

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

PHILIP GRAVALESE,
Appellant

v.

G1-18-012

BOSTON FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Michael S. Rabieh, Esq.
26 Brighton Street, Suite 204
Belmont, MA 02478

Appearance for Respondent:

Louis M. Scapicchio, Esq.
Office of Labor Relations
1 City Hall Plaza, Room 62
Boston, MA 02201

Commissioner:

Christopher C. Bowman

DECISION

On January 7, 2018, the Appellant, Philip Gravalese, pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Fire Department (BFD) to bypass him for original appointment to the position of firefighter based on alleged untruthfulness on his application. On February 20, 2018, I held a pre-hearing conference at the offices of the Commission, which was followed by a full hearing at the same location on April 26, 2018.¹ The full hearing was digitally recorded and both parties received a

¹ 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.

CD of the proceeding.² On June 8, 2018, the parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT

Eight (8) exhibits were entered into evidence. Based on the documents submitted and the testimony of the following witnesses:

For the BFD:

- Andrea Hennelly, Human Resources Director, BFD;
- Neal Mullane, District Chief of Personnel, BFD;

For Mr. Gravalese:

- Philip Gravalese, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. Mr. Gravalese is thirty (30) years old. He lives in Roslindale, MA and owns his home, which he purchased in 2016. He graduated from South Boston High School and is currently attending Bunker Hill Community College. (Testimony of Mr. Gravalese and Exhibit 5)
2. Mr. Gravalese has been a member of the Army National Guard since he was seventeen and was actively deployed to Afghanistan in 2010-2011. (Testimony of Mr. Gravalese)
3. Mr. Gravalese was employed as a police officer with the Massachusetts Bay Transportation Authority (MBTA) from February 2015 to October 2016. After he passed the civil service exam for firefighter in April 2016, the BFD offered him an original appointment for the

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 the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

position of firefighter. He accepted the appointment, resigned from the MBTA, and entered the Boston Fire Academy (Academy) on October 31 2016. (Testimony of Mr. Gravalese and Exhibits 1 and 6)

4. He was performing well in the Academy, but on January 31, 2017, he sustained a back injury while dead-lifting “excessively” heavy weights during training. The weight he was attempting to dead-lift was approximately 275 pounds, well above any requirement of the BFD. He was in “extreme pain,” and his back was spasming. He was transported to Faulkner Hospital, where he was hospitalized for several days. (Testimony of Mr. Gravalese)
5. While he was hospitalized, various officials from the BFD called to check up on him, including Boston Fire Academy Drill Master Captain John Gallagher (the head of the Academy) and a lieutenant, whose name Mr. Gravalese does not recall. Captain Gallagher told Mr. Gravalese “not to worry” and to focus on his recovery so that he might return to the Academy. The lieutenant and Mr. Gravalese discussed Mr. Gravalese’s return to the Academy, and the lieutenant advised him that he needed to recover from his injury first in order to return to the Academy and that his return would be facilitated by a note from his doctor clearing him to return to duty. (Testimony of Mr. Gravalese)
6. Mr. Gravalese was discharged from Faulkner Hospital on February 2, 2017, feeling much better. (Testimony of Mr. Gravalese)
7. On February 6, he called the office of his primary care physician at the Veterans Affairs Hospital in Jamaica Plain, in an effort to schedule an appointment for an examination to assess his fitness to return to duty. Mr. Gravalese left a voicemail message with the office. Later that day, a nurse practitioner called him back and told him that, based on records from

Faulkner Hospital that his primary care physician had reviewed, his primary care physician had issued a note clearing him to return to light duty. Mr. Gravalese picked up the note the same day and set up an appointment for an examination by his primary care physician approximately a month later, the earliest he could get. (Testimony of Mr. Gravalese and Exhibit 2)

