

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

BENNY GONZALEZ,
Appellant

v.

G1-06-6

CITY OF NEW BEDFORD,
Respondent

Appellant's Attorney:

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Mattapoisett, MA 02739
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Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Benny Gonzalez (hereafter "Gonzalez" or Appellant") seeks review of the Personnel Administrator's (HRD's) decision to accept the reasons of the City of New Bedford (hereafter "Appointing Authority", "City" or "Department"), bypassing him for original appointment to the position of police officer. A full hearing was held on February 13, 2008 at the offices of the Civil Service Commission. Two tapes were made of the hearing.

FINDINGS OF FACT:

Five (5) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- Ronald E. Teachman, Chief of Police, City of New Bedford;

For the Appellant:

- Benny Gonzalez, Appellant;

I make the following findings of fact:

1. The Appellant is a thirty-one (31) year old male from New Bedford. He graduated from New Bedford High School in 1995 and attended New England Institute of Technology for one year. His father is a retired New Bedford police officer.
(Testimony of Appellant)
2. At the time he applied for employment with the City in 2005, he had been employed by Smithcurl Electronic Communication Solutions since 2001. (Testimony of Appellant)
3. On June 16, 2005, the Appellant's name appeared on Certification 250131 for the position of police officer for the City of New Bedford. (Stipulated Fact)
4. The City of New Bedford filled 19 police officer positions from Certification 250131. Six (6) of the candidates selected for appointment were ranked below the Appellant on the above-referenced Certification. (Exhibit 1; Stipulated Facts)
5. On September 1, 2005, the City of New Bedford notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment for the following reasons: a) the Appellant drove to police headquarters to attend an

interview on April 1, 2005 with a suspended driver's license; b) the Appellant had previously had his license suspended; and c) the Appellant indicated during his interview that that he was reluctant to enforce the law, particularly as to drunk drivers. (Stipulated Fact; September 1, 2005 letter from City to HRD)

Driving to police headquarters to attend an interview with a suspended license

6. Prior to his appointment as Police Chief in 2006, Ronald Teachman served as a Captain with the New Bedford Police Department. (Testimony of Teachman)
7. While serving as Captain, one of Chief Teachman's responsibilities was to oversee the hiring of new police officers, including the 2005 hiring cycle that is the subject of this appeal. (Testimony of Appellant)
8. On the morning of April 1, 2005, Chief Teachman was scheduled to conduct an initial interview of the Appellant at police headquarters. (Testimony of Teachman)
9. Per Chief Teachman's standard practice, he retrieved the Appellant's driver's history just prior to the interview. According to these records, the Appellant's driver's license had been suspended and he did not have an active license on the morning in question. (Testimony of Teachman)
10. Despite having a suspended driver's license, the Appellant drove to the interview in a truck owned by his employer. (Testimony of Teachman)
11. At the conclusion of the interview, the Appellant was not allowed to drive the company-owned vehicle from police headquarters. (Testimony of Teachman) The Appellant obtained alternative means of transportation and had his license reinstated later that day. (Testimony of Appellant)

12. The Appellant testified that he was unaware that his driver's license was suspended on the morning of the interview until Chief Teachman notified him of this. The Appellant testified that he had never received a notice of this suspension from the Registry of Motor Vehicles. (Testimony of Appellant)
13. According to the Appellant, he was driving a company-owned vehicle in Cambridge in August 2004 and drove through a yellow light. Again according to the Appellant, he received a citation from the Cambridge Police Department for this offense and he put this citation "in a bin" at his place of employment, believing that the citation would be paid by his employer. (Testimony of Appellant)
14. Later in his testimony before the Commission, the Appellant stated that he was unsure if there was a company policy that allowed for payment of such citations, but had only heard that his employer had paid such citations for other employees. (Testimony of Appellant)
15. The Appellant also testified that he had previously received a citation for speeding while driving the company-owned vehicle in November 2003. Again according to the Appellant, he also placed that citation "in a bin" at his place of employment, expecting that his employer would pay the fine associated with the citation. (Testimony of Appellant)
16. The Appellant acknowledged that he never inquired with anyone at his place of employment in regard to whether the fines associated with the above-referenced citations were actually paid by the employer. (Testimony of Appellant)
17. It is undisputed that the Appellant's employer did not pay the fines associated with the above-referenced citations. (Testimony of Appellant)

18. As a result of the above-referenced unpaid citations, the Appellant's license was suspended from October 6, 2004 until April 1, 2005, the day of the interview with Chief Teachman. (Exhibit 4)
19. I find that it was the responsibility of the Appellant to ensure that citations he received for moving violations while driving a company-owned vehicle were paid in a timely manner. Further, I find that the Appellant did not pay these citations in a timely manner, resulting in his license suspension on October 6, 2004.

