October 18, 2021 electronic mail message, Lt. Haskell inquired about the correct starting date at the pest control company. The Appellant conceded that May 2019 date was the correct start date at the pest control company. In the same electronic mail, Lt. Haskell inquired about the employment gap. The Appellant responded that he had not worked between his pest control company employment and his fire sprinkler company employment. (Exhibit 3; Testimony of Appellant.)

*d) Tardiness on the Job*

21. When Lt. Haskell spoke to the owner of the fire sprinkler company, he stated that the Appellant was late for work approximately once a month. (*See* Finding of Fact 21; Exhibit 3; Testimony of Haskell.)

*II. Background Investigation Report*

22. Lt. Haskell also conducted a neighborhood investigation, home visit/applicant interview and spouse/partner interview. The Appellant and his fiancée lived at the end of a row of condos. No one responded when Lt. Haskell tried to contact the neighbor next door. (Exhibit 3.)

23. Lt. Haskell conducted a home visit/applicant review on October 19, 2021. The fiancée was not home at the time. The Appellant explained that the gaps in his employment were due to the seasonal nature of his job, and that he collected unemployment benefits when he is laid off. He acknowledged that he had been committed to MASAC for “little over a month.” He

explained that he “was into body building and got hooked on performance enhancing drugs and my parents didn’t like it, so they had me committed.” (Exhibit 3; Testimony of Haskell.)

24. On October 20, 2021, Lt. Haskell spoke with the Appellant’s fiancée. She indicated her support for the Appellant’s application. She said that the Appellant was “dedicated” and a “hard worker.” (Exhibit 3.)

25. Lt. Haskell completed the background investigation on October 21, 2021. He included both positive and negative employment aspects. He did not include a “do not hire” statement. (Exhibit 3; Testimony of Haskell.)

26. Lt. Haskell concluded that the Appellant had been both “less than truthful and deceitful” in the information he provided, and detailed his conclusions in an October 20, 2021 Addendum to his Investigative Report. Lt. Haskell based his conclusions on (1) the gap in employment (November 1, 2017 to April 1, 2018); (2) the incorrect start date of April 1, 2018 instead of the correct date of May 10, 2019 for employment at the pest control company; (3) his police interactions; (4) his failure to disclose his MASAC November 29, 2016 – January 6, 2017 commitment; (5) threatening phone calls to his parents; and (6) old/incorrect address on his driver’s license after moving in August 2021 (Exhibit 3).

27. Lt Haskell did not make a recommendation on whether or not to hire the Appellant. Instead, the background report was submitted to the Office of Investigative Services (OIS) for review by the OIS Deputy Chief Eugene T. Jalette, Deputy Commissioner Thomas J. Preston, Commissioner Carol A. Mici, and the DOC’s Human Resources Director. They agreed that the Appellant should be bypassed for appointment. (Testimony of Jalette.)

28. On December 16, 2021, a Department Personnel Officer II sent the Appellant an electronic mail message, informing him that the hiring committee had deemed him ineligible to

proceed in the hiring process. She advised that he would receive further information via electronic mail message and via the USPS mail after the CO class had been hired. (Exhibit 2.)

29. On February 4, 2021, the Department bypassed the Appellant for failing the background investigation, to wit:

Failed Background due to a civil commitment at the Massachusetts Alcohol and Substance Abuse Center (MASAC) and police reports related to threats made towards family upon release from the facility; additionally, sporadic work history and one employer (2017) indicated you were late once a month.

(Exhibit 16.)

30. The Appellant filed a timely notice of appeal on December 20, 2021. (Exhibit 1.)

## ANALYSIS AND CONCLUSION

### A. *Applicable Legal Standards*

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001), citing *Cambridge v. Civil Service Comm’n*, 43 Mass. App. Ct. 300, 304 (1997). “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. *Cambridge*, 43 Mass. App. Ct. at 304.

Bypass cases are decided based on a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an

Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Service Comm’n*, 31 Mass. App. Ct. 315 (1991); G.L. c. 31, § 43.

