

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

COREY DONOHUE,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

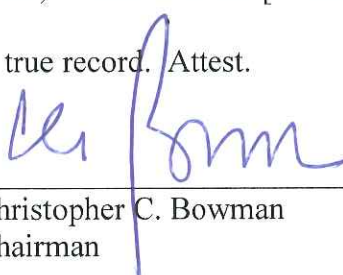
Case No.: G1-12-30

DECISION

The Civil Service Commission voted at an executive session on July 12, 2012 to acknowledge receipt of the report of the Administrative Law Magistrate dated May 31, 2012. No written objections were received by either party. After careful review and consideration, the Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Marquis, McDowell and Stein, Commissioners [Ittleman – Absent]) on July 12, 2012.

A true record. Attest.



Christopher C. Bowman
Chairman

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

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

Notice to:

Corey Donohue (Appellant)
Earl Wilson, Esq. (for Respondent)
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)
John Marra, Esq. (HRD)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
FAX: 617-727-7248

May 31, 2012

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Corey Donohue v. Department of Correction
G1-12-30; DALA Docket No. CS-12-165

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

Richard C. Heidlage, Esq.
Chief Administrative Magistrate

Enclosure

cc: Corey Donohue
Earl Wilson, Esq.

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THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Corey Donahue,
Appellant

v.

Docket No. G1-12-30
DALA No. CS-12-165
Dated: May 31, 2012

Department of Correction,
Appointing Authority

Appearance for Petitioner:

Pro Se

13 Woodwood Avenue
Worcester, MA 01603

Appearance for Appointing Authority:

Earl Wilson
Department of Correction
P.O. Box 946
Industries Drive
Norfolk, MA 02056

Administrative Magistrate:

Judithann Burke

CASE SUMMARY

The Appointing Authority, Department of Correction, had reasonable justification to bypass the Appellant for appointment to the position of Correction Officer I, by virtue of an unsatisfactory background check that included a negative employment record.

RECOMMENDED DECISION

The Petitioner, Corey Donahue, is seeking review of the decision of the Department of Correction (DOC) not selecting him for original appointment to the

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CIVIL SERVICE COMMISSION

position of Correction Officer I when he was bypassed on January 18, 2012. (Exhibit 2). He appealed in a timely fashion pursuant to the provisions M.G.L.c. 31 s. 2(b). (Exhibit 1). A hearing was held on April 13, 2012 at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA.

At the hearing, eighteen (18) exhibits were marked. The Appellant testified and argued in his own behalf. The Appointing Authority presented the testimony of James O'Gara, Personnel Officer II in the Human Recourses Department at DOC. The hearing was digitally recorded.

FINDINGS OF FACT

1. The Appellant, Corey Donahue, Jr., 26 y.o.a., applied for a position as a Correction Officer I with the Appointing Authority, Department of Correction, in October 2011. His name appeared on certification no. 4011045. His Civil Service test score was "91." (Exhibits 2 and 6).

2. The DOC performed a background check on the Appellant and other applicants during October 2011. (Exhibits 3, 5, 6-13.)

3. During the background check, it was discovered that the Appellant been terminated by a former employer, Namco Pools, due to misplacement of company funds. He also had warnings on file. (Exhibit 3).

4. The Appellant had stated on his employment application that he had never been formally disciplined by an employer, Namco Pools. When he was questioned about his Namco employment by DOC Investigator Melvin SanInocencio, the Appellant explained that he had pocketed the money in question (\$130 cash) by accident, and, that

during a phone call at home the next day from the assistant manager, he stated that he knew nothing about the missing money. He added that several days later, he found the missing cash in a pair of trousers, immediately called the manager and indicated he would return the money upon his return from vacation. (Exhibit 3).

5. At the April 13, 2012 hearing, the Appellant testified that he actually found the missing cash in his pants on the same evening he had pocketed it, realizing that he had inadvertently placed the money (\$130 cash) in his pocket. He returned the money when he arrived at work at noon the next day without notifying anyone that he had done so. He also stated on his employment application that he had appealed his termination and won his case. He was not re-hired by Namco. (Exhibits 3 and 6; Appellant and O’Gara Testimony).

