

# COMMONWEALTH OF MASSACHUSETTS

## CIVIL SERVICE COMMISSION

100 Cambridge Street; Suite 200  
Boston, MA 02114  
(617) 979-1900

ANTHONY GIACALONE, JR.,  
*Appellant*

v.

MASSACHUSETTS  
ENVIRONMENTAL POLICE,  
*Respondent*

Docket Number:

G1-24-024

Appearance for Appellant:

Anthony Giacalone, Jr., *Pro se*

Appearance for Respondent:

Alexis N. Demirjian, Esq.  
Deputy Director of Labor Relations,  
Massachusetts Executive Office of Energy  
and Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Commissioner:

Angela C. McConney<sup>1</sup>

## SUMMARY OF DECISION

The Commission affirmed the decision of the Massachusetts Environmental Police (MEP) to bypass a candidate for appointment as an Environmental Police Officer A/B (EPO A/B) because he lacked the minimum entrance requirements.

## DECISION

On February 20, 2024, the Appellant, Anthony Giacalone Jr. (Appellant), pursuant to G.L. c. 31, § 2 (b), appealed to the Civil Service Commission (Commission), a recent decision of

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<sup>1</sup> The Commission acknowledges the assistance of intern Gretchen Wang with the preparation of this decision.

the Massachusetts Environmental Police (MEP) to bypass him for appointment to the position of Environmental Police Officer A/B (EPO A/B).

On March 26, 2024, the Commission held a remote pre-hearing conference. On May 15, 2024, I conducted an in-person full hearing at the offices of the Commission, located at 100 Cambridge Street, Boston.<sup>2</sup> The hearing was recorded via the Webex videoconferencing platform, and copies of the recording were provided to both parties.<sup>3</sup>

I left the record open until June 14, 2024 in order for Mr. Giacalone to submit his US Coast Guard underway records.

On June 21, 2024, the Respondent filed its proposed decision, whereupon the administrative record closed. Mr. Giacalone neither filed a proposed decision nor his underway records.

For the reasons set forth below, Mr. Giacalone's appeal is denied.

## **FINDINGS OF FACT**

I admitted twenty-six exhibits from the Respondent (R. Exhibits 1-26). Based on the documents submitted and the testimony of the following witnesses:

*Called by MEP:*

- Lt. James Cullen, Massachusetts Environmental Police

*Called by the Appellant:*

- Anthony Giacalone, Appellant

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<sup>2</sup> 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.

<sup>3</sup> 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.

and taking administrative notice of all matters filed in this case, plus pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence, I make the following findings of fact:

1. Anthony Giacalone is a lifelong resident of Gloucester, Massachusetts.

(Testimony of Appellant)

2. Mr. Giacalone, a U.S. Coast Guard veteran, served as a Boatswain Mate while on active duty from 2003 to 2008. (R. Exhibit 24; Testimony of Appellant)

3. Mr. Giacalone was employed as a police officer in the Gloucester Police Department from 2010 to 2021. (Testimony of Appellant)

4. Mr. Giacalone has a high school diploma. He did not pursue higher education. (R. Exhibit 24)

5. On October 29, 2022, Mr. Giacalone passed the civil service examination for the position of Environmental Protection Officer A/B (EPO A/B). (Stipulated Facts)

6. On February 15, 2023, the state's Human Resources Division (HRD) established an eligible list for EPO A/B. (Stipulated Facts)

7. On February 23, 2023, HRD issued Certification No. 09085 to MEP. Mr. Giacalone ranked 15th among those willing to accept appointment. (Stipulated Facts)

8. MEP appointed 14 candidates from Certification No. 09085, at least one of them ranked below Mr. Giacalone.<sup>4</sup> (Stipulated Fact)

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<sup>4</sup> MEP hired an additional police officer from certification number 07249, which was issued in 2020. This officer was hired off an earlier list due to a military deferment consistent with USERRA. As this officer was not on the current certification and special circumstances govern his hire, his appointment does not constitute a bypass of the Appellant. (R. Exhibit 26)

9. MEP is a conservation law enforcement agency within the Secretariat of the Executive Office of Energy and Environmental Affairs (EOEEA), and is primarily responsible for safeguarding and enforcing laws related to the Commonwealth's natural resources.

(Testimony of Lt. Cullen)

10. MEP enforces laws related to fish and wildlife, protection of endangered species, laws regulating commercial marine vessels, recreational boating, and recreational off-road vehicles. (Testimony of Lt. Cullen)

11. HRD has established minimum entrance requirements (MERs) for the position of EPO A/B, pursuant to G.L. c. 31, § 5. (R. Exhibit 8; Testimony of Lt. Cullen)

12. In addition to a high school diploma, incumbents of the position EPO A/B must have the following minimum experience or education:

- At least two years of full-time, or equivalent part-time, professional or paraprofessional experience in wildlife or fisheries conservation or management, natural resources conservation or management, biological or environmental science, forestry, ecology, marine science, conservation law enforcement or related field, or any equivalent combination of such experience and the substitutions below.
- An associate's degree in environmental science, biology, oceanography, ecology, natural resources management, wildlife management, fisheries management, forestry, conservation law enforcement or related field, may be substituted for up to one year of required experience on the basis of two years of education for one year of experience.
- A bachelor's or higher degree in environmental science, biology, oceanography, ecology, natural resources management, wildlife management, fisheries management, forestry, conservation law enforcement or related field, may be substituted for up to two years of required experience on the basis of two years of education for one year of experience.
- One year of education equals 30 semester hours or its equivalent. Education completed toward a degree will be prorated on the basis of the proportion to the requirements actually completed.

