

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

GREGORY FRASER,

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

Docket Number:

G1-24-087

Appearance for Appellant:

Gregory Fraser, *Pro Se*

Appearance for Respondent:

Omar Bennani, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Shawn C. Dooley

SUMMARY OF DECISION

After concluding that the Boston Police Department (BPD)'s review of a candidate for police officer was flawed and incomplete, the Commission overturned the BPD's decision to bypass the candidate for appointment and ordered that he be reconsidered in a future hiring cycle.

DECISION

On June 12, 2024, the Appellant, Gregory Fraser (Appellant), filed a timely appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 31, § 2(b) challenging the decision of the Boston Police Department (BPD) to bypass the Appellant for appointment as a police officer for the BPD. The Commission held a remote pre-hearing conference on July 9, 2024.

On September 17, 2024, I conducted an in-person full hearing. The hearing was recorded via the Webex videoconferencing platform, and copies were provided to the parties.¹ Both parties filed proposed decisions. For the reasons set forth below, Mr. Fraser's appeal is allowed.

FINDINGS OF FACT

Five exhibits were introduced into evidence by the BPD (Ex. 1-5) and the Appellant entered none. Based on the exhibits entered into evidence and the testimony of the following witnesses:

Called by the BPD:

- Director of Human Resources Natasha Levarity (Ms. Levarity), Boston Police Department
- Detective Gregory Waldrip (Det. Waldrip), Recruit Investigations Unit, Boston Police Department

Called by the Appellant:

- Gregory Fraser, Appellant

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 findings of fact:

1. The Appellant is a 30-year-old resident of the City of Boston. *(Stipulated Facts)*
2. From 2014 to 2015, the Appellant served on active duty in the United States Marine Corps (USMC) and in the USMC Reserves from 2015-2019. He received an honorable discharge.

(Exhibit 4 and Testimony of the Appellant)

¹ A link to the audio/video recording was provided to the parties. 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 they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

3. The Appellant has an active Massachusetts License to Carry (LTC). (*Ex. 4*)
4. On March 20, 2023, the Appellant took the written examination for police officer. The eligible list was established on July 1, 2023. On August 11, 2023, the state's Human Resources Division (HRD) issued Certification #09448 to the BPD, upon which the Appellant was ranked 73rd. The BPD appointed 97 candidates who were ranked below the Appellant. (*Stipulated Facts*)

Military Discipline

5. The Appellant self-disclosed on his BPD application that in January of 2019, while serving as an E-3, Lance Corporal, an incident occurred where he had confronted a subordinate, an E-2, Private First Class, for stealing an E-4, Corporal's equipment. (*Exhs. 1 and 4; Testimony of the Appellant*)
6. The Appellant disclosed that the E-2 had told him that he had taken the equipment because he lost his own issued equipment and was afraid that platoon leadership would find out. (*Testimony of the Appellant*)
7. To discipline the E-2 (subordinate), the Appellant had the E-2 bring his issued equipment to the "drill deck", an open area used for staging gear in order to have him record the serial numbers of his gear for accountability purposes. (*Exhs. 1 and 4; Testimony of the Appellant*)
8. Following this discipline, the E-2 reported the Appellant to his superiors with an allegation of hazing. (*Exhs. 1 and 4; Testimony of the Appellant*)
9. In response, the Appellant's superiors found him responsible, and decided to non-judicially punish him by demoting him one rank to the rank of E-2. (*Exhs. 1 and 4; Testimony of the Appellant*)
10. The Appellant included his Sergeant Major's contact information on his application, but the

Recruit Investigation officer, Detective Waldrip, did not attempt to contact him. (*Ex. 1, Testimony of the Appellant and Det. Waldrip*)

Appellant's Work History

11. The Appellant was employed at a cyber security firm (Prior Employer 1) from July of 2020 to January of 2021. In his application, the Appellant self-disclosed that he was terminated after he was unable to keep up with the workload. (*Exhs. 1 and 4; Testimony of the Appellant*)
12. The Appellant was employed by an international consulting company (Prior Employer 2) from October 2021 to August of 2022. In his application, the Appellant disclosed that he was terminated after it was discovered that he did not have a college degree. This was a 100% remote position and his supervisor never met him. The Appellant was hired through a temporary employment agency, and while the Appellant disclosed to the agency that he did not have a college degree, the agency neglected to inform Prior Employer #2 of that fact when they hired him. (*Exhs. 2 and 4; Testimony of Det. Waldrip*)
13. At the time of his application to the BPD, the Appellant had been employed in a security position at a restaurant since November of 2022. (*Exhs. 2 and 4; Testimony of Det. Waldrip*)
14. As part of a performance evaluation, the General Manager of the restaurant gave him a positive review, citing his professionalism, calm temperament, respectful nature, and noting that he was a strong contributor to the team. (*Exhs. 2 and 4; Testimony of Det. Waldrip*)
15. Detective Waldrip also interviewed the Appellant's supervisor at the restaurant. This supervisor stated that the Appellant is a good person who means well, but noted that the Appellant sometimes would be assigned to the front door and leave his post without telling the supervisor. There were no notes in the file to support this, only a mention in the Personal and Confidential Memorandum (PCM). (*Exhs. 2 and 4; Testimony of Det. Waldrip*)

