

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

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

CHRISTOPHER J. DOHERTY,  
Appellant

v.

G1-17-234

CITY OF QUINCY,  
Respondent

Appearance for Appellant:

George G. Burke, Esq.  
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Quincy, MA 02171

Appearance for Respondent:

Janet S. Petkun, Esq.  
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Commissioner:

Cynthia A. Ittleman

**DECISION**

On November 3, 2017, the Appellant, Christopher J. Doherty (Appellant), pursuant to G.L. c. 31, § 2(b), timely filed this appeal with the Civil Service Commission (Commission), contesting the decision of the City of Quincy (Appointing Authority or City) to bypass him for original appointment as a permanent, full-time Police Officer. A pre-hearing conference was held on December 15, 2017 at the offices of the Commission. I held a full hearing at the same location

on January 12, 2018.<sup>1</sup> The hearing was digitally recorded and copies of the recording were sent to the parties.<sup>2</sup> The parties submitted proposed decisions to the Commission on February 9, 2018. As indicated herein, the appeal is denied.

**FINDINGS OF FACT:**

Nine (9) exhibits were entered into evidence at the hearing. Based on the exhibits, the stipulated facts, the testimony of:

*Called by Quincy Police Department:*

- Ms. Helen Murphy, the Director of Operations of the City of Quincy;
- Sergeant Dennis Maloney, Quincy Police Department; and
- Patricia McGowan, the Director of Human Resources of the City of Quincy

*Called by the Appellant:*

- Christopher J. Doherty, Appellant;

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:

1. The Appellant was thirty-three (33) years old at the time of the hearing before the Commission. He was born in Quincy and lived there when he applied to be a police officer with the Quincy Police Department. (Exhibits 4 and 5)
2. The Appellant has been employed since November 2014 by the Department of Correction as a correction officer. (Testimony of Appellant and Exhibit 4 p. 27)

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with any conflicting provisions of G.L. c. 31, or Commission rules, taking precedence.

<sup>2</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with this transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion.

3. The Appellant was in the U.S. Navy as a construction mechanic from July 2005 through July 2015, both on active duty and in the reserves. He was assigned to Port Hueneme, California; Gulf Port, Mississippi; Quincy, Massachusetts; Iraq; and Djibouti. (Testimony of Appellant and Exhibit 4 p. 29, 33, 196)
4. While in the Navy, the Appellant was subject to a Captain's Mast, a form of discipline under Article 15 of the Uniform Code of Military Justice. He was punished with loss of some pay for having left the area where he was supposed to stay. (Testimony of Maloney)
5. He received an honorable discharge. (Testimony of Appellant and Exhibit 4)
6. He is a disabled veteran, having been exposed to burn pits in Iraq and Djibouti. (Testimony of Doherty)
7. On May 20, 2009, West Bridgewater police officers responded to a report of a domestic disturbance at the Appellant's family's home. The Appellant's mother told police that the Appellant and her husband, the Appellant's father, had argued. The Appellant's father told police that his argument with the Appellant led the Appellant's parents to argue. Police established that no one had engaged in physical abuse. Police did not arrest anyone but asked the Appellant and his father to leave the home for the evening. (Exhibit 5)
8. The police informed the Appellant's mother of her rights under G.L. c. 209A, the state domestic abuse prevention statute. She applied for an emergency restraining order and the on-call judge issued one against the Appellant and his father. The restraining order included an order to relinquish all weapons. The Appellant's mother brought police to the Appellant's bedroom, where they found a rifle and a handgun, both unloaded, and neither of which were secured in a locked container or with trigger locks. (Exhibit 5)

