

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ANCEL GILOT,
Appellant

v.

G1-19-084

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Ancel Gilot

Appearance for Respondent:

Joseph Santoro
Department of Correction
Industries Drive: P.O. Box 946
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION

On April 8, 2019, the Appellant, Ancel Gilot (Mr. Gilot), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Massachusetts Department of Correction (DOC) to bypass him for original appointment as a permanent, full-time Correction Officer I (CO I). I held a pre-hearing conference on May 7, 2019 at the offices of the Commission and I held a full hearing at the same location on July 25, 2019.¹ The hearing was digitally recorded.²

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² 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 he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

FINDINGS OF FACT:

Nine (9) exhibits were entered into evidence at the hearing. Based on those exhibits, the stipulated facts, the testimony of:

Called by DOC:

- Patricia Malanson, Director of Security, MCI Framingham, DOC (Interview Panelist);
- Melanie Shields, Correction Officer I (CO I), DOC (Interview Panelist);

Called by the Appellant:

- Ancel Gilot, Appellant;

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

1. Mr. Gilot is a twenty-two (22) year-old black male who resides in Ashburnham, MA.
(Testimony of Mr. Gilot & Exhibits 1, 3)
2. Mr. Gilot graduated from high school and is currently working toward an associate's degree in criminal justice. (Testimony of Mr. Gilot)
3. After graduating from high school, Mr. Gilot enlisted in the United States Army Reserves. He completed two (2) months of basic training and two (2) months of advanced individual training. He now serves one (1) weekend per month and two (2) weeks per year at Fort Devens. He has never been disciplined and/or cited for poor performance. (Testimony of Mr. Gilot)
4. Mr. Gilot has been employed at a rental car company since August 2018 where he details automobiles and picks up customers. He has never been disciplined and/or cited for poor performance. (Testimony of Mr. Gilot)

5. Mr. Gilot took and passed the civil service examination for CO I on April 14, 2018.
(Stipulated Fact)
6. On October 22, 2018, Mr. Gilot's name appeared on Certification No. 05868 from which DOC ultimately appointed one-hundred sixty (160) CO Is. (Stipulated Fact)
7. Mr. Gilot was ranked 51st among those willing to accept appointment on Certification No. 05868 and twenty-eight (28) candidates ranked below him were appointed. (Stipulated Facts)
8. Mr. Gilot completed an application for employment and successfully passed a Physical Abilities Test (PAT). (Testimony of Mr. Gilot)
9. Prior to initiating a background investigation of candidates, DOC convenes three-member interview panels to interview each candidate. Only those candidates recommended for hire by their interview panel go onto the next step of undergoing a background investigation.
(Stipulated Fact)
10. On the day of the interview, before meeting with the interview panel, each candidate is required to hand-write the answers to three (3) questions. Mr. Gilot completed that writing sample which was deemed acceptable by the Interview Panel. (Testimony of Ms. Malanson, Ms. Shields and Exhibit 9)
11. The interview panelists are responsible for collectively completing an Interview Evaluation Form that has two (2) parts: "Part A: Experience and Abilities" and "Part B: Points from Interview Questions." (Exhibit 4 and Testimony of Ms. Malanson)
12. Part A includes four (4) categories, each of which can receive a score of 1 to 5 for a total maximum score of 20. DOC describes the ratings as follows:

- | | |
|---|-------------|
| 5 | Outstanding |
| 4 | Excellent |

20. The Interview Panel found Mr. Gilot's answer to the question regarding privileges less than satisfactory because he failed to recognize the need to treat all inmates similarly. (Testimony of Ms. Malanson and Ms. Shields)
21. In regard to the question regarding conflict, Mr. Gilot spoke about an incident in which two superior officers got involved in a physical conflict and he separated them. (Testimony of Mr. Gilot)
22. The Interview Panel found that Mr. Gilot "failed to answer [this] question" because it did not pertain to conflict between himself and another person and how he handled it. (Testimony of Ms. Malanson and Ms. Shields and Exhibit 4)
23. The Interview Evaluation Form completed by the Interview Panel reflects that Mr. Gilot received 7 out of 20 possible points for Part A and 21 out of 45 possible points for Part B for a total of 28 out of 65 points. (Exhibit 4)
24. There is no cutoff score regarding whether or not a candidate has successfully completed this process, allowing him/her to move on to the next step in the hiring process, which, as referenced above, is the background investigation. (Testimony of Ms. Malanson)
25. Rather, the Interview Panelists are asked whether the candidate is "Recommended for Hire? YES / NO." Here the Interview Panelists circled "NO". (Exhibit 4)
26. Under the "comments section", the Interview Panel wrote that Mr. Gilot "shows no self confidence" and that the "panel does not believe the academy would help without having more life experience ... [candidate] has no basic knowledge of security." (Exhibit 4)
27. On March 22, 2019, DOC notified Mr. Gilot that he was being bypassed for appointment as a CO I because "The Interview Panel did not recommend you for appointment." (Exhibit 2)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass.256, 259 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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." Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (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).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n., 447 Mass. 824-826 (2006); and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was

“reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass.App.Ct. 914, 915 (2004).

