

Commonwealth of Massachusetts

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

DONALD ETIENNE,

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

Docket Number:

G1-25-065

Appearance for Appellant:

Pro Se

Donald Etienne

Appearance for Respondent:

Jennifer Cipolletti, Esq.

Julia Kang, Authorized Representative

Office of Legal Advisor

Boston Police Department

One Schroeder Plaza

Boston, MA 02120

Commissioner:

Shawn C. Dooley

SUMMARY OF DECISION

The Commission affirmed the decision of the Boston Police Department to bypass a candidate for appointment as a police officer based on his poor driving history and neglecting to report an additional traffic-related issue that occurred while undergoing the recruit selection process.

DECISION

On March 10, 2025, the Appellant, Donald Etienne (Appellant), acting pursuant to G.L. c. 31, § 2(b), filed a timely appeal with the Civil Service Commission (Commission), challenging the decision of the Boston Police Department (BPD) to bypass him for appointment as a police officer. The Commission held a remote pre-hearing conference on April 15, 2025. On June 24, 2025, I conducted an in-person full hearing at the offices of the Commission in Boston.¹ The hearing was recorded via Webex.² Both parties filed proposed decisions. For the reasons set forth below, Mr. Etienne's appeal is **denied**.

FINDINGS OF FACT

BPD entered ten exhibits (Resp. Exhs. 1-10) into evidence and the Appellant did not enter any exhibits. Based on the documents entered into evidence and the testimony of the following witnesses:

Called by the BPD:

- Detective Sean Flynn, Recruit Investigation Unit, Boston Police Department
- Teori Shaw-Boyce, Deputy Director of Human Resources, Boston Police Department

Called by the Appellant:

- Donald Etienne, Appellant

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² The Commission sent the parties a copy of the recording. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to use the recording to supply the court with a written transcript of the hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

and taking administrative notice of all matters filed in the case, pertinent law, and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following facts:

Background of Appellant

1. The Appellant is a 31-year-old Boston resident who has resided in Boston for 25 years. *(Stipulated Fact)*
2. The Appellant emigrated to the United States from Haiti at a young age and is a naturalized U. S. citizen. *(Testimony of Appellant)*
3. The Appellant graduated from a Boston high school and attended some college but did not attain a degree. *(Testimony of Appellant)*

Civil Service Process

4. On March 16, 2024, the Appellant took the civil service examination for police officer. *(Stipulated Fact)*
5. On June 1, 2024, the Appellant was added to the eligible list for Boston Police Officer. *(Stipulated Fact)*
6. On June 28, 2024, the state's Human Resources Division (HRD) issued Certification Number 09999 to the BPD. *(Stipulated Fact)*
7. The Appellant was ranked 66th on the Certification. *(Stipulated Fact)*
8. The Appellant was not appointed as a police officer, while 49 candidates ranked below him on the Certification were appointed. *(Stipulated Fact)*

9. A bypass letter dated January 12, 2025 was mailed to the Appellant, citing concerns about his driving history and failure to notify his assigned recruit investigator about an interaction with the State Police. (*Resp. Ex. 1*)

Background Investigation

10. Det. Sean Flynn (Det. Flynn) of the Boston Police Department's Recruit Investigation Unit was assigned to conduct the Appellant's background investigation. (*Testimony of Det. Flynn*)
11. Det. Flynn completed a report called a Privileged and Confidential Memorandum (PCM) containing the findings from their background investigation and presented that to the BPD's hiring roundtable. (*Testimony of Det. Flynn*).
12. The roundtable consists of one representative each from the BPD's Human Resources department, Internal Affairs Division, and the Legal department. (*Testimony of Det. Flynn*).
13. The PCM highlighted the Appellant's lengthy driving history which included 21 entries; 13 of which occurred between 2020 and 2024. (*Res. Ex. 4*)
14. The moving violations included speeding, failing to obey a stop sign, following too closely, failing to stop/yield, and failing to signal. In addition, his driving history included entries for having an open container of alcohol while driving, failing to appear for trial/court, operating a motor vehicle after a suspension, and obstructing an emergency vehicle. Most of these entries were for warnings. (*Testimony of Det. Flynn; Res. Ex. 4*)

15. In addition, the Appellant has had three motor vehicle collisions in 2016, 2017, and 2018. (*Testimony of Det. Flynn; Res. Ex. 4*)

16. The BPD's recruit application instructions #4 reads:

“If at any time your information changes, such as your physical address or email or if you have any interaction with law enforcement during this process or after the completion of your background investigation, you must notify the Recruit Investigations Unit 617-343-5010 immediately.”