(R. Exhibits 8 and 9; Testimony of Lt. Cullen)

13. MEP requests that each candidate submit relevant documentation supporting that he or she meets the minimum entrance requirements. (R. Exhibit 9; Testimony of Lt. Cullen)

14. MEP sent candidates notices outlining the minimum entrance requirements and providing the following instructions:

If you are claiming 2 years of full-time related experience (or the equivalent in part-time work), you will need to “show the math” and demonstrate how the part time experience adds up to 2 years of full-time related experiences (based on a 40 hour work week)

Time spent as a traditional city, town or state police officer does not, in and of itself, count as “related experience” for purposes of meeting our entrance requirements.

If claiming an educational substitution for the experience, make sure you indicate your specific “major” (i.e., wildlife biology, marine sciences, etc.) with your degree information.

Degrees in “Criminal Justice Administration” are not considered to be “related degrees” for purposes of meeting our entrance requirements.

(R. Exhibit 9)

15. Following the submission of documents, MEP gave each candidate opportunity to discuss their qualifications and how they meet the necessary minimum entrance requirements. at a panel interview. The interview panel was comprised of members of MEP patrol staff, senior officers, and HR management. (R. Exhibit 7; Testimony of Lt. Cullen)

16. Mr. Giacalone submitted a March 10, 2023, email to MEP, detailing his work experience in the Coast Guard, as a Gloucester Police Officer, and his work in the fishing industry, with supporting certifications and memoranda. (R. Exhibit 24; Testimony of Lt. Cullen)

17. Mr. Giacalone mentioned his experiences conducting escorts, operating various boats, and conducting fisheries law enforcement boardings as a Coast Guard in the March 10 email. However, he failed to qualify his experiences beyond the descriptions of “many” and “multiple.” (R. Exhibit 24; Testimony of Lt. Cullen, Testimony of Appellant)

18. Similarly, in the description of his experiences operating the Gloucester Police boat, and patrolling woods and beaches as a Gloucester Police Officer, Mr. Giacalone failed to

adequately describe his experience; nor did he explain how it satisfied the requirement for a position in environmental conservation enforcement. (R. Exhibit 24; Testimony of Appellant)

19. While Mr. Giacalone included experience gained from working in the fishing industry, he failed to explain how it was relevant to the MERs. (R. Exhibit 24; Testimony of Appellant)

20. Mr. Giacalone failed to submit a resume at any point in the hiring process. (Testimony of Lt. Cullen; Testimony of Appellant)

21. MEP considers both full-time and part-time experience working in a related environmental field, using approximately 2000 hours of part-time experience equivalent to one year of full-time work experience. In order to meet the minimum entrance requirements, a candidate must demonstrate that they have 4000 hours of experience in wildlife or fisheries conservation or management, natural resources conservation or management, biological or environmental science, forestry, ecology, marine science, conservation law enforcement or a related field. (R. Exhibit 8; Testimony of Lt. Cullen)

22. If a candidate claims they meet the minimum entrance requirements through work experience, they must quantify their work and/or military experience to account for the 4000 hours. A candidate must articulate the duties they performed and how often they performed those duties. (R. Exhibits 8 and 9; Testimony of Lt. Cullen)

23. At the panel interview, Mr. Giacalone failed to quantify his work experience. Two panelists made estimates of his total hours based on the information given during the interview, but both concluded that those numbers did not fulfill the 4000 hours requirement. (R. Exhibit 25; Testimony of Lt. Cullen)

24. MEP credited Mr. Giacalone's Coast Guard experience, but concluded that it was insufficient to satisfy the necessary 4000 hours. MEP could not credit Mr. Giacalone service as a Gloucester Police Officer due to insufficient documentation and his inability to quantify the duties he performed. (R. Exhibit 1; Testimony of Lt. Cullen)

25. The lower-ranked candidates provided the relevant documentation that proved that they met the MEP's minimum entrance requirements. (R. Exhibits 10-23; Testimony of Lt. Cullen)

26. In a notice dated December 28, 2023, MEP informed Mr. Giacalone of his bypass. As reason(s) for the bypass, MEP cited that Mr. Giacalone had failed to meet the minimum entrance requirements for the position of EPO A/B. (Stipulated Facts)

#### **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting selecting and advancing employees on the basis of their relative ability knowledge skills" 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. See, e.g., *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259, (2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Basic merit principles in hiring and promotion calls for regular, competitive examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a "certification" of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L. c. 31 §§ 6 through 11, 16 through 27; Personnel Administrative Rules,

