

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

AKIM DORN,
Appellant

v.

G1-17-177

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

James Gilden, Esq.
173 North Main Street
Sharon, MA 02067

Appearance for Respondent:

Katherine Hoffman, Esq.
Boston Police Department
Office of the Legal Advisor
1 Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

DECISION

On September 11, 2017, the Appellant, Akim Dorn (Mr. Dorn), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Police Department (BPD) to bypass him for original appointment to the position of police officer based on his driving history. On October 3, 2017, I held a pre-hearing conference at the offices of the Commission, which was followed by a full hearing at the same location on April 30, 2018.¹ The full hearing was digitally recorded and both parties received a CD of the

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

proceeding.² On June 15, 2018, the parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT

Ten (10) Exhibits were entered into evidence at the hearing. Based on the documents submitted and the testimony of the following witnesses:

For the BPD:

- Rafael Antunez, BPD Detective (Recruit Investigation Unit);
- Nancy A. Driscoll, Director of the BPD's Human Resources Department;

For Mr. Dorn:

- Akim Dorn, 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. Mr. Dorn is a thirty-four (34) year-old African American male who is married with children. He is currently employed as a Boston College campus police officer. (Testimony of Mr. Dorn)
2. Mr. Dorn has been a member of the Army National Guard since 2009 and is assigned to the Military Police where he currently holds the rank of Sergeant. He was deployed to Qatar in 2012-2013. (Testimony of Mr. Dorn)

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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. If such an appeal is filed, this CD should be used to transcribe the hearing.

Stipulated Facts

3. On April 25, 2015, Mr. Dorn took the civil service examination for police officer and received a score of 86.
4. As a result of passing the civil service examination, Mr. Dorn's name appeared on an eligible list of candidates for Boston Police Officer established by the state's Human Resources Division (HRD) on October 25, 2015.
5. On February 22, 2017 and March 2, 2017, HRD issued Certification No. 04401 to the BPD from which the BPD ultimately appointed one-hundred thirty (130) candidates to the position of police officer.
6. Mr. Dorn was ranked 52nd among those candidates willing to accept appointment on Certification No. 04401.
7. Of the one-hundred thirty (130) candidates appointed, eighty (80) were ranked below Mr. Dorn.
8. On August 31, 2017, the BPD notified Mr. Dorn that he was being bypassed for appointment due to a poor driving history.
9. On September 11, 2017, Mr. Dorn filed an appeal with the Commission.

Relevant Driving History

(2007-2011) (6-10 Years Prior to Name Appearing on Certification)

10. On February 18, 2007, Mr. Dorn was cited by the Brookline Police Department for Speeding on Route 9 in Brookline, for which he was found responsible. (Exhibits 1 & 4)
11. On July 25, 2008, Mr. Dorn was cited for Failure to Stop at a Stop Sign in Roxbury, for which he was found responsible. (Exhibit 4)

12. On January 17, 2009, Mr. Dorn was cited by the Boston Police Department for Failure to Stop at a Stop Sign in Dorchester, for which he was found responsible. (Exhibit 4)
13. On May 26, 2009, Mr. Dorn was involved in a surchargeable accident in Braintree (Exhibit 4). Mr. Dorn does not recall the facts related to this accident. (Exhibit 1)
14. On October 6, 2009, Mr. Dorn was cited by the State Police for Speeding on the Massachusetts Turnpike in Framingham, for which he was found responsible. He was driving 80 MPH in a 65 MPH zone. (Exhibits 1 & 4)
15. On October 14, 2010, Mr. Dorn was involved in a surchargeable accident in Dorchester. (Exhibit 4) Mr. Dorn does not recall the facts related to this accident. (Exhibit 1)
16. On July 29, 2011, Mr. Dorn was involved in a surchargeable accident in Roxbury. Mr. Dorn describes the accident as a “fender-bender” in which he was the second car at a stop light. According to Mr. Dorn: “The green light I saw was not the light assigned to the direction I was travelling in. Once I realized that the car in front of me wasn’t moving, I applied pressure to my brakes in an effort to stop. Unfortunately, I was not able to stop in time and made contact with the vehicle in front of me. The damage was very minimal ... “ (Exhibits 1 & 4)
17. Four (4) days later, on August 2, 2011, Mr. Dorn was involved in another surchargeable accident in Roxbury. According to Mr. Dorn: “The light switched from red to green and all the vehicles proceeded as normal when the car in front of me suddenly stopped for an unknown reason. I made an attempt to avoid making contact with the vehicle in front of me by moving into the left lane. During this attempt, my front right corner bumper made contact with the rear left corner bumper of the vehicle in front of me. The damage resulted in a cracked tail light.” (Exhibits 1 & 4)

(2012-2017) (0-5 Years Prior to Name Appearing on Certification)

18. On February 11, 2012, Mr. Dorn was cited by the Boston Police Department for making an improper U-Turn in front of Roxbury District Court, for which he was found responsible.

(Exhibits 1 & 4)

19. On February 6, 2015, Mr. Dorn was involved in a surchargeable accident in Worcester. Mr. Dorn fell asleep at the wheel of the vehicle while driving and collided with another vehicle in front of the Worcester Police Department Headquarters. (Exhibits 1 & 4)

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. at 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).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of 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 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." Town of Burlington, 60 Mass.App.Ct. 914, 915 (2004).

Analysis

For the purposes of this appeal, I limited my review to the Appellant's driving history to the ten (10)-year period prior to his name appearing on Certification No. 04401 (2007-2017) with greater weight given to the most recent five (5) years (2012-2017). Further, I gave more weight to those infractions related to at-fault accidents and other moving violations where the Appellant was found responsible, etc. I gave less weight to those entries which may be attributable to socioeconomic factors such as expired registrations, no inspection sticker, etc. which may have no bearing on whether the Appellant can effectively serve as a Boston Police Officer today. I also tried to put the Appellant's driving history in the proper context, considering such issues as whether he is required to drive more for personal or business reasons. Finally, I reviewed the

driving histories of other candidates appointed that the Appellant argued were the most comparable to his own.

The BPD, has shown, by a preponderance of the evidence, that Mr. Dorn's poor driving history is a valid reason for bypassing him at this time. While his driving history over the most recent five (5)-year period only involves one (1) surchargeable accident and one (1) illegal U-Turn, the seriousness of the accident cannot be understated. Mr. Dorn fell asleep at the wheel while driving his vehicle, causing him to collide into another vehicle that resulted in damage to both vehicles. Further, these most recent infractions appear to be part of a continuing pattern of poor driving that was exhibited during the prior five (5) years. In regard to other candidates appointed who have negative entries on their driving record, the BPD, when looking at a comparable ten (10)-year look-back period, has sufficiently distinguished the driving histories of those individuals with Mr. Dorn. Finally, I did consider Mr. Dorn's argument that he has extensive driving experience as a campus police officer and in the military and that he has no record of any driving infractions while on duty in those jobs. This does not outweigh the BPD's valid concerns about a continuing pattern of non-work related driving infractions, including the troubling accident that occurred most recently in Worcester, while Mr. Dorn was headed to work at the Worcester Police Academy.

Conclusion

For all of the above reasons, Mr. Dorn's appeal under Docket No. G1-17-177 is hereby ***denied.***

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Commission (Bowman, Chairman; Camuso, Commissioner; Ittleman, Commissioner, Stein, Commissioner and Tivnan, Commissioner) on December 20, 2018.

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 to:

James Gildea, Esq. (for Appellant)

Katherine Hoffman, Esq. (for Respondent)