8. The next day (February 7), Mr. Gravalese went to BFD headquarters to be examined by the BFD medical examiner, who examined him and found no signs of spinal trauma. Mr. Gravalese then presented him with the note from his primary care physician. The BFD Medical Examiner reviewed the note and said that it might be “a problem” because it cleared Mr. Gravalese only for light duty. (Parties’ stipulation and testimony of Mr. Gravalese)
9. The BFD Medical Examiner then brought the note to Deputy Chief of Personnel Scott J. Malone, who summoned Mr. Gravalese to his office and told him, in The BFD Medical Examiner’s presence, that the note would not allow him to return to the Academy because it cleared Mr. Gravalese only for light duty. (Parties’ stipulation and testimony of Mr. Gravalese)
10. Deputy Chief Malone then told Mr. Gravalese that he needed to see his doctor. When Mr. Gravalese replied that he was scheduled to be examined by his doctor a month later, Deputy Chief Malone said that the appointment was too far off. (Testimony of Mr. Gravalese)
11. Deputy Chief Malone then asked the BFD Medical Examiner for advice about how to proceed, and the BFD Medical Examiner suggested that the BFD send Mr. Gravalese for an examination by a doctor at the Greater Boston Orthopedic Center in Dedham. (Parties’ stipulation, testimony of Mr. Gravalese and Exhibit 2)

12. Deputy Chief Malone accepted this recommendation, and the BFD referred Mr. Gravalese to
The orthopedic doctor. (Parties' stipulation and testimony of Mr. Gravalese)
13. The next day (February 8), Mr. Gravalese had a full examination by The orthopedic doctor in
Dedham. (Parties' stipulation, testimony of Mr. Gravalese and Exhibit 2)
14. The orthopedic doctor issued a medical note clearing Mr. Gravalese to "return to work on 2-
9-17," but the note contained a "no lifting weights" restriction. (Parties' stipulation and
testimony of Mr. Gravalese)
15. The orthopedic doctor had not originally intended to include such a restriction in his note, but
he did so after Mr. Gravalese, who was very concerned about re-injuring himself at the
Academy, proposed this restriction out of an abundance of caution. The orthopedic doctor
acquiesced in the suggestion and modified his original note to include the "no lifting weights
restriction." While modifying the note, he said to Mr. Gravalese that the restriction might
cause him problems at the Academy. (Testimony of Mr. Gravalese and Exhibit 2)
16. Shortly after the examination by The orthopedic doctor, Captain Gallagher telephoned Mr.
Gravalese to ask about it. (Mr. Gravalese had informed him of the examination in advance.)
(Parties' stipulation and testimony of Mr. Gravalese)
17. Mr. Gravalese told Captain Gallagher that he had been cleared to return to the Academy and
that The orthopedic doctor's note also contained a "no lifting weights" restriction. (Parties'
stipulation and testimony of Mr. Gravalese)
18. Mr. Gravalese then sent a scan of the note to Captain Gallagher by email. (Parties' stipulation
and testimony of Mr. Gravalese)

19. Captain Gallagher immediately called Mr. Gravalese back and said that if he could get a note clearing him to return to full duty, he could come back to the Academy, or words to that effect. (Parties' stipulation and testimony of Mr. Gravalese)
20. Mr. Gravalese promptly called The orthopedic doctor back and asked if, based on his examination of Mr. Gravalese, he could issue a note clearing Mr. Gravalese to return to full duty without restrictions. The orthopedic doctor said that he could and, referring back to the conversation earlier that day in which he had advised Mr. Gravalese that the "no lifting weights" restriction might cause him problems at the Academy, also said to Mr. Gravalese words to the effect of "I told you so." (Testimony of Mr. Gravalese)
21. The orthopedic doctor issued a revised note clearing Mr. Gravalese to "return to work on 2-9-17," without restrictions. (Parties' stipulation, testimony of Mr. Gravalese and Exhibit 2)
22. The orthopedic doctor's office faxed the first note to the BFD at 12:37 p.m. on February 8 and the second note at 5:11 p.m. (Exhibit 2)
23. On or about February 9, 2018, Mr. Gravalese returned to BFD headquarters, to which he had been told to report after his examination by the orthopedic doctor. Deputy Chief Malone asked him about the medical notes, including why the earlier note from the orthopedic doctor contained a "no lifting weights" restriction and the later one did not. (Testimony of Mr. Gravalese)
24. Mr. Gravalese answered that Deputy Chief Malone himself had sent Mr. Gravalese to be examined by the orthopedic doctor after concluding that the note from his primary care physician was not adequate. With respect to the two notes from the orthopedic doctor, Mr. Gravalese explained to Deputy Chief Malone that (a) The orthopedic doctor had included the restriction in the first note only at Mr. Gravalese's suggestion, (b) when Mr. Gravalese had