PAR.09. To deviate from that formula, an appointing authority must provide specific, written reasons — positive or negative, or both, consistent with basic merit principles—to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority had shown, by a preponderance of the evidence, that it has “reasonable justification for the bypass after an “impartial and reasonably through 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 Service Comm’n*, 483 Mass. 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Service Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification ... means ‘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’”. *Bracket v. Civil Service Comm’n.*, 447 Mass. 233, 543 (2006); *Commissioners of Civil Service v. Municipal Ct.*, 359 Mass. 211, 214 (1971), and cases cited. See also *Mayor of Revere v. Civil Service Comm’n.* 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. See, e.g., *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303-305, *rev. den.*, 428 Mass. 1102 (1997). However, the governing statute, G.L. c. 31 § 2(b), gives the Commission’s de novo review “broad scope to evaluate the legal



basis of the appointing authority's action" and it is not necessary for the Commission to find that the appointing authority acted "arbitrarily and capriciously." *Id.*

MEP's minimum entrance requirements for the position of EPO A/B are directly related to the subject of natural resource and environmental protection and reasonably related to the requirements of the job. See *Lalli v. Massachusetts Environmental Police*, 34 MCSR 397 (2021). The Commission has made clear that, absent proof that job requirements are arbitrary or unequivocally irrelevant to the performance of the duties required of the position, it will defer to the interpretation given to those requirements by the appointing authority, who is best situated and informed on those matters. See *Harrell v. Massachusetts Environmental Police*, 33 MCSR 30 (2020). See also *Graham v. Department of Conservation & Recreation*, 31 MCSR 337 (2018) (DCRs definition of "major park" and other terms); *Trubiano v. Department of Conservation & Recreation*, 31 MCSR 298 (2018) (definition of "major recreational area" and "heritage park").

## **ANALYSIS**

MEP has shown by a preponderance of evidence that it was reasonably justified to bypass Mr. Giacalone for appointment as an EPO A/B because he did not meet the minimum experience requirements specified for the position.

MEP clearly outlines the minimum entrance requirements for the position in its hiring package given to all candidates. See *Georgopoulos v. Massachusetts Environmental Police*, Docket No. G1-23-247 (Aug. 22, 2024); *Hichborn v. Massachusetts Environmental Police*, Docket No. G1-24-026 (Oct. 3, 2024). These requirements call for education and experience totaling the equivalent of 2 years (4000+ hours) directly related to wildlife or fisheries conservation or management, natural resources conservation or management, biological or environmental science, forestry, ecology, marine science, conservation law enforcement.

Additionally, MEP reminded the candidates that they needed to “show the math” as to how they meet the two-year (4000+ hour) requirement.

Within his MERs submission to MEP, Mr. Giacalone included a letter outlining his experience, and certificates and records documenting his Coast Guard achievements. The letter briefly illustrated his past undertakings in the Coast Guard, Gloucester Police Department, and the fishing industry, but failed to quantify any of this experience. During his MERs interview with MEP, he again failed to quantify his experience. Two panelists from the interview attempted to calculate hours for him based off what he said during the interview, but both concluded with numbers that did not reach 4000 hours. During the hearing, Mr. Giacalone claimed to have requested “underway records” from the Coast Guard that would provide an hours breakdown of his time underway and qualify him under the MERs. Such a document had not been provided during the hiring process. Although this Commissioner left the record open for nearly a month after the evidentiary hearing for the receipt of his underway records, Mr. Giacalone failed to submit such evidence.

To meet the MERs for EPO A/B, a candidate needs to show that the duties performed are or were related to wildlife or fisheries conservation or management, natural resources conservation or management, biological or environmental science, forestry, ecology, marine science, conservation law enforcement or related field to fulfill the work experience requirement. While MEP found that Mr. Giacalone’s experience in the Coast Guard sufficiently related to environmental conservation or management, those hours alone, based on existing evidence, were insufficient to satisfy the 4000 hours environmental experience requirement.

In regard to his time as a Gloucester Police Officer, Mr. Giacalone failed to elaborate on how his duties patrolling woods and beaches and driving the Gloucester Police boat were sufficiently related to environmental conservation or management.

Lastly, Mr. Giacalone was unable to demonstrate how his past jobs at fish offloading facilities and in commercial lobster fishing related to the MEP MERs, thus this time cannot be counted towards the 4,000 hours requirement.

## CONCLUSION

For all of the above reasons, MEP's decision to bypass Anthony Giacalone, Jr. for the position of Environmental Police Officer (EPO A/B) is affirmed. The appeal filed under Docket No. G1-24-024 is hereby *denied*.

Civil Service Commission

/s/ Angela C. McConney  
Angela C. McConney  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair, Dooley, Markey, McConney, and Stein, Commissioners) on December 5, 2024.

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 C.M.R. § 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:  
Anthony Giacalone, Jr. (Appellant)  
Alexis N. Demirjian, Esq. (for Respondent)