

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

LUIS GONZALEZ,
Appellant

v.

G1-20-175

SPRINGFIELD POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro se
Luis Gonzalez

Appearance for Respondent:

David J. Wenc, Esq.
Labor Relations Counsel
City of Springfield
36 Court Street, Room 005
Springfield, MA 01103

Commissioner:

Christopher Bowman¹
Cynthia Ittleman²

SUMMARY OF DECISION

The Commission allowed the Appellant’s bypass appeal as the Springfield Police Department (SPD) did not show, by a preponderance of the evidence, that the Appellant failed to meet the civil service residency preference requirement, the sole reason offered by the SPD for bypassing the Appellant. For that reason, the Commission ordered that the Appellant be given one additional opportunity for consideration. Nothing prohibits the SPD, however, as part of a future

¹ The Commission recognizes the assistance of Law Clerk Jeffrey Hernandez in drafting this decision.

² Commissioner Cynthia Ittleman conducted the full hearing regarding this appeal, but she retired from the Commission prior to drafting a decision. The appeal was reassigned to me and I have reviewed the entire record regarding this appeal.

hiring cycle, from considering the Appellant's entire record when determining whether it is appropriate to appoint or bypass him.

DECISION

On December 7, 2020, the Appellant, Luis Gonzalez (Appellant), acting pursuant to G.L. c. 31, § 2(b), timely filed an appeal with the Civil Service Commission (Commission) contesting the decision of the Springfield Police Department (SPD) to bypass him for appointment as a permanent, full-time police officer.³ On January 19, 2021, I held a remote pre-hearing conference. On April 13, 2021, Commissioner Ittleman held a full remote hearing⁴ via Webex. Following the hearing, the Commission invited the parties to submit post-hearing briefs, providing a due date of June 30, 2021. The SPD filed a post-hearing brief; however, the Appellant did not. For the reasons set forth below, the Appellant's appeal is allowed.

FINDINGS OF FACT

Seven Appellant exhibits (Exhibits A1 – A7) and five SPD exhibits (Exhibits R1 – R5) were entered into evidence. Based on these exhibits and the testimony of the following witnesses:

Called by the SPD:

- Lynn Vedovelli, Human Resources & Payroll Manager, SPD;
- Richard Pelchar, Sergeant, SPD;

³ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

⁴ The Appellant's portion of the full remote hearing was omitted from the Webex recording due to technical issues. The parties were provided with the option to either: (i) accept Commissioner Ittleman's extensive hearing notes as the official record with respect to the Appellant's portion of the hearing or (ii) schedule an additional day of hearing to record the entire testimony of the Appellant and his witnesses. The parties were subsequently informed that if either party objected to accepting Commissioner Ittleman's notes as the official record, another day of hearing at a separate date and time would be held. On April 29, 2021, counsel for the Respondent accepted the notes as the official record and on May 4, 2021, the Appellant did the same.

- Edward Van Zandt⁵, Sergeant, SPD;

Called by the Appellant:

- Luis Gonzalez, Appellant
- Jessica D (Ms. D);⁶
- Jesenia C (Ms. C);
- Luis A (Mr. A);

and taking administrative notice of all pleadings filed in this cases, pertinent law, statutes, regulations, case law, and reasonable inferences drawn from the credible evidence, a preponderance of the evidence establishes the following facts:

Appointment Process

1. On March 23, 2019, the Appellant took the civil service examination for police officer and received a score of 80. (Stipulated Fact)
2. As part of his civil service examination application, the Appellant applied for civil service residency preference in Springfield, which requires that he reside in Springfield continuously for the one-year period prior to the examination. Applied here, the Appellant was required to have resided in Springfield from March 23, 2018 to March 23, 2019 to qualify for the civil service residency preference in Springfield. (Stipulated Fact)
3. On September 1, 2019, the state's Human Resources Division (HRD) established an eligible list for Springfield police officer. (Stipulated Fact)

⁵ Edward Van Zandt was promoted to sergeant in September of 2021. Despite holding a lower rank at the time he submitted the Appellant's 2020 background summary report, he is referred to herein as Sergeant Van Zandt.

⁶ Since the identify of these private citizens who testified before the Commission are not relevant, they are referred to by their first name and last initial.