9. On May 21, 2009, Brockton District Court issued a restraining order under G.L. c. 209A against the Appellant. (Exhibit 9)
10. On May 26, 2009, the Appellant's mother called the West Bridgewater Police Department to report that she had found a third firearm that had been hidden in the Appellant's closet. Because the restraining order was still in effect, a police officer went to the Appellant's home and seized a pump shotgun that had one round in its chamber. It was not secured by a trigger lock and had not been secured in a locked container. (Exhibit 5)
11. On June 12, 2009, the restraining order was vacated or expired. (Exhibit 9)
12. On June 13, 2009, the Appellant's mother walked into the West Bridgewater Police Department and turned in ammunition that she had found in the Appellant's bedroom, ammunition for the rifle, handgun, and shotgun. (Exhibit 5)
13. On June 15, 2009, the West Bridgewater Police Department applied for a complaint against the Appellant for three charges of improperly storing a firearm in violation of G.L. c. 140, § 131L. (Exhibit 9)
14. On September 17, 2009, a court clerk denied the complaint against the Appellant at a clerk's hearing. (Exhibit 9) The clerk may have done so because the Appellant was returning to active service in the Navy. (Testimony of Maloney, Testimony of Doherty) A West Bridgewater police report described the disposition of charges as "Closed...Party leaving for overseas Navy." (Exhibit 5)
15. At some point, as a result of the police discovery of the Appellant's unsecured firearms, the Appellant's license to carry firearms was revoked and later reinstated. (Testimony of Maloney)

16. On September 19, 2015, the Appellant took and passed the civil service examination for police officer, receiving a score of 83 as a disabled veteran. (Stipulated Fact)
17. In October 2015, the Human Resources Division (HRD) established the eligible list for police officer. On June 13, 2017, HRD sent certification 04711 to the Appointing Authority. On July 11, 2017, HRD added names at the Appointing Authority's request. (Stipulated Fact)
18. On June 13, 2017, the Appellant's name appeared 13<sup>th</sup> on Certification No. 04711. (Exhibit 1, Stipulated Fact)
19. The Quincy Police Department was to select from six of the highest 13 candidates willing to accept the position. (Exhibits 1 and 2) The number was later increased to eight. (Testimony of Murphy 15, Stipulation of Fact)

*Quincy Police Department's Review of the Appellant's Background*

20. When the Appellant picked up his application and later dropped off his completed application, Ms. Murphy, the City's Human Resources Director, was present and eventually questioned his responsibility and maturity levels because he spoke excessively about matters such as his home and weaponry. On his way out of the building, he conversed with the security guard about these topics as well. (Testimony of Murphy)
21. A total of four police officer interviewed candidates, with two officers interviewing each candidate. (Testimony of Murphy 22, Testimony of Maloney)
22. After the Appellant returned his application, Sergeant Maloney and Officer William Plant interviewed him on July 18, 2017. (Testimony of Maloney)
23. During the interview, the Appellant referred to Officers Maloney or Plant as "dude" several times. (Testimony of Maloney)

24. During the interview, the Appellant's demeanor was not professional and he looked uncomfortable for most of it. (Testimony of Maloney)
25. During the interview, Sergeant Maloney asked the Appellant if he had had a way to secure his firearms in May 2009, referring to trigger locks or storage containers. The Appellant answered no. Sergeant Maloney asked the Appellant if he knew that the law required him to secure his firearms. He answered yes. (Testimony of Maloney)
26. During the interview, the Appellant explained that the context of the restraining order was the bitter divorce that his parents were going through. (Testimony of Maloney)
27. After the interview, Sergeant Maloney wrote a report. Under positive factors affecting the Appellant's application, he wrote: "Continuous work history with no issues. Served ten years with the Navy. Two years active and eight years in the reserves. Given an Honorable Discharge. Current[ly] employed as a Prison Guard for Department of Correction[.]. Recently purchased a condo in Quincy. Positive references." Under negative factors, he wrote: "Had a restraining order taken against him by his Mother in 2009. Was summonsed into court for having an Unsecured Firearm in his home. The charges were dismissed prior to arraignment. Received a Captain's Mast and was docked pay for being out of the approved area while in the Navy. Questionable professionalism and maturity level." (Exhibit 7 p. 5)
28. During one of his visits to the Quincy police station as part of his application process, the Appellant interacted with a police officer who worked at the front desk area. He discussed his work at the prison, how many firearms he owned, and that he had been a firearms instructor in the navy. (Testimony of Maloney) Because most applicants do not volunteer

information to people they encounter at the police station, the police officer considered the Appellant's behavior worth reporting to Sergeant Maloney. (Testimony of Maloney)

