

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

JEFF B. GARVEY,
Appellant

v.

CITY OF WOBURN,
Respondent

Case No.: G1-12-3

DECISION

The Civil Service Commission (Commission) voted at an executive session on July 26, 2012 to acknowledge receipt of: 1) the Recommended Decision of the Administrative Law Magistrate; 2) the Appellant's Objections to the Recommended Decision; and 3) the Respondent's Response to the Appellant's Objections.

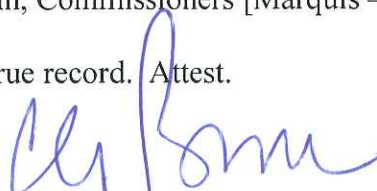
To the extent that the City presented valid reasons for bypassing Mr. Garvey, including positive reasons associated with the selected candidate, the Commission voted to adopt the findings of fact and recommended Decision of the Magistrate therein.

We do not accept, or adopt, however, the conclusion of the magistrate that Mr. Garvey lacks direction and responsibility or that he has issues with self-control. Respectfully, Mr. Garvey's personal and professional background appear to paint the picture of a serious, focused individual with a sincere desire to pursue a career in law enforcement.

The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners [Marquis – Absent]) on July 26, 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:

Joseph L. Sulman, Esq. (for Appellant)

Ellen Callahan Doucette, Esq. (for Respondent)

John Marra, Esq. (HRD)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



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 24, 2012

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

Re: Jeff B. Garvey v. City of Woburn
G1-12-3; DALA Docket No. CS-12-143

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: Joseph Shulman, Esq.
Ellen Callahan Doucette, Esq.

COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

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THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Jeff B. Garvey,
Appellant

v.

Docket No. G1-12-3
DALA No. CS-12-143
Dated: May 24, 2012

City of Woburn,
Appointing Authority

Appearance for Petitioner:

Joseph Sulman, Esquire
185 Devonshire Street, #502
Boston, MA 02110

Appearance for Appointing Authority:

Ellen Callahan Doucette, Esquire
City Solicitor
City Hall
10 Common Street
Woburn, MA 01801

Administrative Magistrate:

Judithann Burke

Case Summary

The Appellant was bypassed for appointment as a Woburn Reserve Police Officer. Because of his minimal experience in law enforcement, less than stellar credit history, poor driving record and limited community service, the Appointing Authority met its burden of proving that it had reasonable justification for the action taken.

RECOMMENDED DECISION

Pursuant to the provisions of G.L. c. 31 § 2(b), the Appellant, Jeff B. Garvey, is seeking review of the decision of the Personnel Administrator to accept reasons proffered

by the Appointing Authority, City of Woburn, for the October 31, 2011 bypass of him for original appointment to the position of Woburn Reserve Police Officer. (Exhibit 2.)

The appeal was timely filed.

A hearing was held on March 30, 2012 at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, Boston, MA.

The Appellant testified in his own behalf. The Appointing Authority presented the testimony of Sergeant Timothy Donovan of the Woburn Police Department and Mayor Scott D. Galvin of the City of Woburn. Eight (8) exhibits were marked at the hearing. The Appointing Authority filed a Stipulation of Facts. One (1) tape was made of the proceedings.

FINDINGS OF FACT

1. The Appellant, Jeff Garvey, d.o.b. 6/11/79, took and passed the Civil Service Examination for entry-level police officer on April 25, 2009. His name appeared on the eligible list for the position of Intermittent Reserve Police Officer in Woburn on March 16, 2010. (Stipulation and Exhibit 1.)

2. The City of Woburn, acting through its Mayor as the Appointing Authority, received two lists of reserve officer candidates for certification. The first, received on June 22, 2011, contained twenty-seven (27) candidates from which it was to appoint twelve (12) reserve officers. The Appellant appeared on this list, tied at number nineteen (19) with two (2) other candidates. The second list, containing fifteen (15) additional candidates, was received on July 11, 2011. (Stipulation and Exhibit 1.)

3. The Appellant signed the list stating he was willing to accept appointment, and the city began its normal hiring procedure. As per its hiring procedure, the city conducted a full background check on the Appellant. The Appellant interviewed with the Appointing Authority on October 25, 2011. (Stipulation and Exhibits 1, 3, 4, and 5.)

4. Pursuant to the Appellant's background check and interview, the Appointing Authority found that the Appellant lacked relevant education, work experience, and community involvement. The Appellant also had a checkered driving record; and credit problems. (Testimony and Exhibit 2.)