4. On March 6, 2020, HRD issued Certification No. 06988 to the SPD, upon which the Appellant was ranked 31st among those willing to accept appointment. The Appellant's rank was based, in part, on his Springfield civil service residency preference, without which he would not have been among those ranked high enough to be considered for appointment. (Stipulated Facts)
5. On March 10, 2020, the Appellant signed the SPD's Notice of [civil service] Residency Preference, affirming that he resided at [name of street redacted], Springfield, MA (the Springfield address) from March 23, 2018 to March 23, 2019. (R.Ex. 1)
6. The SPD appointed 34 candidates for appointment, eight of whom were ranked below the Appellant. (Stipulated Fact) All eight of the lower-ranked candidates who bypassed the Appellant qualified for civil service residency preference in Springfield. (R.Ex. 4; Testimony of Vedovelli)
7. On August 6, 2020, SPD Commissioner Cheryl Clapprood informed HRD that the SPD was bypassing the Appellant for appointment based on the SPD's determination that the Appellant did not qualify for the civil service residency preference in Springfield. (A.Ex. 1; R.Ex. 1; Stipulation of Facts)
8. On December 2, 2020, HRD approved the SPD's reason for bypass and the Appellant subsequently filed a timely appeal with the Commission. (A. Ex. 1)

About the Appellant and where he resided during the residency window

9. The Appellant is a Hispanic male who, at the time of his 2020 background investigation, was 37 years old. (Testimony of Appellant; R. Ex. 1)
10. The Appellant attended Springfield Public Schools and graduated from the Springfield High School of Commerce in 2001. From 2009-2012, the Appellant attended Springfield

Technical Community College (STCC) and, in 2013, he attended Elms College in nearby Chicopee. (R.Ex. 1)

11. Since 2012, the Appellant has been employed by a non-profit organization in West Springfield. His supervisor describes the Appellant as a dedicated employee who possesses strong communication skills and who is always flexible with his availability. The Appellant is responsible for supervising Department of Youth Services (DYS) committed youths who are transitioning to independent living in leased apartments. (R.Ex. 1)

12. In September 2017, more than a year and a half prior to taking the civil service examination in March 2019, the Appellant purchased a single-family house with three bedrooms and two bathrooms at the Springfield address for \$123,000. (Testimony of Appellant; A. Ex. 2)

13. While he owned the house at the Springfield address, the Appellant painted the walls, updated the kitchen cabinets, put in a new toilet and replaced some sheet rock. None of the work required the use of outside contractors. (Testimony of Appellant)

14. In a letter dated July 13, 2020, addressed to the Springfield Address, Eversource wrote in relevant part:

“RE: Service Verification
Account: [redacted]
[Springfield Address]

Dear Luis Gonzalez:

Thank you for your recent inquiry regarding the electric service for the above reference location.

Our records indicate that from 9-29-2017 through 06-11-20 this service was, or has been, in the name of Luis A. Gonzalez.” (A. Ex. 3)

15. A gas bill from Columbia Gas from April 2019, addressed to the Appellant at his Springfield address, stated that the Appellant had made a payment on 3/22/19 for \$150.00 and that the

Appellant still had a balance due of \$457.42. The statement also contains a “Monthly Usage History” that includes the period April 2018 to March 2019, all months within the applicable residency preference window. (A. Ex. 4)

16. The “therm” usage history was as follows:

April 2018:	76
May 2018:	34
June 2018:	17
July 2018:	15
August 2018:	15
September 2018:	15
October 2018:	50
November 2018:	2
December 2018:	79
January 2019:	151
February 2019:	212
March 2019:	201

(A. Ex. 4)

17. The average residential non-heating customer uses approximately 20-30 therms per month and the average residential heating customer uses approximately 100-125 therms during the heating season. (Administrative Notice: Understanding your Gas Bill; mass.gov)⁷

⁷ Under “Facts and Features” for the Springfield address on Zillow.com, it states “Heating: Steam, Natural Gas”. The Appellant testified that the home at the Springfield address had gas heat and an electric stove.

18. In calendar years 2018 and 2019, the relevant calendar years regarding Springfield residency preference, the Appellant paid excise taxes for his motor vehicle to the City of Springfield.
(A. Ex. 7)
19. An automobile monthly payment bill dated July 13, 2018, within the applicable residency window, was mailed to the Appellant at the Springfield address. (A. Ex. 6)
20. On June 11, 2020, 15 months after the end date of the applicable residency window, the Appellant sold the single-family house at the Springfield address for \$178,000. (Testimony of Appellant; A. Ex. 2)
21. Shortly after selling his home at the Springfield address in June 2020 (outside the residency preference window), the Appellant moved to Enfield, CT with his girlfriend and their two children. (R. Ex. 1)

