

After careful review, and in accordance with our Standard Governing Disclosures of Sensitive Personal Data, the Commission has opted to use a pseudonym for the Appellant to appropriately balance their privacy interests with the Commission's statutory obligation to provide the public with a transparent record of its deliberative process and interpretation of civil service law.

Decision mailed: 12/31/10  
Civil Service Commission  
CS

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

GREGORY P [REDACTED],  
Appellant

v.

Docket NO.: G1-08-[REDACTED]

BOSTON POLICE DEPARTMENT,  
Respondent

Appellant:

Gregory P [REDACTED]  
*Pro se*

Appointing Authority:

Amanda E. Wall, Atty.  
Office of the Legal Advisor  
Boston Police Department  
One Schroeder Plaza  
Boston, MA 02120

Commissioner:

Daniel M. Henderson

**DECISION**

Pursuant to the provisions of G.L. c. 31, s. 2(b), the Appellant, Gregory P [REDACTED], seeks review of the Human Resources Division's (HRD) decision in accepting reasons proffered by the Respondent-Appointing Authority, Boston Police Department (hereafter, "Department" or "Appointing Authority" or "BPD"), for the bypass of the Appellant for original appointment to the position of Boston police officer. The reason proffered for the bypass and accepted by the Human Resources Division was that the Appellant was deemed psychologically unfit for original appointment to the position of Boston police officer. The reasons proffered for the bypass and accepted by the Human Resources Division, (HRD).

The Department substantially based its determination of psychological unfitness on the evaluation and opinion of Dr. Julia M. Reade. The Appellant filed a timely appeal at the Civil Service Commission, (hereinafter "Commission"). A full hearing was held on April 27, 2009, at the offices of the Commission. One (1) audio tape was made of the full hearing. The Department filed a post hearing proposed decision at the Commission.

### **FINDINGS OF FACT**

Eleven (11) exhibits and HRD's document packet filed at the Commission, were entered into evidence. Based upon the documents entered into evidence and the testimony of:

#### **For the Appointing Authority:**

- Dr. Julia M. Reade

#### **For the Appellant:**

- Gregory P [REDACTED], Appellant

### **I make the following findings of facts:**

1. The Appellant having previously taken and passed a civil service exam; being qualified his name appeared on an eligibility list for police officer. The Appellant's name appeared on special Certification # [REDACTED], dated [REDACTED]/[REDACTED]/2007, for the position of Haitian-Creole speaking Boston Police officer. (Exhibit 3 and HRD document packet)
2. The Appellant applied for a position with the Boston Police Department and met with the Department's Recruit Investigations Unit. He provided the Department with his Student Officer Application, and thereafter, a Recruit Investigations Unit

detective undertook an investigation into the Appellant's background. The Appellant passed the background check.

3. Following the background investigation, the Department extended a conditional offer of employment to the Appellant, contingent upon his successful completion of the medical/psychological component of the hiring process.
4. On May 16, 2008, BPD's Director of Human Resources Robin Hunt sent a bypass letter to HRD. The letter stated the BPD's reason for bypassing the Appellant, being psychologically unqualified, the determination having been based on the evaluation and opinion of Dr. Julia Reade. Dr. Reade's opinion stated: "In summary, Mr. P [REDACTED] appears to be a well-intentioned man with significant psychological problems. He seemed hypomanic in his clinical presentation and demonstrated chaotic thinking, disorganized communication and impulsive behavior. There are multiple instances of unmodulated emotion, rule-breaking and inattention to procedures and rules. He has little insight into his limitations, and his interest in police work appears unrealistic and grandiose. There are many indications in the testing, his history and his presentation that he is psychologically unstable and in need of treatment. For these reasons, Mr. P [REDACTED] is currently found not acceptable for the police department." And the letter further states that: "Given the highly stressful nature of urban police work, the Boston Police Department is unable to provide Gregory P [REDACTED] with a reasonable accommodation." (Exhibit 3)
5. On November 18, 2008, the Appellant was notified by letter from Jenifer Murphy of HRD that the BPD's reasons for bypass were deemed acceptable. The letter

further notified the Appellant of his right to appeal this bypass decision to the Civil Service Commission. (Exhibit 3)

6. The Commonwealth's personnel administrator (HRD) [HRD regulations] has established Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel HRD regulations, for police officers, establish two disqualifying categories of psychiatric medical conditions:

- “Category A Medical Condition” is a “condition that would preclude an individual from performing the essential functions of a municipal police officer or present a significant risk to the safety and health of that individual or others.” Category A “psychiatric” medical conditions include “disorders of behavior, anxiety disorders, disorders of thought, disorders of mood, disorders of personality”.
- “Category B Medical Condition” is a “condition that, based on its severity or degree, may or may not preclude an individual from performing the essential functions of a municipal police officer or present a significant risk to the safety and health of that individual or others.” Category B “psychiatric” medical conditions include “a history of any psychiatric condition, behavior disorder, or substance abuse problem not covered in Category A. Such history shall be evaluated based on that individual's history, current status, prognosis, and ability to respond to the stressors of the job” and “any other psychiatric condition that results in an individual not being able to perform as a police officer.” (administrative notice:(HRD) Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel).(administrative notice)