29. On the same day as his conversation with that police officer, the Appellant conversed with a police sergeant in the police station's parking lot about his work at the prison and how many firearms he had. He mentioned that he had been a firearms instructor and hoped to be one at the Quincy Police Department. That police sergeant also approached Sergeant Maloney to pass on the conversation because he considered it unusual. (Testimony of Maloney)

30. In or around August 2017, approximately 12 people held a roundtable discussion of the applicants. Participants included all police officers who had interviewed applicants (including Sergeant Maloney), Ms. Murphy, the Police Chief, Quincy's Director of Policy, the Mayor, the Mayor's Chief of Staff, and Quincy's Director of Human Resources. (Testimony of Murphy)

31. At the roundtable, the Police Department made recommendations and then the roundtable participants decided whether to adopt or reject the recommendations. Ultimately, the Mayor decided which applicants to select, based on the recommendations. (Testimony of Murphy)

32. The Mayor, as Appointing Authority, selected eight candidates for appointment. Five of them ranked below the Appellant. (Stipulated Fact, Testimony of Murphy)

33. On October 27, 2017, the City of Quincy sent a bypass letter to the Appellant citing these reasons for the bypass: "You were the defendant on a Restraining Order, at the time the police department charged you with having several unsecured firearms in your home" and "[i]n your interactions with the Quincy Police Department you appeared unprofessional and pre-occupied with firearms." (Exhibit 8)

34. The bypass letter described the five candidates who had ranked below the Appellant.  
(Exhibit 8)
35. The first candidate who ranked below the Appellant was a veteran with a bachelor's degree in criminal justice from Northeastern University, who had the highest military security clearance, no criminal history, one moving violation on his driving history, and positive comments from his references, neighbors, and coworkers. (Exhibit 8)
36. The second candidate who ranked below the Appellant was a veteran with a bachelor's degree in criminal justice, who was a 911 dispatcher with the Hanover Police Department, with no criminal history or adverse driving history, and positive comments from references, neighbors, and coworkers. (Exhibit 8)
37. The third candidate was a veteran and current member of the National Guard with no criminal history, a "[p]ositive recommendation for Quincy Fire Background 2016," and positive comments from references, neighbors, and coworkers. (Exhibit 8)
38. The fourth candidate was a veteran with experience as a military police officer and armed security guard, no criminal history, two entries on his driving history (speeding in 2015, and being at fault for a vehicle crash in 2013), and positive comments from his references and neighbors. (Exhibit 8)
39. The fifth and last candidate who ranked below the Appellant was a corrections officer in the Norfolk County Sheriff's Office, who had received a bachelor's degree in criminal justice *magna cum laude* from the University of Massachusetts at Boston, and who had no criminal history, no adverse driving history, a very good credit rating, and positive comments from references and neighbors. (Exhibit 8)



40. None of the candidates who were offered positions had had restraining orders against them.  
(Testimony of Murphy, Maloney and McGowan)
41. None of the candidates who were offered positions had had a complaint of an unsecured firearm. (Testimony of McGowan)
42. None of the candidates who were offered positions had questionable professionalism or maturity. (Testimony of McGowan)
43. Three of the candidates who were offered positions were veterans, but not disabled. One candidate was a disabled veteran. (Testimony of Murphy)
44. The Appellant timely filed the instant appeal. (Administrative Notice)
45. At the Commission hearing, the Appellant's two explanations for his unsecured firearms were not entirely consistent with each other or with other facts that emerged during the hearing. The Appellant testified that he understood the law to require him to secure his firearms when he left the home and that he left the home when the police directed him to do so. He also testified that he had been cleaning his firearms in the basement and that they could not be secured while he was cleaning them. (Testimony of Doherty) However, the three firearms that almost led to charges against the Appellant were not seized in the basement.
46. At the hearing, the Appellant attributed his behavior at the interview to having been nervous and to his personality type being talkative. He testified that he had used "dude" at the end of the interview because the interviewers seemed to be getting chummy and he relaxed.  
(Testimony of Doherty)
47. At the hearing, the Appellant exhibited traits that had caused concern during his interview: verbosity and occasional inability to answer questions without meandering off of the topic.