5. The Appellant earned an Associate's Degree in Science from Middlesex Community College in the year 2003. On his application, the Appellant stated that he had attended Middlesex Community College from 9/1997-12/2010. The Appellant testified that he had actually earned his Associate's Degree in 2003, but after that, he had studied sporadically towards a Bachelor's Degree in Criminal Justice if and when he had both the time and the resources. (Testimony and Exhibit 3.)

6. The Appellant's prior work experience included being a CAD designer for two architectural engineering firms after a period of unemployment due to a layoff. He is currently employed as a manager at the High Street Smoke Shop in Lowell, MA, a business owned by his brother. (Testimony and Exhibit 3.)

7. When asked about his community/volunteer activities during his interview, the Appellant stated that he had helped various causes in college. When questioned about his activities at the hearing, the Appellant stated that since college, he

has raised money for victims of 9/11 and that he raises money for food drives during the holidays. (Testimony and Exhibit 5.)

8. When reviewed by the Appointing Authority, the Appellant's driving record reflected ten (10) incidents between 1996 and 2006. When the Appellant requested his driving record from the RMV, it reflected five (5) incidents between 2003 and 2006. The Appellant was found to be responsible for only three (3) of the violations. These were: Failure to keep in the Right Lane in 2002, Improper Equipment in Chelmsford in 2006 and a surchargeable accident in 2002. (Testimony, Exhibits 3 and 7.)

9. The Appellant acknowledged that he had been denied credit cards twice and was overdue in payments to another creditor. (Testimony and Exhibit 3.)

10. On November 1, 2011, the Appointing Authority notified the Human Resources Division and the Appellant of its decision to bypass the Appellant for "positive and negative reasons." The positive reasons were the result of a favorable application by Robert C. DeNapoli, who had been number twenty four (24) on the list. The negative reasons were based upon the results of the Appellant's background investigation. (Testimony, Stipulation, and Exhibit 2.)

11. While Robert C. DeNapoli's father is a Woburn Police Officer who was seriously wounded in a recent incident in Woburn, Mr. DeNapoli was chosen because his education and work experience were found to be directly related to law enforcement. Mr. DeNapoli had obtained a Bachelor's Degree in Criminal Justice. He was currently an Associate Court Officer in the Middlesex Superior Court and had previously worked for the Transportation Security Administration. Mr. DeNapoli was also chosen because of

his “exemplary personal and driving record” and his involvement in the community through youth sports and charitable activities, such as the Food Drive for the Woburn Council of Social Concern the D.A.R.E. program. (Testimony, Exhibits 2 and 6.)

12. Mayor Scott Galvin of the City of Woburn was not asked to appoint Mr. DeNapoli, nor was he pressured to do so. (Testimony.)

13. The Appellant filed an appeal with the Civil Service Commission on December 28, 2011. (Exhibit 2 and Stipulation.)

CONCLUSION AND RECOMMENDATION

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 the City of Boston*, 359 Mass. 214 (1971). Pursuant to M.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).

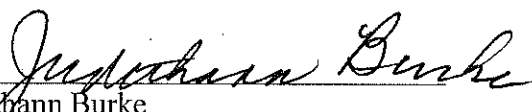
After a careful review of all of the testimonial and documentary evidence in this case, I have concluded that the Appointing Authority has met its burden of proving that its reasons for the bypass of the Appellant were “more probably than not sound and

sufficient". The Appellant claims that he was bypassed solely because Mr. DeNapoli is the son of police officer who was recently wounded in the line of duty. However, the Appellant's Associate's Degree in Science and his work history as a CAD designer in architectural engineering do not indicate a strong interest and or background in law enforcement nor do they provide him with experience in relevant duties. This is further highlighted when compared to Mr. DeNapoli's work experience as an Associate Court Officer and with the Transportation Security Authority, both of which indicate a strong interest in a career in law enforcement and provide a background in officer duties, such as writing reports.

With his background taken as a whole, the picture that emerges is one of a person who lacks direction and responsibility. Even with fewer incidents than what the background check revealed, the Appellant's driving record shows that he has issues with self-control. Moreover, the Appellant's less than stellar credit history denotes issues with responsibility. Given that police officers must write reports, drive safely, and act responsibly and exhibit self-control under all circumstances, the bases for the Appointing Authority's bypass do not seem trivial, arbitrary or capricious.

In conclusion, the Civil Service Commission cannot substitute its judgment for that of the Appointing Authority. *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). I recommend that the Civil Service Commission deny the appeal, affirm the action of the Appointing Authority, and uphold the bypass.

Division of Administrative Law Appeals,
BY:


Judithann Burke
Administrative Magistrate

DATED: May 24, 2012