7. On or about June 2004, the Department submitted a psychological screening plan to the Human Resources Division (HRD) for approval. (Exhibit 1)
8. On or about July 2004, Sally McNeely, the Director of the Organizational Development Group of the Human Resources Division of the Commonwealth of Massachusetts, approved the psychological screening plan submitted by the Boston Police Department. (Exhibit 2)
9. As stated in the Plan, “[T]he goal of the proposed psychological screening process is to identify candidates who may exhibit any evidence of a mental

disorder.... This process will be used to detect, through a review of the background investigation, personal history as provided by the candidate, psychological testing, interviews, and *any psychological or behavior characteristics*, which would significantly interfere with the candidate's successful performance of the essential functions and duties of the position of Boston Police Officer.” (Exhibit 1)

10. No specific instructions are given to the psychiatrists conducting the first and second level clinical interviews pursuant to the Plan with respect to what information and/or documents may be relied upon. Dr. Scott and Dr. Reade must abide by the Plan in conjunction with their training and experience and utilize the standards set forth by the laws of the Commonwealth (G.L.c.31, §61A and regulations promulgated by HRD pursuant thereto) to determine the psychiatric fitness to perform the duties or manage the stresses of an armed police officer. (Exhibit 1)

11. The Boston Police Department's Psychological Screening Plan consists of three phases. During Phase I of the Plan, all candidates are administered two written psychological tests, the Minnesota Multiphasic Personality Inventory-2 Exam (hereinafter “MMPI-2”) and the Personality Assessment Inventory Exam (hereinafter “PAI”). (Exhibit 1)

#### **Phase I - Written Psychological Tests**

12. The MMPI-2 is a 567 question psychometric test. It is targeted to an 8<sup>th</sup> grade reading level. It was “normed” on a combination of clinical populations and non-clinical populations initially to diagnose psychological conditions; however, as

the test was further researched, researchers have been successful in ferreting out even more personality characteristics based on how a person responded on the test. The test results provide information about how the applicant has approached the test and also highlights both enduring personality traits and more acute problems that the candidate is experiencing. (Testimony of Dr. Reade)

13. On or about February 24, 2008, the Appellant was administered the Minnesota Multiphasic Personality Inventory-2 Exam (hereinafter "MMPI-2") and subsequently a Law Enforcement Interpretive Report and an Extended Score Report were generated by computer. (Exhibit 6)

14. The Appellant was open and non-defensive when responding to the MMPI-2. His test results showed elevations on the mania scales, which correlate with impulsivity, cynicism, and rule breaking. He demonstrated feelings of persecution, issues with trust and functioning as a team, in addition to exhibiting bizarre thinking and odd beliefs. His test results showed a very disturbed profile which indicated the possibility of a major mental illness involving a severe mood or anxiety disorder. He endorsed critical items related to depression, suicide, seeing things that others do not, deviant thinking, and problematic anger. There were many content themes in the Appellant's test results that indicated an array of problems with his attitudes, temper, antisocial behavior, disregard for others feelings, and a cynical attitude. He also endorsed a significant number of work dysfunction items related to impatience, distrust, resentment, problems with rules and authority, fatigue, frustration, and anxiety. (Testimony of Dr. Reade and Exhibits 6 & 10)

15. On or about February 24, 2008, the Appellant was administered the Personality Assessment Inventory exam ("PAI") and subsequently a PAI Law Enforcement, Corrections and Public Safety Selection Report was generated by computer. (Exhibit 7)
16. The PAI is a 344 question, multiple choice test that also examines different domains of personality functioning. The PAI has been "normed" against the general population and against different gender groups, different ethnic groups, and also against post-probationary public safety officers. Because of this, the PAI results allow for comparisons to be made of the applicant to other applicants who have passed through to the point of being probationary candidates. (Testimony of Dr. Reade)
17. The Appellant's PAI test results reinforced the results of the MMPI-2 and demonstrated a very concerning pattern of responses indicative of an untreated mental disorder. The Appellant generated extreme elevations on clinical scales and subscales measuring depression, anxiety, mania, paranoia, psychotic thinking, antisocial behaviors, egocentricity, and suicidal tendencies. He exhibited trouble concentrating and irritability. (Testimony of Dr. Reade and Exhibits 6, 7, & 10)
18. Compared to a normed sample of post-probationary public safety officers, the Appellant showed a high risk of receiving a "poorly suited" rating and a high likelihood of job-related, integrity, anger management, and substance abuse problems. (Testimony of Dr. Reade and Exhibits 7 & 10)