SPD Background Investigation

22. Sgt. Edward VanZandt was assigned to conduct a background investigation of the Appellant. As part of that investigation, Sgt. VanZandt was responsible for verifying whether the Appellant qualified for the civil service residency preference in Springfield. (Testimony of VanZandt)
23. As part of his investigation on or around June 2020, Sgt. VanZandt obtained, in part, the following information regarding the Appellant's Springfield residency:
 - a) The Appellant had a valid driver's license listing the Springfield address.
 - b) The Appellant owned a motorcycle that was registered at the Springfield address.
 - c) The Appellant owned an automobile that was registered at the Springfield address.
 - d) Several "IMC Reports" listed the Appellant's address as the Springfield address.

e) The Appellant's "CLEAR report" listed several addresses for the Appellant including the Springfield address.

(R Ex. 1)

24. Sgt. VanZandt, on or around June 2020⁸, visited the Springfield address and spoke to three "neighbors", one who lived across the street, one who lived next door and one who lived behind the house at the Springfield address. All three neighbors were familiar with the Appellant. (Testimony of VanZandt) Sgt. VanZandt's report, which was completed in June 2020, more than one year outside the relevant residency window, and at or around the same time that the Appellant was selling the house, states in part that " ... I spoke with three two (sic) individuals whose properties abut [the Springfield address] and one individual who lives across the street. All three described the candidate as a nice guy and they were happy he was 're-habbing' the home. Two of the individuals stated the candidate did not live [present tense] at the address. He recently sold the property." (R. Ex. 1)

25. In another section of the Sgt. VanZandt's report he wrote: "Mr. Gonzalez currently resides in Enfield, Ct. He recently sold a home at [Springfield address]. He lived at [Springfield address] from September 2017 to March 2020. Two neighbors believe he didn't reside at the home at [Springfield address]. He acknowledged he stayed there infrequently due to having young children and the home not being safe during the re-hab process. He spent most of his time at his fiancée's home in Chicopee⁹." (R. Ex. 1)

⁸ Sgt. VanZandt's report does not provide the actual date that he visited the Springfield address nor does it list the names of the neighbors with whom he spoke with.

⁹ Sgt. VanZandt testified that the Appellant's statement was made to him during part of his background interview with the Appellant. The Appellant disputes that he said that he spent "most of his time" at his girlfriend's home in Chicopee. During cross examination, Sgt. VanZandt stated that the Appellant may have said "a lot" as opposed to "most of his time" and

26. Sgt. VanZandt forwarded his report to Sgt. Richard Pelchar. Three individuals serving on an interview panel (Sgt. Pelchar, Deputy Chief William Cochrane and Lynn Vedovelli) interviewed the Appellant after reviewing Sgt. VanZandt's report. During the interview, the Appellant referenced rehabbing the house at the Springfield address. (Testimony of Vedovelli and Pelchar)
27. The above-referenced interview was one of 150 interviews conducted as part of this hiring process and it was not recorded. (Testimony of Pelchar)

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 at 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, § 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.

In order to deviate from the rank order of preferred hiring and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles. G.L. c. 31, §§ 1

that the Appellant may have used the term “remodel” as opposed to “rehab”. The interview was not recorded.

and 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a “reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and was “reasonably justified”. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688 (2012), citing Abban, 434 Mass. at 259; Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006); and cases cited; Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

Section 58 of G.L. c. 31 states in relevant part:

“ ... upon written request of the appointing authority to the administrator, the administrator shall, when certifying names from said eligible list for original appointment to the police force or fire force of a city or town, place the names of all persons who have resided in said city or town for one year immediately prior to the date of examination ahead of the name of any person who has not so resided.”

Analysis

The sole reason stated for bypassing the Appellant, and thus the sole issue before the Commission, is whether, by a preponderance of the evidence, the SPD has shown that the Appellant did not qualify for the civil service Springfield residency preference, without which he would not have been ranked high enough to be considered for appointment as a Springfield police officer during this hiring cycle. Based on a careful review of the entire record, I have concluded that it is more likely than not that the Appellant did qualify for the civil service Springfield residency preference at the time that he took the civil service examination on March 23, 2019.

The parties agree that, in order to qualify for this residency preference, the Appellant must have resided in Springfield between March 23, 2018 and March 23, 2019, the one-year

period preceding the examination. There is ample evidence supporting the Appellant's residency preference claim.

First, the Appellant, who graduated from high school in Springfield and attended Springfield Technical Community College (STCC), purchased a single-family house in Springfield in September 2017 and owned this house in Springfield until June 2020. The records show that the electric bill was in the Appellant's name during this entire period of time and the Appellant has produced gas records showing, with the exception of one month, that the monthly gas usage during the relevant one-year time period was within or above the typical average monthly usage for a single-family house.