discussed the note with Captain Gallagher, Captain Gallagher had advised him to ask the orthopedic doctor if the restriction could be removed, and (c) when Mr. Gravalese followed Captain Gallagher's advice, the orthopedic doctor readily agreed to remove the restriction and did so. (Testimony of Mr. Gravalese)

25. Deputy Chief Malone made no decision about Mr. Gravalese's return to the Academy that day. Instead, he told Mr. Gravalese to return on February 15. (Testimony of Mr. Gravalese)

26. When Mr. Gravalese returned to BFD headquarters on February 15, he was examined by the BFD Medical Examiner, who cleared him to return to duty, writing in progress notes "medically cleared full duty." (Testimony of Mr. Gravalese and Exhibit 4)

27. Mr. Gravalese then met with Deputy Chief Malone and District Chief Neal Mullane. (A union representative, Robert Petitti, was also present.) Deputy Chief Malone asked again about the difference in the notes from the orthopedic doctor, and Mr. Gravalese explained that he had obtained the second note after Captain Gallagher had advised him that the first note, which contained a "no lifting weights" restriction only because Mr. Gravalese had suggested it, would not suffice. (Testimony of Mr. Gravalese and District Chief Mullane)

28. Deputy Chief Malone told Mr. Gravalese that he had already missed more than two weeks at the Academy, that he had missed hazmat training, and that he would be unable to complete the Academy anyway. Mr. Gravalese agreed to resign if the BFD would issue him a guarantee with respect to the next Academy class. (Testimony of Mr. Gravalese)

29. Deputy Chief Malone agreed that he would be processed for the next class. Accordingly, Mr. Gravalese signed a statement dated February 15, 2017 stating as follows: "I Philip Gravalese do hereby resign my position in the Boston Fire Department, with the guarantee of being

processed for the next class.” Deputy Chief Malone and District Chief Mullane also signed the statement. (Testimony of Mr. Gravalese and District Chief Mullane and Exhibit 3)

30. Shortly thereafter, District Chief Mullane recommended to Mr. Gravalese that he become certified as an emergency medical technician (EMT) so that, upon graduation from the next Academy class, he would be able to start working as a firefighter sooner. (Testimony of Mr. Gravalese and District Chief Mullane)

31. Mr. Gravalese promptly signed up for EMT training, which concluded in late April 2017, and he subsequently obtained his national and state EMT certifications. (Testimony of Mr. Gravalese)

32. After completing EMT training, Mr. Gravalese performed eight weeks of military service. He spent two weeks at his Guard unit’s headquarters in Whitinsville, Massachusetts setting up (e.g., by preparing equipment for shipping) for the unit’s training in Virginia, followed by four weeks of training in Virginia and then by two weeks in Whitinsville receiving shipments back from Virginia, putting equipment back in storage and completing the inventory of the equipment. This military service, for which he was paid, ended in late June 2017. (Testimony of Mr. Gravalese)

33. At some point in June 2017, while he was waiting to be called for the next Academy class, Mr. Gravalese began performing landscaping work for which a friend had recommended him. He was called when extra help was needed, and he worked approximately three days a week; the hours he worked fluctuated depending on the need for his services. He was paid in cash, and he performed landscaping work off and on into September 2017. (Testimony of Mr. Gravalese)