**Phase II - Evaluation by Dr. Marcia Scott**

19. On or about March 2, 2008, the Appellant undertook Phase II of the Boston Police Department Psychological Screening and met with Dr. Marcia Scott, a Department Psychiatrist, who conducted a first level psychiatric examination, pursuant to the Boston Police Department psychological screening plan. (Exhibits 1 & 9)
20. Dr. Marcia Scott has worked for the Department for over eight (8) years as its First Level Psychological Screener. Her education, training, employment history, clinical history, academic affiliations, licenses, publications, presentations, and the professional organizations and committees to which she belongs, are all detailed in her lengthy curriculum vitae. (Exhibit 4)
21. Prior to the 2008 interview, Dr. Scott reviewed the Appellant's background documents, his MMPI-2 test scores/results, and his PAI test scores/results. She notes that he has two positive references from retail supervisors who say he is in a dance group and "could be more aggressive." She also notes another reference who said he would like to be positive but "cannot imagine him [the Appellant] as a police officer." He describes the Appellant as "tardy, unkempt, and detached." Dr. Scott also notes that there is no evidence of an honorable discharge from the military in the Appellant's file. (Exhibit 9)
22. In her review of the Appellant's MMPI-2 and PAI results, Dr. Scott noted that the Appellant's MMPI-2 profile demonstrated unusual beliefs along with antisocial behavior and attitudes. The report also identified an unusually high degree of impulsivity, only seen in five (5) percent of law enforcement applicants. Dr. Scott noted that the test results showed an inordinate number of unusual content



themes including difficulty controlling temper, antisocial behavior, irresponsibility, difficulty with authority, disregard for others, and cynicism. Dr. Scott further observed that the PAI reported “high psych, job, integrity, anger management, and moderate alcohol concerns.” (Exhibits 6, 7 & 9)

23. Dr. Scott made note of her March 2, 2008 evaluation of the Appellant. She indicated that the Appellant arrived on time, was casually dressed and energetic. Dr. Scott notes that she found the Appellant’s thinking disorganized, obsessive, and unable to focus, or to make a simple decision even when she coached him. She was unable to get a coherent picture of the Appellant’s life course or of single life events because the Appellant was only able to provide a detailed obsessive report of his life with circumstantial and tangential digressions. (Exhibit 9)

24. In her summary, Dr. Scott indicated that the Appellant “is a well meaning young man who is mentally disorganized and emotionally unstable, dependent and unable to make decisions or reason effectively or communicate coherently.” She also noted that his history is consistent with an ongoing anxiety disorder that inhibits his activities and was the reason he was discharged from the military. (Exhibit 9)

25. Dr. Scott concluded that the Appellant’s mental impairments and anxiety disorder preclude him from managing the stresses and performing the duties of an armed police officer. (Exhibit 9)

26. Since Dr. Scott opined that the Appellant was not psychologically fit to become a Boston Police Officer, the Appellant was referred to Dr. Julia M. Reade to

undergo a Second Opinion Psychiatric Review, pursuant Phase III of the Boston Police Department psychological screening plan. (Exhibits 1 & 10)

**Phase III - Evaluation by Dr. Julia Reade**

27. Dr. Julia Reade is a Board Certified psychiatrist who has worked for the Department for almost ten (10) years conducting Second Level Psychiatric Interviews for police officer recruits. She is Board Certified in General Psychiatry and Forensic Psychiatry and has extensive experience in Law and Psychiatry as well as Occupational Psychiatry. (Exhibit 5 and testimony of Dr. Reade)
28. Dr. Reade conducts Second Level Psychiatric Screening interviews when Dr. Scott deems an applicant as not psychologically fit to be a Boston Police officer. (Testimony of Dr. Reade)
29. Dr. Reade explains to each candidate that, even though she has been hired by the City of Boston and even though she is reviewing what Dr. Scott has sent to her, she is obligated to be as objective and as careful as possible and that even though the recruit is coming to see her for a second opinion, everybody gets a fresh look. She indicated that she is sensitive to the fact that most of the recruit candidates have never seen a psychiatrist before and may be very nervous. She tries to put the candidate at ease. (Testimony of Dr. Reade)
30. In her almost ten (10) years with the Department, Dr. Reade has overruled Dr. Marcia Scott, the Department's First Level screener, approximately zero (0) to twenty-five/thirty (25-30) percent of the time and has deemed recruits as

psychologically fit to be Boston Police officers. Dr. Reade and Dr. Scott are separate entities who have separate practices. (Testimony of Dr. Reade)

31. Dr. Reade has conducted hundreds of Second Level Psychiatric Screenings for the Boston Police Department. She has also consulted for other police departments in Massachusetts, including Cambridge, Lawrence, Cohasset, and Hamilton. (Testimony of Dr. Reade)
32. Dr. Reade testified that the Department's Psychological Screening Process is in place because the Boston Police officer position is a complicated job, a high stakes job, that requires autonomy, the ability to get along well with others, adjust to difficult circumstances, review and be accountable for your own behaviors, adjust to a hierarchal structure, be flexible, deal with very high levels of stress and deal with high levels of boredom. She also testified that the process is important to protect the safety of the general public; the safety of the actual recruit/police officer; the safety of their partner(s); and the reputation of the Department. A solid psychological evaluation is essential. (Testimony of Dr. Reade)
33. Dr. Reade used the MMPI-2 and the PAI to help focus her inquiry during her interview with the Appellant. (Testimony of Dr. Reade)
34. Dr. Reade did not base her recommendation to bypass solely on the Appellant's MMPI-2 and PAI test results, nor would she ever do so. (Testimony of Dr. Reade)
35. Dr. Reade analyzes the results of the MMPI-2 and PAI, with caution. She looks at how someone approached the test, whether the person was defensive, and how

willing the person was to disclose information. She reads through the narrative results of the test to see if there are any issues that are flagged as particular concerns and she focuses on those areas in her clinical interview with the individual. (Testimony of Dr. Reade)