The Appellant signed the Declaration of Acceptance of the recruit application of July 27, 2024. (*Respondent's Exhibit 2; Testimony of Det. Flynn*)

17. On August 23, 2024, less than a month after signing the application and shortly after the recruit interview, the Appellant was pulled over by a Massachusetts State Police trooper and received a warning for tinted windows. (*Testimony of Det. Flynn; Res. Ex. 4*)

18. The Appellant failed to disclose this to the BPD until after Det. Flynn questioned him about it. Per the request of Det. Flynn, the Appellant then submitted a narrative explaining his driving history. In this statement, he apologized for not informing the detective when this incident occurred. (*Testimony of Det. Flynn; Res. Ex. 4*)

19. In the statement, the Appellant also wrote: “Upon hearing my driving record, it seems I have been a bit reckless in the past. I always thought it was decent since I’ve only gotten ticketed 3 times since I first got my license but hearing the number of warnings I’ve gotten in between lets me know it’s time to change and be better on the road.” (*Resp. Ex. 4*)

APPLICABLE CIVIL SERVICE LAW

The role of the Civil Service Commission is to determine whether, "on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by appointing authority." *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997); *See Town of Watertown v. Arria*, 16 Mass. App. Ct. 331 (1983); *Mclsaac v. Civil Service Commission*, 38 Mass. App. Ct. 411 (2000); *Police Department of Boston v. Collins*, 48 Mass. App. Ct. 411 (2000); *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003).

The Commission has held in numerous decisions that its function is to determine whether the appointing authority has shown that it had "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 Serv. Comm'n*, 483 Mass. 461, 474-78 (2019); *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003). Massachusetts General Laws chapter 31, § 2(b), provides that "[n]o decision of the administrator . . . shall be reversed by the [C]ommission except upon a finding that such decision was not based upon a preponderance of evidence in the record."

An action to bypass a candidate is justified when it is "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." *City of Cambridge*, 43 Mass. App. Ct. at 304, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of Eastern Middlesex*,

262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Court of the City of Boston*, 359 Mass. 211, 214 (1971).

City of Cambridge further states: “In the task of selecting employees of skill and integrity, appointing authorities are invested with broad discretion.” *Id* at 304. The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *Falmouth v. Civil Service Commission*, 447 Mass. 814, 824-826 (2006). In doing so, 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 Service Commission*, 78 Mass. App. Ct. 182, 188 (2010). That “deference is especially appropriate with respect to the hiring of police officers.” *Id*. 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." *Town of Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (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).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., *Falmouth v. Civil Serv. Comm’n.*, 61 Mass. App. Ct. 796, 801 (2004), citing *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997); *Police Comm’r v. Civil Serv. Comm’n*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986). Massachusetts courts have held that

“[a]n officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion.” *McIsaac v. Civil Service Commission*, 38 Mass. App. Ct. 473, 475 (1995). “Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” *Police Comm’r v. Civil Service Comm’n*, 22 Mass. App. Ct. 364, 371, rev. den., 398 Mass. 1103 (1986).

ANALYSIS

By a preponderance of the evidence, the BPD has shown that it had reasonable justification to bypass the Appellant for the position of full-time police officer. The sheer volume of driving related incidents / interactions with police over the past four to five years is rightfully concerning when determining if a person such as this Appellant can effectively perform the duties and responsibilities of a police officer at this time. See, e.g., *Moore v. Boston Police Dep’t*, 37 MCSR 176 (2024), *aff’d sub nom. Moore v. Civil Serv. Comm’n*, Suffolk Super. Ct. no. 2484CV02253 (Sept. 25, 2025). This, coupled with the failure to report an additional traffic stop while in the midst of the interview process, only serves to confirm that the BPD had reasonable justification to bypass the Appellant at this time.