16. Detective Waldrip only included the supervisor's comments on the PCM and did not include the General Manager's assessment. (*Ex. 4*)
17. All other references that were included in the Appellant's PCM were positive and stated that they felt he would make a good police officer. (*Ex. 4*)
18. The hiring roundtable for the BPD consisted of a member of the BPD's Internal Affairs Department and the Director of Human Resources at the time, who is no longer employed by the BPD. (*Testimony of Ms. Levarity*)
19. The roundtable reviews candidates for the BPD and determines who will be hired and who will be bypassed. (*Testimony of Ms. Levarity*)
20. Natasha Levarity is currently the Director of Human Resources and was not a part of the roundtable that bypassed the Appellant. (*Testimony of Ms. Levarity*)
21. Due to the departure of her predecessor, Ms. Levarity wrote and issued the Appellant's bypass letter. (*Testimony of Ms. Levarity*)
22. Ms. Levarity only relied on information in the Appellant's PCM in writing the bypass letter. (*Testimony of Ms. Levarity*)
23. Ms. Levarity is not familiar with the Uniform Code of Military Justice (UCMJ), how punishment is conducted in the military, or how non-judicial punishments are regarded. (*Testimony of Ms. Levarity*)
24. On May 15, 2024, the BPD sent a letter to the Appellant informing him of their decision to bypass him for original appointment to the position of Boston police officer. (*Ex. 5*)

Legal Standard

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the state's Human Resources Division (HRD) or, in certain cases,

by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. The statute provides:

No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status. Id. (*emphasis added*)

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights. (*emphasis added*)

The fundamental mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31, which command, among other things, “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. A mechanism for ensuring adherence to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority of a “certification” which ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. G.L. c. 31, §§ 6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly

ranked candidates who indicate they are willing to accept the appointment, which is known as the “2n+1” formula. G.L. c. 31, § 27; PAR.09.

In order to deviate from the rank order of preferred hiring, and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L. c. 31, §§ 1 and 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a “reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and was “reasonably justified”. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688 (2012), citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006). and cases cited; Beverly v. Civil Service Comm’n 78 Mass. App. Ct. 182 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

Analysis

The BPD’s decision to bypass the Appellant for police officer was based on a flawed and incomplete review as discussed in detail below.

The former Director of Human Resources, who was one of the two people participating in this roundtable, left the BPD’s employment prior to drafting a bypass letter, leaving that task to the incoming Director of Human Resources who had not participated in the roundtable discussion. Thus, the author of the bypass letter could only rely on documentation, including a background investigation report that did not provide a full picture of the Appellant’s background, including a

positive reference from his former employer.²

Unfortunately, the report related to the Appellant's background was limited in its findings as the investigating officer neglected to interview any person of authority related to the Appellant's six years of service in the Marine Corps. Although the Appellant listed his supervisor and phone number, the BPD did not contact anyone from his command. This is significant as one of the primary reasons stated for bypass was an incident of non-judicial discipline that was self-reported by the Appellant on his BPD application. After this discipline, the Appellant was later promoted back to his previous rank and received an honorable discharge when he separated from service. If the BPD is going to use something as a basis for bypass, one would hope that they would gather more information than the mere recollection and interpretation of events as related by someone who was possibly still in his teens when the event took place. The military keeps detailed personnel files and to simply decide not to follow up on what is considered a disqualifier is problematic.

Further, the investigating officer did not include positive reports from the Appellant's work history, but, rather, only highlighted negative aspects. In the bypass letter, the BPD highlights that a supervisor (at the Appellant's part-time bouncer position) noted that the Appellant was "given an assignment to stand at the front door with another security person and you would leave your post without notifying the supervisor." The investigator stated he received that comment over the phone from the supervisor but was not able to supply any documentation or details surrounding the call. Further, there was no mention in the report of all the glowing praise heaped upon the Appellant, in writing, from the restaurant's General Manager. These comments included

² The BPD chose not to call the one other individual who participated in the roundtable discussion related to the Appellant's candidacy.

statements such as: “consistently dependable since day one”; “Greg performs all security duties asked of him”; “Professional and Respectful”; “Greg treats conflict with a cool head and is always a voice of reason”; and “I think Greg would make a fine Boston Police Officer.”

The other past job issue that the bypass letter cited was that a supervisor stated that the Appellant had some “motivational challenges.” This supervisor had never met the Appellant due to the job being a fully remote position. In addition, the Appellant’s termination was related to the employment agency failing to notify the employer that the Appellant did not have the required degree. It is important to note that he was not fired due to work performance, as one reading the bypass letter would be led to believe.

To her credit, the new Director of Human Resources acknowledged that if the Appellant had a few more positive reviews from employers, he probably would not be bypassed. Given that the reviews shared with the roundtable were incomplete and appear to paint an inaccurate picture of the Appellant, there is the strong possibility that the BPD may have elected *not* to bypass the Appellant for appointment if the report had been more complete.

Conclusion

For all of the above reasons, the Appellant’s appeal under Docket No. G1-24-087 is hereby *allowed*. Pursuant to the Commission’s authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- HRD shall place the name of the Appellant at the top of any current or future certification for the position of permanent full-time police officer in the Boston Police Department until he is given one additional consideration for appointment.
- If the Appellant is appointed as a Boston Police Officer, he shall receive the same civil service seniority date as the candidate appointed from Certification No. 09448. This date is for civil service purposes only and is not intended to provide the Appellant with any additional compensation or benefits, including creditable service toward retirement.

- Once the Appellant has been provided with the relief ordered above, the Department shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

Civil Service Commission

/s/Shawn C. Dooley
Shawn C. Dooley
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, and Stein, Commissioners) on March 6, 2025.

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:
Gregory Fraser (Appellant)
Omar Bennani, Esq. (for Appellant)