34. While performing landscaping work, Mr. Gravalese once ran into District Chief Mullane, and the two had a brief conversation, including about when the upcoming Academy class would start. (Testimony of Mr. Gravalese)
35. On another occasion, Mr. Gravalese ran into BFD Commissioner Joseph Finn while landscaping and had a brief conversation with him, including about the upcoming Academy class. (Testimony of Mr. Gravalese)
36. On September 11, 2017, Mr. Gravalese completed another application for employment. Page 10 of the Application states:

“EMPLOYMENT HISTORY

BEGIN WITH YOUR MOST RECENT JOB AND LIST YOUR COMPLETE WORK HISTORY FOR THE LAST SEVEN YEARS IN CHRONOLOGICAL ORDER. INCLUDE ALL PART TIME JOBS, PERIODS OF EMPLOYMENT AND MILITARY SERVICE. ALL TIME MUST BE ACCUMULATED. IF UNEMPLOYMENT. YOU ARE REMINDED THAT FAILURE TO COMPLETE THIS SECTION COMPLETELY AND ACCURATELY WILL RESULT IN DISQUALIFICATION. (emphasis in original)” (Exhibit 5)

37. In this section of the employment application, Mr. Gravalese wrote that he was “unemployed” from “Feb 2016 [to] current”. (Exhibit 5)
38. Mr. Gravalese failed to report on the September 11, 2017 application that he had been employed part-time doing landscaping work, beginning in July 2017 and continuing into September 2017. (Exhibit 5)
39. On October 3, 2017, Deputy Chief Malone, District Chief Mullane and Human Resources Director Andrea Hennelly interviewed Mr. Gravalese. (Testimony of Mr. Gravalese, District Chief Mullane and HR Director Hennelly and Exhibit 7)
40. During the interview, Mr. Gravalese was asked about his failure to list his landscaping work in the employment history section of his application, especially since he had been observed

working as a landscaper by District Chief Mullane and Commissioner Finn. (Testimony of HR Director Hennelly, District Chief Mullane and Mr. Gravalese)

41. He stated that he did not report the landscaping work because he was being paid “under the table.” (Testimony of Ms. Hennelly)

42. When Mr. Gravalese filed his taxes for 2017, he reported his income from landscaping. (Testimony of Mr. Gravalese and Mr. Gravalese’s 2017 Schedule C (confidential exhibit))

43. During the roundtable discussion following the interview of Mr. Gravalese on October 3, 2017, the interview panel expressed puzzlement as to why Mr. Gravalese had not listed his landscaping work on his application despite his awareness that he had been observed working as a landscaper. A week or so later, the panel recommended that Mr. Gravalese be bypassed. (Testimony of District Chief Mullane)

44. The BFD issued its bypass letter on April 2, 2018. As grounds for the bypass, the letter stated that Mr. Gravalese had been “untruthful” about his medical treatment and about his employment status in 2017 and his failure to list his part-time employment on his application. (Exhibit 1)

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. at 259, 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

Honesty is a required trait of any person seeking a public safety career and evidence of untruthfulness is a valid reason for bypassing a candidate for the position of firefighter. Labeling a candidate as untruthful, however, can be an inherently subjective determination that should be

made only after a thorough, serious and uniform review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates. (See Morley v. Boston Police Department, 29 MCSR 456 (2016) (Based on unreliable hearsay and false assumptions, the Boston Police Department erroneously concluded that Mr. Morley, a federal police officer and a disabled veteran who had been deployed on active duty overseas on four occasions, was untruthful.)