Previous License Suspension / Poor Driving History

20. In 1996, the Appellant was cited for trespassing while sitting in his personal vehicle parked behind a service station in New Bedford, MA. The Appellant subsequently placed the citation on his bureau and failed to pay the citation in a timely manner. (Testimony of Appellant)
21. As a result of this unpaid citation, the Appellant's license was suspended in December 1996. (Exhibit 4)
22. Sometime in 1997, the Appellant was cited for speeding while driving in Fall River, MA while driving his personal vehicle. Later in 1997, the Appellant was again cited for speeding in Fairhaven, MA while driving his personal vehicle. Upon citing the Appellant for speeding, the Fairhaven Police determined that the Appellant's license was suspended. Hence, the Appellant was arrested and was required to pay the fines associated with the above-referenced citations in addition to court fees. (Testimony of Appellant)
23. Sometime in 2003, the Appellant was cited for speeding while driving his personal vehicle in Freetown, MA. He failed to pay the citation in a timely manner and

received a Notice of Suspension from the Registry of Motor Vehicles. Just prior to the license suspension becoming effective, the Appellant paid the citation and avoided the suspension of his license. (Testimony of Teachman and Exhibit 4)

Reluctance to enforce drunk driving laws

24. On July 22, 2007, the Appellant was interviewed for a second time by Chief Teachman, accompanied by Sergeant Spillet and Lieutenant Hebert. Exhibit 5 is a written transcript of that interview. (Exhibit 5)
25. As part of the above-referenced interview, the Appellant was presented with a hypothetical scenario in which, upon pulling a motorist over for speeding, he realizes that the motorist is his best friend who is drunk. Asked what action he would take as a police officer, the Appellant stated, "I'm going to have to apologize [to] him and PC him", but then stated that he would tell his friend, "You've got to come with me, I can't let you drive. I would arrest him if I have to...". (Exhibit 5)
26. Asked by a member of the interview panel to clarify whether he would arrest his friend in the above-referenced scenario or place him in protective custody, the Appellant stated, "Well PC if he's intoxicated wouldn't it, wouldn't it be?...he's getting PC'd, he's not getting charged...I would PC him if he's still drunk and if he can't...if he so drunk and can't drive, I'll PC him. And if he doesn't cooperate with that then I'll arrest him." (Exhibit 5)
27. Asked whether he would place all drunk drivers in protective custody, the Appellant stated, "well at least; it depends on how many times they have it. If they have – if it's the first time they're drunk, then maybe it's a good idea to PC them. If it's been numerous times, then I'm arresting them." (Exhibit 5)

28. Chief Teachman testified that he was concerned about the Appellant's response regarding the above-referenced hypothetical scenario, which he believes indicated that the Appellant did not understand the serious nature of drunk driving laws. (Testimony of Teachman)
29. Chief Teachman was a good witness. He has over 31 years of experience in law enforcement and began his career as a police officer in New Bedford in 1977. All of his answers were thoughtful and consistent with the documentary evidence in the record. Moreover, Chief Teachman, during his testimony before the Commission, showed no ulterior motive for not recommending the Appellant for appointment as a police officer. In fact, at one point during the hearing, Chief Teachman offered an unsolicited clarification to ensure that the Appellant's poor driving record was not overstated. (Testimony, demeanor of Teachman)
30. Based on the fact that: 1) the Appellant drove to his initial interview while his license was suspended; 2) the Appellant had a poor driving record including at least one other suspension of his license; and 3) the Appellant, through his responses during an interview, showed a reluctance to enforce drunk driving laws, then-Captain Teachman and the other members of the interview panel recommended that the Appointing Authority bypass the Appellant for original appointment as a police officer in the City of New Bedford. (Testimony of Teachman)
31. The state's Human Resources Division accepted the City's reasons for bypassing the Appellant and the Appellant subsequently filed a timely appeal of HRD's decision with the Civil Service Commission. (Stipulated Facts)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on 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 Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, s. 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991). ; G.L. c. 31, § 43.

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. 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, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58

Mass. App. Ct. 726, 727-728 (2003). However, 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. City of Cambridge, 43 Mass. App. Ct. at 304.

Benny Gonzalez took and passed the civil service examination for the position of police officer. Born and raised in New Bedford, the Appellant graduated from New Bedford High School and attended one year of classes at New England Institute of Technology. The Appellant is a likeable, well-mannered man with a sincere desire to serve his community as a police officer.

Unfortunately for the Appellant, he has a poor driving record including having his driver's license suspended on two occasions. Both license suspensions resulted from the Appellant's failure to pay citations for moving violations in a timely manner. Although the Appellant testified that he thought his employer would pay the citations that led to one of the suspensions, he is ultimately responsible for ensuring that citations issued to him are paid in a timely manner. Moreover, the Appellant testified that he only assumed these citations would be paid by the employer based solely on hearing from someone in the workplace that another employee had his citation paid by the employer. As a result of the Appellant's failure to pay these citations in a timely manner, his license was suspended twice and was suspended on the day he drove to his initial interview with then-Captain Ronald Teachman, who is now the Chief of Police.

Chief Teachman, during his testimony before the Commission, also expressed concern regarding the Appellant's response to a hypothetical scenario during the interview

process related to drunk driving laws. As the transcript of that interview indicates, the Appellant stated that he would only be inclined to arrest a drunk driver if the motorist had a prior history of driving drunk.

After considering all the testimony and evidence in the record, I conclude that the City of New Bedford had sound and sufficient reasons for bypassing the Appellant for selection as a police officer and there is no evidence of inappropriate motivations or objectives that would warrant the Commission's intervention in this matter.

For all of the above reasons, the appeal under Docket No. G1-06-6 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Marquis and Taylor, Commissioners [Henderson – Absent]) on March 13, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Donald J. Fleming, Esq. (for Appellant)

Jane Medeiros Friedman, Esq. (for Appointing Authority)

John Marra, Esq.