Second, the SPD has reported that the address listed on the Appellant's license was the Springfield address and that an automobile and motorcycle owned by the Appellant were registered at the Springfield address.

Third, the Appellant has produced evidence showing that, during calendar years 2018 and 2019, he paid excise taxes to the City of Springfield. He also produced an auto insurance bill and an automobile payment invoice during the relevant time period, both of which are addressed to the Springfield address.

Fourth, three neighbors of the Springfield address who spoke to the background investigator were familiar with the Appellant, with one stating that the Appellant was a "nice guy".

Fifth, credit and other reports associated with the Appellant that were reviewed by the SPD all reflected the Springfield address.

I also considered the evidence put forth by the SPD that could potentially detract from this conclusion. I gave no weight to the insufficiently reliable hearsay statements of two

neighbors who purportedly told the background investigator that the Appellant did not actually reside at the address. Assuming that the statements were made on or shortly before the background investigator completed his report (in June 2020), then the statements were made well outside (after) the relevant residency period window and at or around the same time that the Appellant was selling the house. Thus, it would be irrelevant whether the neighbors believed that the Appellant was residing at the Springfield address at that time. Further, there is nothing in the background investigator's report or testimony to persuade me that either of those neighbors definitively said that the Appellant never lived at the Springfield address, which, even if said, would appear to contradict the evidence showing average to above average gas usage during the relevant time period.

I now turn to the (un-recorded) conversation between the background investigator and the Appellant regarding the Appellant's residency. The Appellant insists that he never told the investigator that he spent "most" of his time with this girlfriend at a Chicopee address and that he never said that the house at the Springfield address was not safe for his children because of the extent of the "rehab" project underway at the Springfield address. During cross examination, the background investigator acknowledged that the Appellant may not have used the words "most of the time", but, rather "a lot of the time" in reference to the Chicopee address and he also acknowledged that the Appellant may have referred to "remodeling" instead of "re-habbing" the property at the Springfield address. Those distinctions are important as it is clear that the SPD ultimately concluded that the Appellant could not have resided at the Springfield address given the extent of the "rehab" being done to the house. The SPD has not produced any evidence to show that the house was uninhabitable due to a major rehabilitation project. Further,

commonsense suggests that, replacing a toilet, updating the kitchen and painting and repairing walls is entirely consistent with the Appellant's occupancy of the premises as he claimed.

The testimony regarding the (unrecorded) three-panel interview is also not persuasive in showing that the Appellant did not qualify for Springfield residency preference. It does not appear that there was a sufficiently detailed dialogue at the interview to draw any conclusions other than the oft-repeated conclusion that the Appellant had been "rehabbing" the property at the Springfield address.

Finally, the SPD argues that it simply doesn't make sense that the Appellant would reside in a single-family house in Springfield while his girlfriend and two children resided in Chicopee. That appears to be more of a value judgment rather than persuasive evidence and possibly ignores that the living arrangements of certain families, often dictated by various financial and other factors, may not conform to preconceived notions regarding what is sensible.

Conclusion

Since the SPD has failed to prove, by a preponderance of the evidence, that the Appellant was ineligible for the civil service residency preference in Springfield, and because this is the one reason put forth for bypassing the Appellant, the Appellant's bypass must be overturned and he must be granted at least one additional consideration for appointment. As referenced above, however, I have reviewed the entire record, including the Appellant's complete background investigation. Although the SPD has failed to support the bypass reason related to residency, nothing in this decision prevents the SPD from proffering other valid reasons to bypass the Appellant if those reasons are supported by a preponderance of the evidence.

For all of the above reasons, the Appellant's appeal is hereby *allowed*. Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- HRD shall place the name of the Appellant at the top of any current or future certification for the position of permanent full-time police officer in the Springfield Police Department until he is given one additional consideration for appointment.
- When the Appellant's name is placed on the top of the next certification, the SPD is permitted to consider, notwithstanding the 2N+1 formula established by the Personnel Administration Rules, one additional candidate (in rank order) from that certification among those willing to accept appointment.
- Once the Appellant has been provided with the relief ordered above, the SPD shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

Civil Service Commission

/s/Christopher Bowman
Christopher Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on August 11, 2022.

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)(1), 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:
Luis Gonzalez (Appellant)
David J. Wenc, Esq. (for Respondent)
Michele Heffernan, Esq. (HRD)
Regina Caggiano (HRD)