36. Dr. Reade typically spends an hour with the candidate. She realizes that everyone she meets with is nervous, based upon the fact that the stakes are very high and a lot of recruits have never met with a psychiatrist before. Everyone comes in with some level of nervousness and Dr. Reade is looking at how the person handles the stress of that situation – whether he is able to keep command of himself and manage the interaction in a way that gives the doctor confidence in his ability to handle stressful situations. (Testimony of Dr. Reade)

37. Dr. Reade conducts her interview in semi-structured fashion, always with the focus on whether the candidate is a good fit to be a Boston Police officer. She looks at a series of domains, which include a candidate's life experiences, their problem solving skills, interest in police work, communication, interpersonal relationships, and community. This is a standardized methodology for pre-screening public safety candidates, with a focus on job specific domains. (Testimony of Dr. Reade)

38. Dr. Reade testified that the clinical evaluation is an important step in the Department's screening process. There are issues that arise in the test and/or in the candidate's background that the doctor would like to ask the candidate about. The doctor wants to gain an understanding as to why the candidate answered questions in a particular way on the test or, relative to the candidate's

background, why the candidate made particular choices in his life. The purpose of this questioning is to gain an understanding of what the context of the trait or behavior at issue is. (*Testimony of Dr. Julia Reade*)

39. Dr. Reade is looking to see if the candidate can, not only give a coherent account of what has happened in his life, but she also is looking to hear the candidate's thoughts about what has happened, whether the candidate is willing to take any responsibility for unfortunate events in his life, whether the candidate has learned from his experiences, how the candidate solves problems, etc. She stresses that a police officer must have the ability to make split second decisions and must be able to learn from any missteps along the way. An officer must have the ability to analyze his past actions and must do so in an honest manner. (*Testimony of Dr. Julia Reade*)

40. Dr. Reade recounted her interview with the Appellant, which took place on or about March 10, 2008. She indicated that the Appellant was on time and dressed in a theatrical outfit. He was smiling broadly, was anxious, and in a state of near exuberance. Dr. Reade described him as having an intense, impulsive style where he answered questions with a headlong rush of words. (*Ex. 10 and Testimony of Dr. Julia Reade*)

41. Dr. Reade noted that the Appellant's thought process was tangential and chaotic. She found him to be likeable and cooperative, but so animated that he appeared hypo-manic, which is symptomatic of bipolar disorder. He laughed loudly and inappropriately and did not seem to comprehend the seriousness of the interview. Once the Appellant began speaking, Dr. Reade found him difficult to "reign in."

She was unable to get a clear picture of anything he described based upon his confused and unorganized thinking. (*Ex. 10 and Testimony of Dr. Julia Reade*)

42. Dr. Reade testified that she spoke with the Appellant about why he wanted to become a police officer. She related that he first talked about “capturing bad guys.” He then became incoherent and stated, “what if I become a police officer, if I know someone as a regular person or if I have a uniform?” He then changed topics and stated that he wanted to be in the movies, “which would be like fun and entertainment.” He began speaking again about becoming a police officer and stated that, “If I see myself as a police officer, I see myself as really important...Instead of regular Greg-Hey, wassup, they’d see me as serious...I want to take a big challenge.” (*Ex. 10 and Testimony of Dr. Julia Reade*)

43. Dr. Reade attempted to elicit an explanation from the Appellant of a shoplifting incident that occurred when he was in high school. Again Dr. Reade notes that the Appellant’s explanation of the incident was unintelligible. He stated that he went to a store and they were giving things out for free and people were putting things into bags and then when he went back the next day with the pants in the bag and he got in trouble. Dr. Reade had to repeatedly redirect the Appellant in order for him to describe the final disposition of the case. The Appellant was also unable to coherently explain to Dr. Reade an issue regarding his driving history. He talked about something involving his cousin and a State Trooper showing up and then he trailed off from there. (*Testimony of Dr. Julia Reade and Ex. 10*)

44. Dr. Reade had similar difficulty getting an accurate account of the Appellant’s family relationships, his social and developmental history, and his schooling. He

denied any family history of psychiatric illness or substance abuse. He also denied any history of learning or attention problems at school. He was unable to convey his military history to Dr. Reade and it was only after repeated questions and redirection that he was able to explain that he had been discharged for anxiety. (Exhibit 10 and Testimony of Dr. Reade)