While I credit the Appellant for taking responsibility for his driving record, it is nevertheless understandable that the BPD has valid concerns about entrusting the Appellant with operating a police cruiser. A police officer is called upon to operate their vehicle during very stressful and complex scenarios and their ability to make sound

judgments during these situations is critical to protecting the public. When one routinely is cited for moving violations in non-emergency situations, it calls into question how they will respond when faced with an actual emergency. While most of the entries on his record are warnings, the sheer volume of these interactions over the past four years highlights a pattern of concerning behavior.

More broadly, when the bypass, as here, involves a person of color, appointing authorities must consider public policy concerns related to the racial disparity in traffic stops. See Commonwealth v. Gonsalves, 429 Mass. 658, 670 (1999) (Ireland, J., concurring) (“The widespread public concerns about police profiling, commonly referred to as ‘DWB—driving while black,’ has been the subject of much discussion and debate both across the country and within the Commonwealth”). Applied here, I find that the BPD did conduct a reasonably thorough review of the Appellant’s driving record. They reviewed information lawfully available to them through the Criminal Justice Information System (CJIS) related to the Appellant’s driving record. A background investigator then provided the Appellant with an opportunity to address the entries on the report. The Appellant was forthright in his statement when addressing his driving record stating, “Upon hearing my driving record, it seems I have been a bit reckless in the past. I always thought it was decent since I’ve only gotten ticketed 3 times since I first got my license but hearing the number of warnings I’ve gotten in between lets me know it’s time to change and be better on the road.”

The BPD also contends that the Appellant has shown poor judgment for his failure to disclose that he had been pulled over and issued a warning by the State Police during his evaluation period, despite being told a month earlier that he must immediately disclose

any encounters with law enforcement. The Commission has ruled that a person's ability to follow directions and orders is a "legitimate and important" trait for an officer in a paramilitary organization. *Comfrey v. Fall River Police Dep't*, 28 MCSR 317 (2015). The BPD application directions emphasize the need for full disclosure of an applicant's information. A failure to disclose is not only an inability to follow directions, but the Commission has held that an applicant's failure to disclose material information could be interpreted as indicating that an applicant is not being completely truthful.

While neglecting to report this interaction, from an outsider's point of view, may be seen as a somewhat minor infraction given that he merely received a warning for tinted windows, the instructions were very clear that he must *immediately* report *any* interaction with law enforcement to his recruit investigator. The fact that these instructions were relayed to him less than a month prior reinforces the position of the BPD that this was a legitimate concern resulting in his bypass. The BPD is a paramilitary organization and following instructions / obeying orders is an essential requirement of all police officers in order for the department to fulfill its mission. Failing to abide by these simple instructions at this initial stage of the process certainly raises a red flag as to his ability to comply with directives and his overall attention to detail – qualities that are imperative for a candidate to possess.

Nevertheless, it should be seen as a positive that the Appellant has expressed the realization that he must be a more conscientious driver and was genuinely contrite for not reporting his interaction with the State Police. Understanding that fact, if he continues to show improvement and has no further incidents on his driving record, it is my hope that the

BPD would take into account his ability to mature and learn from past mistakes and consider him for a position as police officer in the future.

CONCLUSION

For all the above reasons, the BPD's decision to bypass Donald Etienne for the position of police officer is affirmed. The appeal filed under Docket No. G1-25-065 is hereby **denied**.

Civil Service Commission

/s/ Shawn C. Dooley

Shawn C. Dooley
Commissioner

By vote of the Civil Service Commission [Bowman, Chair; Dooley and McConney, Commissioners [Stein, Markey-absent]] on October 2, 2025.

Either party may file a motion for reconsideration within ten days of 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:

Donald Etienne (Appellant)

Jennifer Cipolletti, Esq. (for Respondent)