48. At the hearing, the Appellant ascribed the bypass to the Mayor not wanting to hire him because he does not belong to the same political party as the Mayor. (Testimony of Doherty 199)

### *Legal Standard*

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 Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, citing Cambridge v. Civil Serv. 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, section 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 at 304.

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, 727-728 (2003).

In its relatively recent decision in Boston Police v. Civ. Serv. Comm'n and Gannon, 483 Mass. 461 (2019), the SJC confirmed that an Appointing Authority must prove, by a preponderance of the evidence, that the Appellant actually engaged in the alleged misconduct

used as a reason for bypass. However, the Court also *reaffirmed* that, once that burden of proof regarding the prior misconduct has been satisfied, it is for the appointing authority, not the commission, to determine whether the appointing authority is willing to risk hiring the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. City of Beverly v. Civil Serv. Comm’n, 78 Mass.App.Ct. 182,188 (2010) citing Cambridge at 305, and cases cited.

### *Analysis*

As shown through years of prior decisions, the Commission has given significant weight to whether an applicant has been the subject of a civil restraining order and has decided that evidence of prior domestic abuse, standing alone, is a valid reason for bypass. The Commission also reviews other factors related to the issuance of such an order, including, but not limited to: whether there was any allegation of abuse, how many years have transpired since the order was issued and whether or not the restraining order was extended beyond the 10-day return court hearing. The restraining order in this case was issued approximately 8 years prior to this appeal; it was not extended far beyond the 10-day court hearing; and there was no allegation that the Appellant abused any party. For these reasons, this, standing alone, is not a valid reason for bypass.

The City stands on firmer ground, however, regarding the Appellant’s interview performance and other interactions with the Quincy Police Department. The purpose of an interview is not simply to ask a candidate follow-up questions about the investigation. An interview gauges the bearing and demeanor of a candidate, which is vital for a police officer, who interacts with the public and does so in stressful circumstances, sometimes crises. The Appellant testified that he had been nervous at the interview but a police officer faces more

stressful circumstances than an interview and must remain calm and must display an appropriate demeanor for the sake of colleagues and the public, as well as to effectively manage situations. An interview also gauges, as in this case, the maturity and potential professionalism of a candidate, and reveals or confirms other matters of concern, such as the Appellant's apparent preoccupation with firearms, a concern that is relevant to police officers, to whom the Appointing Authority provides firearms.

The issue is not whether the Commission believes that it would have selected or rejected the Appellant in light of his interview and preoccupation with firearms. Watertown v. Arria, 16 Mass.App.Ct. at 332 (1983). The issue is whether the Appointing Authority's bypass was legitimate and reasonable. City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. at 189, 190-191. An Appointing Authority is legitimately and reasonably concerned that a candidate who refers to his interviewers as "dude" might address members of the public unprofessionally and inappropriately. It is also legitimately and reasonably concerned that a candidate who cannot focus during an interview and engages in gratuitous interactions with police officers during the application process cannot focus on police work. Similarly, an Appointing Authority is legitimately and reasonably wary of selecting and arming a candidate whom it considers to be preoccupied about firearms. Interviews that do not proceed well for candidates can justify their bypass. Dorney v. Wakefield Police Department, 29 MCSR 405 (2016) and Cardona v. City of Holyoke, G1-15-61, 28 MCSR 365 (2015), and cases cited. Moreover, police officers are responsible for handling and securing their firearms. The Appellant's at least negligent failure to secure his firearms in his family home as required by law certainly supports the Appointing Authority's decision to bypass the Appellant.

Finally, the Appellant proffered no credible evidence that the City's Mayor was aware of the Appellant's political affiliation and/or that this played any factor in the decision not to appoint the Appellant.

*Conclusion*

For the foregoing reasons, the Appellant's appeal under Docket No. G1-19-198 is hereby ***denied.***

Civil Service Commission

/s/ Cynthia A. Ittleman  
Cynthia A. Ittleman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners on March 25, 2021.

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

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

Notice:  
George G. Burke, Esq. (for Appellant)  
Janet S. Petkun, Esq. (for Respondent)  
Michele Heffernan, Esq. (HRD)