45. Dr. Reade's overall assessment of the Appellant, after reviewing his background information, his MMPI-2 and PAI test results, Dr. Scott's report, and meeting with the Appellant, was that he was a well intentioned man with significant psychological problems. He appeared hypo-manic in his clinical presentation which Dr. Reade described as being symptomatic of a mood disorder. During his meeting with Dr. Reade, the Appellant demonstrated chaotic thinking, disorganized communication and impulsive behavior. Dr. Reade found that he had little insight into his limitations and his interest in police work seemed to be unrealistic and grandiose. Dr. Reade concluded that there were many indications in the Appellant's testing, his history, and his presentation, that he is psychologically unstable and in need of treatment for his mood/anxiety disorder. Based upon this assessment, Dr. Reade found that the Appellant was not psychologically fit to be a Boston police officer. She concluded that the Appellant is suffering from an untreated mental disorder. (Exhibit 10 and Testimony of Dr. Reade)

46. Dr. Reade admitted that candidates may have problems understanding the true meaning of the test questions. She tried during the interview to discern whether

there was a comprehension or language problem with the Appellant. (Testimony of Dr. Reade)

### **Testimony of Appellant**

47. The Appellant testified that he made mistakes on the written test questions. He read the questions a certain way which he found out later were wrong. He gave the following examples: He does wake in the night if he hears something unusual, like a window breaking. He believes this is normal since he lives in a bad neighborhood, not that he has trouble sleeping. Regarding his heart pounding- he answered yes because he plays sports and works hard causing his heart rate to accelerate. He did not know what the word “seldom” meant, so answered the question wrong. He thought the phrase “high strung” was positive, so he answered accordingly. He answered that he was “hot headed” only because his parents told him he was that way as a young child, but he does not remember being that way and he is not hot headed as an adult. He also answered other questions based on what his parents or others had told him about his early childhood. He answered the test questions with complete honesty because the RIU Detective instructed him not to lie. He did not consider the use of the word “often” in answering a test question. Regarding the question of people talking about him; he answered yes because people are always talking about other people, including himself. He is in the event promotion business and is always talking-up events and club activities. He thought the phrase “raw deal” meant a “good life”. He thought the word “misfortune” used in one question meant having a large sum of money and then losing it. He believes he leads a good, normal life.



The Appellant also gave numerous other examples of how he misunderstood the test questions and therefore answered incorrectly. (Testimony of Appellant)

48. The Appellant is a thin black male of average height. He was dressed neatly in a white shirt with an open collar. The Appellant is a very talkative and lively personality during his testimony or argument. He sort of rambles on, giving many examples instead of just a concise statement. However, he is unassuming and appropriate in his demeanor when he is not testifying. He is endearing and likeable and seems to be bright and quick thinking. He is a high school graduate and is in his second year at Clark University. He is a member of the US Army Reserves, having been activated in 2006 and serving in Iraq. He made the mistake of reading a question on his BPD application, and referring to military deactivation when he actually meant activation. He did not offer any exhibits for this hearing and at one point in his testimony admitted that he forgot to bring his “paper work” with him for this hearing. He did not make any notes during the hearings, losing that assistance to organization or preparation. He appears to be naïve or excessively honest to the point of providing self-deprecating yet inaccurate answers or information. I find him to be a credible witness but mistaken in many instances. (Testimony and demeanor of Appellant)

49. The Appellant submitted no exhibits. He did not present any witnesses other than himself. He testified sometimes in a rambling style by providing many examples of what he thought as conveying the idea or concept he was unable to otherwise state concisely. He did not effectively rebut or refute every factual or psychological assertion made against him. He failed to present sufficient qualified, factual and

psychological evidence to meet the burden of submitting a preponderance of credible evidence in the record. (Exhibits, testimony, reasonable inferences)

### **CONCLUSION**

In a bypass appeal, the Commission must consider whether, based on a preponderance of the evidence before it, the Appointing Authority sustained its burden of proving there was “reasonable justification” for the bypass. E.g., City of Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300, 303-305, 682 N.E.2d 923, rev.den., 428 Mass. 1102, 687 N.E.2d 642 (1997) (Commission may not substitute its judgment for a “valid” exercise of appointing authority discretion, but the Civil Service Law “gives the Commission some scope to evaluate the legal basis of the appointing authority’s action, even if based on a rational ground.”). See Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 461-62 (2001) (“The [Civil Service] commission properly placed the burden on the police department to establish a reasonable justification for the bypasses [citation] and properly weighed those justifications against the fundamental purpose of the civil service system [citation] to insure decision-making in accordance with basic merit principles . . . . the commission acted well within its discretion.”); MacHenry v. Civil Service Comm’n 40 Mass.App.Ct. 632, 635, 666 N.E.2d 1029, 1031 (1995), rev.den., 423 Mass. 1106, 670 N.E.2d 996 (1996) (noting that personnel administrator [then, DPA, now HRD] (and Commission oversight thereof) in bypass cases is to “review, and not merely formally to receive bypass reasons” and evaluate them “in accordance with basic merit principles”); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 577 N.E.2d 325 (1991) (“presumptive

good faith and honesty that attaches to discretionary acts of public officials . . . must yield to the statutory command that the mayor produce ‘sound and sufficient’ reasons to justify his action”). See also, Bielawski v. Personnel Admin’r, 422 Mass. 459, 466, 663 N.E.2d 821, 827 (1996) (rejecting due process challenge to bypass, stating that the statutory scheme for approval by HRD and appeal to the Commission “sufficient to satisfy due process”)

It is well settled that reasonable justification requires that Appointing Authority actions be based on “sound and sufficient” reasons supported by credible evidence, when weighed by an unprejudiced mind guided by common sense and correct rules of law. See Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214, 268 N.E.2d 346, 348 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 451 N.E.2d 443, 430 (1928). All candidates must be adequately and fairly considered. The Commission has been clear that a bypass is not justified where “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988).