6. The Appellant’s last employer, Ferrari Pools, did not recommend him for the position of Correction officer I due to “immaturity.” Jason Ward, the owner of Ferrari Pools reported to Mr. SanInocencio that the Appellants overall work performance was “lacking” and that the Appellant “needed at lot of direction.” (Exhibit 3.)

7. The Appellant attempted to contact Mr. Ward in order to discuss his negative reference, but his calls were not returned. (Appellant Testimony).

8. The Appellant has no law enforcement experience. (*Id.* and O’Gara Testimony).

9. On January 18, 2012, the DOC informed the Appellant that he failed to meet the eligibility criteria for the position of Correction Officer I by virtue of an “unsatisfactory background check/negative employment.” (Exhibit 2).

10. The Petitioner filed a timely appeal. (Exhibit 1).

CONCLUSION AND RECOMMENDED DECISION

The issue for determination in this appeal is “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken”. *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). “Reasonable justification” is defined as “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 District Court of East Middlesex*, 262 Mass. 477, 482 (1928) and *Commissioners of Civil Service v. Municipal Court of Boston*, 359 Mass. 214 (1971). Pursuant to G. L. c. 31 § 2(b), the Appointing Authority must prove by a preponderance of the evidence that the reasons assigned for the bypass were “more probably than not sound and sufficient”. *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991).

The Civil Service Commission owes “substantial deference” to the Appointing Authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Such deference is especially appropriate with respect to the hiring of public safety personnel. In light of the high standards to which public safety personnel are appropriately held, Appointing Authorities are given significant latitude in screening candidates. *City of Beverly v Civil Service Commission*, 78 Mass. App. Ct. 182, 188 (2010), citing *City of Cambridge*, *supra* at p. 305.

After a careful review of all of the testimonial and documentary evidence in this case, I have concluded that the Appointing Authority has met its burden of proving that

its reasons for the bypass of the Appellant were "more probably than not sound and sufficient". The Appellant was terminated by Namco Pools for misplacing company property after allegedly inadvertently pocketing funds. When a colleague called to ask him about the missing funds, he first responded that he had no knowledge of it. After finding the money in his pants and coming into work sometime later, i.e. either one day or several days later, he placed the money in the safe without notifying anyone. He neglected to tell his colleague or any of his superiors that he had taken or replaced the money. He did not discuss the issue with any supervisor or co-worker until he returned from vacation two weeks later when his manager terminated him. These actions call into question the Appellant's maturity level, level of attention to detail, and judgment.

The Appellant's versions of events changed during his April 13, 2012 hearing testimony. He testified that he actually found the missing cash the following morning and returned it when he arrived at work at noon that day. The Appellant acknowledged that he had told the assistant manager he had no idea what he was talking about during the phone call the previous evening. He stated that he had not told anyone because he was embarrassed.

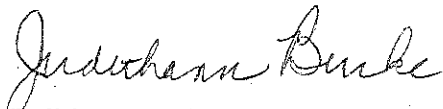
Despite warnings on file and subsequent termination, the Appellant stated on his employment application with the DOC that he had never been formally disciplined by an employer. Although the Appellant claims that he had appealed and won his case against termination, he was never re-hired. Moreover, when the DOC investigator spoke to the Appellant's employer about the money incident, nothing exculpatory was revealed.

It should also be noted that in his application, the Appellant had indicated that he was laid off from Namco. This and the previously mentioned inconsistencies between his application responses, the information he gave to the investigator and his hearing testimony all raise questions about his overall credibility.

The Appellant's history reflects episodes of immaturity, lack of self-discipline, lack of attention to detail, and poor judgment which resulted in both termination and negative references. These are unacceptable characteristics in a public safety employee who is required to respond to stressful situations and readily make decisions affecting public safety.

In conclusion, the Civil Service Commission cannot substitute its judgment for that of the Appointing Authority. *Cambridge v. Civil Service Commission*, supra, p. 304. I recommend that the Civil Service Commission deny the Appeal, affirm the action of the DOC, and uphold the bypass.

Division of Administrative Law Appeals,
BY:



Judithann Burke
Administrative Magistrate

DATED: May 31, 2012