As part of this de novo proceeding, I carefully reviewed the two (2) allegations of untruthfulness that the BFD has relied on bypassing Mr. Gravalese. The first allegation of untruthfulness, which District Chief Mullane acknowledged was insufficient, standing alone, to justify a bypass of Mr. Gravalese, arose from what appears to have been at best miscommunications between Mr. Gravalese and the BFD. After he was discharged from Faulkner Hospital on February 2, 2017 following his injury at the Academy, Mr. Gravalese followed instructions from BFD officials at every stage of the process in his efforts to return to the Academy. First, after a BFD lieutenant advised him to do so, he obtained a note clearing him to return to duty from his primary care physician. When the BFD medical examiner and Deputy Chief Malone determined that the note was insufficient to allow him to return because it restricted him to light duty, the BFD referred him to an independent doctor of its own choosing for an examination, an orthopedic doctor. The orthopedic doctor issued two notes on February 8, one clearing Mr. Gravalese to return to duty with a “no lifting weights” restriction and one a few hours later clearing him to return to duty without restrictions. The parties have stipulated that Mr. Gravalese obtained the second note only after Captain Gallagher advised him to try to obtain it. Thus, both notes from the orthopedic doctor were produced with the knowledge of, and to some extent at the direction of, the BFD.

I credit Mr. Gravalese's testimony that the orthopedic doctor included the "no lifting weights" restriction in the first note only at Mr. Gravalese's suggestion, that he did not think the restriction was necessary, and that he had advised Mr. Gravalese that the restriction could cause problems for his re-entry into the Academy.

Mr. Graves may not have succeeded in communicating to Deputy Chief Malone the full circumstances of how the medical notes came to be issued, but whether it was (a) the lieutenant who directed him to obtain a note from his primary care physician, (b) Deputy Chief Malone when he referred him to The orthopedic doctor for an examination, or (c) Captain Gallagher when he advised Mr. Gravalese to try to obtain a different note from The orthopedic doctor, the BFD was aware of every stage of Mr. Gravalese's efforts to obtain medical clearance, and Mr. Gravalese did not attempt to conceal any aspect of these efforts. Thus, the BFD has failed to sustain its burden of demonstrating that Mr. Gravalese was untruthful with respect to the medical notes he obtained following his discharge from Faulker Hospital.

Mr. Gravalese's failure to list his very recent part-time employment on his application for employment is a different story. Mr. Gravalese *was employed*, performing landscaping duties three (3) days per week from June 2017 to September 2017. Yet, when instructed on his application to provide his employment history, including all part-time employment, Mr. Gravalese, on September 11, 2017, failed to list his part-time employment, despite the explicit written warning that ... "FAILURE TO COMPLETE THIS SECTION COMPLETELY AND ACCURATELY WILL RESULT IN DISQUALIFICATION." When questioned about this discrepancy by the interview panel, Mr. Gravalese told the panelists that one of the reasons for not listing his part-time employment was that he was working "under the table." Rather than justifying the omission, this explanation only raised additional, valid concerns for the panelists.

Mr. Gravalese argues that he had no intention to conceal this information and, thus, the omission on his application does not constitute untruthfulness that justifies the decision to bypass him for appointment. I disagree. Mr. Gravalese did not simply forget to list this very recent part-time employment. He chose not to list this employment because he effectively deemed it to be irrelevant because he was working “under the table.” Setting aside this eyebrow-raising explanation, firefighter candidates cannot self-determine what information is responsive or relevant, particularly, as here, when the instructions were so explicit and the part-time employment was so recent.

Finally, I found no evidence that the decision by the BFD here was motivated by any personal or political factors, including animus toward Mr. Gravalese. Rather, based on the witness testimony, it appears that senior BFD personnel, *when they saw Mr. Gravalese working at his landscaping job*, offered him words of encouragement and genuinely wished Mr. Gravalese nothing but the best.

Conclusion

The BFD has provided reasonable justification for bypassing Mr. Gravalese for appointment as a firefighter. For this reason, Mr. Gravalese’s appeal under Docket No. G1-18-012 is hereby ***denied***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Commission (Bowman, Chairman; Camuso, Commissioner; Ittleman, Commissioner, Stein, Commissioner and Tivnan, Commissioner) on December 20, 2018.

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 to:

Michael S. Rabieh, Esq. (for Appellant)

Louis Scapicchio, Esq. (for Respondent)