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 Comm’n, 31 Mass. App. Ct. 315, 321, 577 N.E.2d 325, 329 (1991).

*The greater amount of credible evidence must . . . be to the effect that such action ‘was justified’ . . . {If [the factfinder’s] mind is in an even balance or inclines to the view that such action was not justified, then the decision under review must be reversed. The review must be conducted with the underlying principle in mind that an executive action, presumably taken in the public interest, is being re-examined.* The present statute is

different . . . from [other laws] where the court was and is required on review to affirm the decision of the removing officer or board, 'unless it shall appear that it was made without proper cause or in bad faith.'

Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427, 430 (1928) (*emphasis added*)

The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001). "Abuse of discretion occurs . . . when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and improper factors are assessed but the [fact-finder] makes a serious mistake in weighing them." E.g., I.P.Lund Trading ApS v. Kohler Co., 163 F.3d 27, 33 (1<sup>st</sup> Cir.1998).

When an Appointing Authority relies on scientific evidence provided through expert witnesses to support the justification for a by-pass decision, the Commission is mindful of the responsibility to ensure: (a) the scientific principles and methodology on which an expert's opinion is based are grounded on an adequate foundation, either by establishing "general acceptance in the scientific community" or by showing that the evidence is "reliable or valid" through an alternative means, e.g., Canavan's Case, 432 Mass. 304, 311, 733 N.E.2d 1042, 1048 (2000) *citing* Commonwealth v. Lanigan, 419 Mass. 15, 641 N.E.2d 1342 (1994); (b) the witness is qualified by "education, training, experience and familiarity" with special knowledge bearing on the subject matter of the testimony, e.g., Letch v. Daniels, 401 Mass. 65, 69-69, 514 N.E.2d 675, 677 (1987); and (c) the witness

has sufficient knowledge of the particular facts from personal observation or other evidence, e.g., Sacco v. Roupenian, 409 Mass. 25, 28-29, 564 N.E.2d 386, 388 (1990).<sup>1</sup>

Experts' conclusions are not binding on the trier of fact, who may decline to adopt them in whole or in part. See, e.g., Turners Falls Ltd. Partnership v. Board of Assessors, 54 Mass.App.Ct. 732, 737-38, 767 N.E.2d 629, 634, rev. den., 437 Mass 1109, 747 N.E.2d 1099 (2002). As a corollary, when the fact-finder is presented with conflicting expert evidence, the fact-finder may accept or reject all or parts of the opinions offered. See, e.g., Ward v. Commonwealth, 407 Mass. 434, 438, 554 N.E.2d 25, 27 (1990); New Boston Garden Corp. v. Board of Assessors, 383 Mass. 456, 467-73, 420 N.E.2d 298, 305-308 (1891); Dewan v. Dewan, 30 Mass.App.Ct. 133, 135, 566 N.E.2d 1132, 1133, rev.den., 409 Mass. 1104, 569 N.E.2d 832 (1991).

No specific degree of certitude is required for expert testimony and it may be accepted if the opinion is "reasonable" and expressed with sufficient firmness and clarity. See, e.g., Commonwealth v. Rodriguez, 437 Mass. 554, 562-63, 773 N.E.2d 946, 954 (2002); Bailey v. Cataldo Ambulance Service, Inc., 64 Mass.App.Ct. 228, 235, 832 N.E.2d 12, 11-18 (2005); Resendes v. Boston Edison Co., 38 Mass.App.Ct. 344, 352, 648, N.E.2d 757, 763, rev.den., 420 Mass. 1106, 651 N.E.2d 410 (1995). So long as the expert's opinion is sufficiently grounded in the evidence, but certain facts were unknown or mistakes were made in some of the expert's assumptions that generally goes to the weight of the evidence. Commonwealth v. DelValle, 443 Mass. 782, 792, 824 N.E.2d 830, 839 (2005); Sullivan v. First Mass. Fin. Corp., 409 Mass. 783, 79-92, 569 N.E.2d 814, 819-20 (1991).

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<sup>1</sup> As to the latter point, the Commission's notes that it is granted broader discretion in the admission of evidence than permitted in the Massachusetts courts. Compare G.L.c.30A, §11(2) with Department of Youth Services v. A Juvenile, 398 Mass. 516, 531, 499 N.E.2d 812, 821 (1986).

However, “it is also a familiar principle that testimony may not rest wholly on conjecture, and that is no less the case when the conjecture flows from the mouth of an expert.

