

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

JAMAINE GAITOR,

Appellant

CASE NO. G1-16-178

v.

BOSTON POLICE DEPARTMENT,

Respondent

Appearance for Appellant:

Pro Se

Appearance for Respondent:

Jaelyn R. Zawada, Esq.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Paul M. Stein

DECISION ON MOTION FOR RECONSIDERATION

The Appellant, Jamaine Gaitor, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b), to contest his non-selection for appointment as a full-time permanent Police Officer with the Boston Police Department (BPD). By Decision dated May 11, 2017, the Commission allowed the appeal based on the Commission’s findings and conclusion that the BPD had unlawfully bypassed Mr. Gaitor without reasonable justification. The Commission’s Decision held that Mr. Gaitor’s non-selection was not the result of his voluntary withdrawal or unreasonable neglect but, rather, the BPD’s unjustified unilateral decision to refuse to process him based on an erroneous claim that he “failed to complete” the application process.

The BPD now moves for reconsideration of the Commission’s Decision on the grounds that: (1) the Commission erroneously concluded that Mr. Gaitor neither failed to appear for any orientation or event nor failed to respond to any request for information

necessary to permit the BPD to process his application that constituted a “failure to complete” the application process, when, in fact, he had not participated in a “home visit” with the BPD investigator; and (2) the Commission erroneously found Mr. Gaitor’s version of events more credible than the version proffered by the BPD’s witnesses by overlooking inconsistencies in the evidence presented to the Commission.

After careful consideration, I conclude that the BPD’s motion for reconsideration is not persuasive. The BPD did not identify a clerical or mechanical error in the decision or a significant factor the Commission overlooked in deciding the case, as required by 801 CMR.1.01(7).

First, the Commission’s Decision did not overlook the fact that the BPD background investigator did not conduct a home visit with Mr. Gaitor. In its present motion, BPD now proffers that all City employees are required to prove that they live in Boston and, presumably, BPD could not verify this fact without another home visit. Even if I were to accept this belated rationale for a home visit, it would not change the conclusion. At no time was Mr. Gaitor ever asked to participate in a home visit and none was ever scheduled by the BPD investigator. There was nothing to suggest that Mr. Gaitor would have balked at such a request had one been made.

Rather, as the Commission Decision made clear, the form that the investigator used in requesting Mr. Gaitor to respond contained spaces that could have sought such a home visit or identified what, if any, specific information or documentation Mr. Gaitor needed to supply, but the investigator chose to leave that part of the form entirely blank. In viewing the evidence as a whole, the Commission drew the proper inference that these inquiries, ambiguous at best, were not designed to prompt Mr. Gaitor to contact BPD to

schedule a home visit or provide any information so that BPD would process his application, but solely intended to prompt his withdrawal from the process, as to which he already made perfectly and reasonably clear he would not do. Any supposition that he “failed” to complete the hiring process specifically by impeding in any way BPD’s opportunity to request or conduct such a home visit is wholly without merit.

Second, the Commission’s conclusion that Mr. Gaitor’s version of the process, in which he had made unequivocally clear his decision NOT to withdraw his application voluntarily, did not overlook the alleged inconsistencies in the testimony. Indeed, the credibility of Mr. Gaitor’s testimony under oath – that he told the BPD investigator when he was called into the meeting in July 2015 that he wanted his application to be processed “to the roundtable” as he knew he soon would be over the age limit and there was “nothing to think over” because he would not “sign a withdrawal form, period” – is not inconsistent with the (unsworn) statement he made at the opening of the hearing about not having “heard anything from the Department since my background interview”. This initial remark, as were other similar remarks made under oath, was directed to when he first knew he had not been selected and why. Mr. Gaitor did fully acknowledge that he received various other earlier e-mails and voice-mails from the BPD investigator. He even was completely candid in stating that he “could have” replied to them, but didn’t, solely because he knew his “application was complete” and all that BPD wanted was to have him sign the withdrawal form, which he had “already told her he was not going to do, period.” Moreover, Mr. Gaitor’s version of events is actually corroborated by the testimony of the BPD investigator, who acknowledged that Mr. Gaitor “knew it was his last chance if he didn’t get an opportunity this time around.” In sum, the Commission

stands by its credibility assessments, which, as the law requires, considered the evidence as a whole and produced the ultimate finding that Mr. Gaitor had been unequivocal that he wanted to be given an up-or-down decision on the merits of his application and BPD chose unilaterally, and unlawfully, to deny him that opportunity.

Accordingly, for the reasons stated above, the BPD's Motion for Reconsideration is hereby *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on June 8, 2017.

Notice to:
Jamaine Gaitor (Appellant)
Jaclyn R. Zawada, Esq. (for Respondent)