Analysis

I found no personal bias or favoritism on the part of the interview panelists, two (2) of whom testified before the Commission. They both offered candid, straightforward testimony and appeared to be focused on providing DOC with an informed opinion regarding the suitability of the candidates interviewed.

The decision to bypass Mr. Gilot for the entry-level position of CO I, however, was not justified, for the reasons discussed below.

While years of Commission decisions and precedent-setting judicial decisions have firmly established that appointing authorities can rely upon a candidate’s interview performance to justify a bypass, DOC’s failure to conduct any background investigation, coupled with flaws in the interview process itself, caused me to conclude that DOC did not conduct the type of reasonably thorough review required to justify the bypass of Mr. Gilot.

In most cases, appointing authorities that utilize interviews in the hiring process *first* conduct a thorough background investigation, which review typically includes such actions as: speaking with current and former employers and/or commanding officers, when applicable; reviewing academic records; speaking with neighbors; conducting a home visit / interview, etc. When utilized, the interview of a candidate typically comes *after* this background investigation is completed. Thus, the appointing authority, having completed a reasonably through review, is able to make an *informed* decision regarding the candidate’s suitability for employment. Here,

DOC, relying exclusively on the interview panel ratings, bypassed him for appointment prior to conducting any type of background investigation.

The flaws associated with this incomplete review were evident based on the witness testimony. For example, the interview panelists, prior to even meeting Mr. Gilot, and without ever talking with his current and former employers, were asked to assess his work history, his experience and competence in related work and his education / training related to this position. That type of assessment cannot be adequately completed by an interview panel prior to even meeting the candidate. Rather, assessing a candidate's work history requires talking with current and former employers, inquiring about any performance or discipline issues and inquiring about whether the candidate would be eligible for re-hire, all inquiries typically associated with a background investigation. Even, however, if the interview panelists could make such an assessment, Mr. Gilot received a "satisfactory" rating in each of these categories.

The one category where Mr. Gilot was given a "less than satisfactory" rating in Part A was "communication / interpersonal skills". There was some divergent testimony regarding whether this rating was based on information gleaned solely from the application or if the interview panelists made this assessment after the interview was completed. I credited the testimony of Ms. Malanson, who believes the rating was completed prior to the interview. Even, however, if the rating was completed after the interview, neither witness was able to justify providing Mr. Gilot with a "less than satisfactory" rating for "communication / interpersonal skills". While even Mr. Gilot acknowledges he did not give the best interview, this broad category encompasses both communication *and* interpersonal skills. Throughout the appeal process at the Commission, both at the pre-hearing and full hearing, Mr. Gilot's strong interpersonal skills have

been on full display. His is polite, cordial, friendly and respectful, even offering a sincere handshake to DOC officials present at the hearing, thanking them for their time.

That turns to Mr. Gilot's responses to the actual interview. The interview panelists rated Mr. Gilot's response to seven (7) of the nine (9) questions as satisfactory or average. Only two (2) of his responses were rated as "less than satisfactory". The first unacceptable answer came in response to a question regarding whether an inmate should receive extra privileges for volunteering for extra work details. I listened carefully to the testimony of the two (2) DOC witnesses regarding this question. Notwithstanding their testimony, I have concluded that Mr. Gilot's response to that question does not justify a decision to bypass him for appointment. The question assumes that a candidate is aware of DOC policies and practices in this regard, something that appears to be an unreasonable expectation in regard to an entry level position.

The second answer rated as less than satisfactory regards how Mr. Gilot has dealt with conflict. The DOC witnesses offered divergent testimony regarding Mr. Gilot's response and were not able to adequately justify providing Mr. Gilot with the lowest score.

Finally, there is no cutoff score or firm guidelines regarding whether the information gathered in Part A and Part B of the interview disqualifies a candidate from going forward with the next step of the review process, the background investigation. Even given the inherently subjective nature of the interview process, the lack of any uniform cutoff score or guidelines in this regard calls into question whether all candidates receive fair, uniform and impartial treatment.

In summary, the overall review process here was not thorough enough to support the reasons used by DOC to bypass Mr. Gilot for appointment and the evidence presented did not sufficiently support the limited categories where Mr. Gilot was found to have been less than satisfactory. For these reasons, Mr. Gilot's appeal under Docket No. G1-19-084 is hereby

allowed and he shall be afforded the following relief that will allow him to be reconsidered for appointment in a future hiring cycle:

1. HRD shall place the name of Ancel Gilot at the top of any current or future certification for appointment of CO I at DOC until he is appointed or bypassed.
2. If appointed, Mr. Gilot shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 05868. This retroactive date is for civil service seniority purposes only, and is not meant to entitle the Appellant to any additional compensation or benefits, including creditable time toward retirement.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – Absent]) on August 15, 2019.

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. 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:

Ancel Gilot (Appellant)
Joseph Santoro (for Respondent)
Patrick Butler, Esq. (HRD)
Regina Caggiano (HRD)