[Citations] Qualification as an expert does not confer a license to spout nonsense.” Fourth Street Pub, Inc. v. National Union Fire Ins. Co., 28 Mass.App.Ct. 157, 547 N.E.2d 935, 939 (1989) (Kass.J., dissenting), rev.den., 406 Mass. 1104, 550 N.E.2d 396 (1990). See also Board of Assessors v. Odgen Suffolk Downs, 398 Mass. 604, 606-607, 499 N.E.2d 1200, 1202-1203 (1986) (expert testimony stricken which blatantly overlooked critical facts). See also: (impartial medical examiner’s opinion (IME) found in part to be unsupported by admissible evidence in the record of hearing at DIA), Thomas Brommage’s Case 75 Mass. App. Ct. 825 (2009).

In the case at bar, the Department sustained its burden of proving that it was reasonably justified in bypassing Appellant Gregory P [REDACTED] for appointment as a Boston police officer. The Department followed its HRD approved psychological screening plan. “[T]he goal of the... psychological screening process is to identify candidates who may exhibit *any evidence of a mental disorder....* This process will be used to detect through a review of the background investigation, personal history as provided by the candidate, psychological testing, interviews, and *any psychological or behavior characteristics*, which would significantly interfere with the candidate’s successful performance of the essential functions and duties of the position of Boston Police Officer.”

The HRD regulations set forth Category A and Category B medical conditions for which a candidate can be disqualified from employment. A Category A condition would preclude a candidate from performing the essential functions of police officer or present a

significant risk to the safety and health of that individual or others. A Category B condition may or may not preclude a candidate from performing the essential functions of police officer or present a significant risk to the safety and health of that individual or others. The HRD regulations do not require the diagnosis of a psychological *disorder* to disqualify a candidate as being psychologically unfit, as evidenced by the list of Category B psychological *conditions*. However, in this case, the Appellant's history, testing, and presentation led Dr. Reade to conclude that the Appellant was suffering from a Category A condition rendering him psychologically unfit to perform the duties of a Boston Police officer.

Every potential Boston police recruit that has been given a conditional offer of employment, including the Appellant, must take the MMPI-2 and PAI exams, meet with a first level psychiatric screener, and if he is given an unfavorable first opinion, is then referred to the Department's second level psychological screener. The Department's psychological screening process is in place because a Boston police officer position is a complicated job, a high stakes job, that requires autonomy, the ability to get along well with others, adjust to difficult circumstances, review and be accountable for your own behaviors, adjust to a hierarchal structure, be flexible, deal with very high levels of stress and deal with high levels of boredom. The psychological screening process is important to protect the safety of the general public, the safety of the police officer himself, the safety of their partner(s), and the reputation of the Department.

As was found in the MMPI-2 results, the Appellant showed elevations on the mania scales which are indicators of impulsivity, cynicism, and rule breaking. He endorsed critical items related to depression, suicide, deviant thinking, and problematic anger. There

were many content themes that indicated an array of problems with the Appellant's attitudes and temper. Other content themes demonstrated antisocial behavior, problems with both authority and rules, disregard for others feelings and a cynical attitude. Finally, the Appellant endorsed a significant number of work dysfunction items related to impatience, distrust, resentment, fatigue, frustration, and anxiety.

The Appellant's PAI test results paralleled the results of MMPI-2 and demonstrated a very troubling pattern of responses indicative of an untreated mental disorder. The Appellant test results showed extreme elevations on clinical scales and subscales measuring depression, anxiety, mania, paranoia, psychotic thinking, antisocial behaviors, egocentricity, and suicidal tendencies. His test results demonstrated that he exhibited trouble concentrating and irritability. Finally, compared to a normed sample of post probationary public safety officers, the Appellant showed a high risk of receiving a "poorly suited" rating and a high likelihood of job-related, integrity, anger management, and substance abuse problems.

After undergoing the testing, the Appellant was sent for an evaluation with Dr. Marcia Scott, the Boston Police Department's psychological first level screener. After a review of the Appellant's test results and background information, Dr. Scott undertook a clinical evaluation with the Appellant. In her summary, Dr. Scott indicated that she found the Appellant's thinking disorganized, obsessive, and unable to focus even when she coached him. She was unable to get an accurate account of his life history because the Appellant could only provide "a detailed, obsessive report of his life with circumstantial and tangential digressions." Dr. Scott concluded that the Appellant "is a well meaning young man who is mentally disorganized and emotionally unstable, dependant and unable



to make decisions or reason effectively or communicate coherently.” She noted that the Appellant’s history is consistent with an ongoing anxiety disorder that inhibits his activities and was the reason he was discharged from the military. Based upon the Appellant’s mental impairments and his anxiety disorder, Dr. Scott found the Appellant unable to manage the stresses and perform the duties of an armed police officer.