“In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” *See Beverly v. Civil Service Comm’n*, 78 Mass. App. Ct. 182, 187 (2010), *citing Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727 (2003). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” *Falmouth v. Civil Service Comm’n.*, 447 Mass. 814, 823 (2006). 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 in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” *Watertown v. Arria*, 16 Mass. App. Ct. 331, 332 (1983). *See Commissioners of Civil Service v. Municipal Ct. of Boston*, 369 Mass. 84, 86 (1975); and *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

The Commission determines “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” *Id.* at 304. Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 214 (1971).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. *Beverly v. Civil Service Comm’n*, 78 Mass. App. Ct. 182, 189, 190-191 (2010), *citing Falmouth v. Civil Serv. Comm’n*,

447 Mass. 824-826 (2006), and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. *Beverly, supra*, citing *Cambridge* at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” *Burlington v. McCarthy*, 60 Mass. App. Ct. 914, 915 (2004).

*B. Reasonable Justification for Bypassing the Appellant*

By a preponderance of the evidence, DOC has shown that it had reasonable justification for bypassing the Appellant for appointment as a CO I. First, there is no evidence that the decision to bypass the Appellant was due to political considerations, favoritism or bias. The Appellant completed a background information form and waiver, and understood that a background investigation would be conducted to determine his fitness for CO I. Lt. Haskell gathered the facts in an objective manner and prepared an unbiased summary of his findings that was reviewed by Deputy Chief Jalette, the Department Commissioner and the Human Resources Director.

Second, Lt. Haskell did not simply conduct a document review; he spoke with former employers, references, the Appellant and his fiancée before completing his report. Also, instead of delegating the decision-making process to subordinates, the DOC Commissioner and Human Resources Director personally reviewed the background investigation of the Appellant, which included both positive and negative information for consideration.

Third, the Department’s reasons for bypass were legitimate and reasonable. The Appellant’s behavior presented a legitimate concern for Department officials who rely on front-

line correction officers to defuse and de-escalate stressful situations as part of their daily job duties and responsibilities. Specifically, the Appellant's threatening call to his parents from the MASAC facility was troubling to DOC officials and provided them with a valid reason to bypass the Appellant.

The DOC was also troubled by the Appellant's "sporadic" work history and reported tardiness. Indeed, the Appellant's application made it appear as if he was more steadily employed than he really was. His current position is seasonal, and he receives unemployment benefits in the "off-season." The Appellant also had a year-and-a-half gap in his employment history, which he did not report as required. He completed the employment history form to show continuous employment at the fire sprinkler company in order to disguise his MASAC committal. The Appellant's employer at the fire sprinkler company also said that he was late once a month. Certainly in combination, these are valid reasons to bypass the Appellant.

The Department has met its burden. The Appellant has failed to show that the reasons offered for the bypass were untrue or incapable of substantiation, applied unequally to him and the selected candidates, or that the bypass was a pretext for impermissible reasons. *Borelli v. Massachusetts Bay Transportation Auth.*, 1 MCSR 6 (1988).

At the hearing, the Appellant's main contention was that he was wrongly committed to MASAC.

Whether or not the Appellant's commitment was appropriate is beyond the scope of this proceeding and I have not based my recommendation to uphold this appeal on the fact that he was committed to MASAC. Rather, in regard to that commitment, I have based my tentative decision on the unrefuted fact that, while committed, he made threatening phone calls to his parents, a legitimate concern for a paramilitary organization like DOC.

The Department has shown, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant for the position of Correction Officer I. The Commission lacks the authority “to substitute its judgment about a valid exercise of discretion based on merit and policy consideration by an appointing authority ... .” *Burlington*, 60 Mass. App. Ct. 914 (2004), *quoting Cambridge*, 43 Mass. App. Ct. 300, 304-05 (1997). “It is not for the Commission to assume the role of super-appointing agency, and to revise those employment determinations with which the Commission may disagree.” *Burlington, ibid.*

Based on the preponderance of credible evidence presented at the hearing, I conclude that the Department was reasonably justified in bypassing the Appellant. Accordingly, I recommend that the Appellant’s appeal against the Department of Correction as appointing authority be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Angela McConney Scheepers*  
Angela McConney Scheepers  
Administrative Magistrate

DATED: September 28, 2022