Since Dr. Scott opined that the Appellant was not psychologically fit to become a Boston Police Officer, the Appellant was referred to Dr. Julia M. Reade to undergo a Second Opinion Psychiatric Review, pursuant Phase III of the Boston Police Department psychological screening plan. Based on Dr. Reade’s review of the Appellant’s background information, his recruit investigation information, his MMPI-2 test results and analysis, his PAI test results and analysis, Dr. Marcia Scott’s report, and Dr. Reade’s own clinical interview with the Appellant, Dr. Reade concluded that the Appellant was a well intentioned man with significant psychological problems. During his encounter with Dr. Reade he demonstrated chaotic thinking, disorganized communication, and impulsive behavior. Dr. Reade found him to have little insight into his limitations and his interest in police work seemed to be unrealistic and grandiose. Dr. Reade testified that she was unable to get a coherent account of any of the events in the Appellant’s history because of his inability to formulate a cogent response. Based upon the Appellant’s presentation during his interview with Dr. Reade in conjunction with his testing and his history, she concluded that there were many indications that he was psychologically unstable and in need of treatment for his anxiety/mood disorder. Consequently, Dr. Reade concluded that the Appellant was not psychologically fit to be a Boston Police officer.

Acknowledgment is made of a recent decision *City of Beverly* (cited below) by the Appeals Court. The *City of Beverly* decision addressed the standard of review employed by the commission for cases involving the bypass for hiring a candidate for a civil service police officer position. The Court's decision also addressed the issues of burden of proof and proper exercise of judgment incumbent upon the appointing authority in these hiring matters. The candidate there, Bell, was bypassed for appointment based on an allegation of misconduct which led to him being fired by a prior employer. The alleged misconduct by the prior employer was: "intentionally accessing the private voicemail system of another person is a serious confidentiality breach, an invasion of the privacy of other employees, as well as potentially a violation of the law." See City of Beverly v. Civil Service Commission & another. 78 Mass. App. Ct. 182 (2010), Appeals Court (No. 9-P-1959), Essex county, October 28, 2010. There the Appeals Court found "A Superior Court judge vacated the commission's ruling after concluding that the commission had improperly substituted its judgment for that of the city, and Bell appealed. We affirm. [FN4]" id page 183.

That decision further stated: "although it is plain that the finding of facts is the province of the commission, not the appointing authority, the commission owes substantial deference to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. [FN11]<sup>2</sup> Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police officers appropriately held, [FN12] appointing authorities are given significant latitude in screening candidates, and "[p]rior misconduct has frequently been a ground for not hiring

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<sup>2</sup> "FN11 As demonstrated below, this case well illustrates the difficulties inherent in sorting out what is fact finding (the province of the commission) and what is the exercise of judgment with regard to the facts (the province of the appointing authority)."

or retaining a police officer.” Cambridge v. Civil Serv. Comm., 43 Mass. App. Ct. at 305, and cases cited.” *City of Beverly* at page 188. And the Appeals Court also stated: “Instead of focusing on whether the city had carried its burden of demonstrating a “reasonable justification,” the commission focused on whether the city had proven that Bell in fact engaged in the misconduct. We believe the commission erred as a matter of law in placing an added evidentiary burden on the city. In simple terms, neither Bell nor the commission has presented a convincing argument that the Legislature intended to force an appointing authority to hire a job applicant for such a sensitive position unless it is to prove to the commission’s satisfaction that the applicant in fact engaged in the serious alleged misconduct for which he was fired. [FN15]” *id* at page 190 And further stated: “Absent proof that the city acted unreasonably, we believe that the commission is bound to defer to the city’s exercise of its judgment.” *id* at page 191 And further elaborated: the [commission] “...ultimately rested their ruling on the city’s failure to prove that the allegations of misconduct were in fact true, a burden that we have concluded the commission erroneously assigned to the city. [FN17]” *id* at page 192. The Appeals court concluded: “In sum, we agree with the judge below that the city demonstrated a reasonable justification to bypass Bell and that the commission improperly substituted its judgment for that of the city in ordering that he be hired.” *id* at page 192.

The Appellant submitted no exhibits. He did not present any witnesses other than himself. He did not take any notes during the hearing and admitted that he forgot to bring his “paper work” for this hearing. He testified sometimes in a rambling style, providing many examples of what he apparently was unwilling or unable to describe in concise statements. He did not effectively rebut or refute every factual or psychological assertion

made against him. He failed to present sufficient qualified, factual and psychological evidence to meet the burden of submitting a preponderance of credible evidence in the record.

The Appellant has failed to show that the BPD's decision to bypass him was made with any political considerations, favoritism, bias or other unpermitted consideration.

For all the above reasons, the Appeal under Docket No. G1-08-████ is hereby *dismissed.*

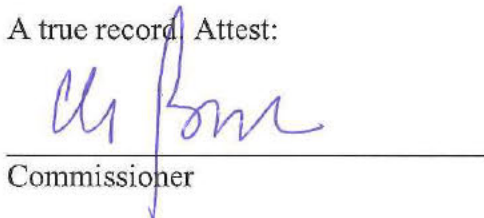
Civil Service Commission,



Daniel M. Henderson  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell, Stein and Marquis, Commissioners) on December 30, 2010.

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. 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:

Amanda E. Wall, Atty.

Gregory F. █████

John Marra, Atty. - HRD