

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

One Ashburton Place – Room 503
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PIERRE GRENIER,

Appellant

CASE NO. G2-20-020

v.

SPRINGFIELD FIRE DEPARTMENT,

Respondent

Appearance for Appellant:

William J. Fennell, Esq.
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84 Park Street – 2d Floor
West Springfield, MA 01089-3336

Appearance for Respondent:

Mary Kelleher, Esq.
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Commissioner:

Paul M. Stein

DECISION

The Appellant, Pierre Grenier, currently a Fire Captain in the Springfield Fire Department (SFD), appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, §2 (b), from his bypass by the SFD for appointment to the position of District Fire Chief.¹ The Commission held a pre-hearing conference on April 22, 2020 via remote videoconference (Webex). A full hearing was held, also by remote videoconference (Webex), on September 29, 2020, which was digitally recorded.² Sixteen (16) Exhibits (*Exhs.1 through 11; App.Exhs.1*

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.

² A recording of the full hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the stenographic or other written transcript of the 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.

through 5) were received in evidence. Each party filed a Proposed Decision on December 4, 2020.

For the reasons stated below, Capt. Grenier's appeal is denied.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- Catlyn Julius, City of Springfield Personnel Director
- Bernard Calvi, SFD Fire Commissioner

Called by the Appellant:

- Pierre Grenier, SFD Fire Captain, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

Procedural Background

1. The Appellant, Pierre Grenier, is a tenured member of the SFD with over 23 years of service. He has held the rank of Fire Captain for ten years. He reports to a District Fire Chief and, as senior Captain in his group, has filled in (estimated at over 500 hours) as Acting District Chief in his supervisor's absence. Earlier in his career, he served as a District Chiefs' Aide. (*Exhs.1 & 8; App.Exh.2; Testimony of Appellant*)

2. Capt. Grenier is a U.S. Marine Corps veteran who served as a squad commander and was deployed overseas for Operation Desert Storm and Operation Desert Shield. He is a licensed journeyman electrician. He is 12 credits short of an Associate's Degree in Fire Science. He has a clean disciplinary record. (*Testimony of Appellant*)

3. The SFD is staffed by approximately 250 fire service personnel. The department head and appointing authority is Bernard Calvi, Fire Commissioner, whose senior command staff includes two Deputies reporting directly to him (Staff and Operations), 11 District Chiefs and 15 Captains, along with Lieutenants and Firefighters who operate the Department's firefighting apparatus. (*Testimony of Calvi*)

4. On May 19, 2018, Capt. Grenier took the written examination for District Fire Chief administered by the Massachusetts Human Resources Division. (*Exhs.1 & 2*)

5. On or about August 15, 2018, HRD established the eligible list for District Fire Chief. (*Exh.2*)

6. Pursuant to requisitions received from the SFD in December 2019, and supplemented in January 2020, HRD issued Certification #05199 that authorized the SFD to fill five vacancies in the position of District Fire Chief ³. Capt. Grenier was one of six SFD Captains whose names remained on the eligible list. His name appeared below two candidates (Candidates A & B) and above three candidates (Candidates C, D & E) (*Exh.3 through 5; Testimony of Calvi & Julius*)

7. Candidates were interviewed by a seven-member panel that included Fire Commissioner Calvi, SFD Deputy Chief Hess, two outside Fire Chiefs from nearby municipalities, the Springfield Director of Finance and Administration, the Springfield Chief Diversity and Inclusion Officer and the Springfield Assistant HR Director. (*Exhs.6 through 8; Testimony of Calvi & Julius*)

8. Candidates were interviewed in the order of their place on the certification, but the candidate's scores on the written examination were unknown to Fire Commissioner Calvi or the other interview panelists at the time of the interviews. Fire Commissioner Calvi viewed the examination scores as testing what you "learn from a book" and simply gets a candidate "in the room". He gave no other weight to the candidate's relative ranking on the certification in making his ultimate decisions. (*Exh.5; Testimony of Calvi*)⁴

9. The interviews were conducted in a semi-structured format, with all candidates asked the same set of questions by Fire Commissioner Calvi. Each panel member kept notes of each

³ The SFD's initial requisition was for a lesser number but, as the hiring process got underway, additional vacancies arose and, ultimately, the SFD made five appointments. (*Exhs.3 through 5 & 11; Testimony of Calvi & Julius*)

⁴ According to Capt. Grenier's undisputed testimony, he received a score of 80, which included two points added to his examination score for veteran's status (as the only veteran on the list). The candidates below him had scores of 78 (Candidate C) and 72 (Candidate D & E). (*Exhs.5 & 11; Testimony of Appellant*)

candidate's answers to each question on a pre-printed form and independently assigned a score to each answer (1 low to 5 high). The interview panelists were not provided with any candidate's attendance, disciplinary or other personnel records. The interviews were not recorded. (*Exhs.5 through 7; Testimony of Calvi & Julius*)

10. Ultimately, Fire Commissioner Calvi appointed five candidates from Certification #05199 (Candidates A, B, C & D were appointed to "line" (operations) District Chief positions. Candidate E was appointed to a staff District Chief Position. Capt. Grenier, the only remaining candidate on the list, was bypassed. (*Exhs.6 through 8 & 11; Testimony of Calvi*)

11. By letter dated January 29, 2020, Fire Commissioner Calvi informed Capt. Grenier of his non-selection for appointment to District Fire Chief. The bypass letter stated three reasons:

- (1) Capt. Grenier's "very limited" continuing education and experience, that focused on his "side job as an electrician" compared to the selected candidates who had college degrees or "almost" had a degree.
- (2) Poor critical thinking demonstrated by creating a "bad and dangerous situation" at an actual fire scene that "put lives at risk" and, then repeating this "dangerous mistake" before the interview panel in responding to a hypothetical fire scenario question; and
- (3) He was the only candidate who told the interview panel that the SFD should maintain its current path and "nothing can be done better in the department", which demonstrated "a lack of understanding of the department as a whole" and "how this particular industry evolves", which was particularly disappointing to the panelists in view of Capt. Grenier's substantial experience serving as an Acting District Chief.

(*Exh.8*)

12. In February 2020, this appeal was timely filed with the Commission. (*Claim of Appeal: Exh.8*)

13. Captain Grenier did not take the next examination for District Fire Chief administered by HRD in August 2020. (*Testimony of Appellant & Calvi*)

The Candidates' Education and Experience

14. Commissioner Calvi distinguished Capt. Grenier from the other candidates based on his conclusion that Capt. Grenier's record of continuing education was limited to courses in furtherance of his outside expertise as a journeyman electrician. (*Exh. 8; Testimony of Calvi*)

15. Capt. Grenier had begun describing the relevance of expertise as an electrician to his work in the fire service at the interview, when Commissioner Calvi cut him short, stating something to the effect: "so no degree", and moved on to the next question. (*Exh.6; Testimony of Appellant*)

16. Capt. Grenier is enrolled in a Fire Science degree program and, at the time of this appeal, he was 12 credits short of an Associates Degree. (*Testimony of Appellant*)

17. Only one of the selected candidates held a college degree. One of the lowest ranking candidates was 8 credits short of an Associate's Degree in Fire Science, which Fire Commissioner Calvi called being "close to" obtaining his degree. (*Exhs.7A through 7E & 8*)

18. Fire Commissioner Calvi did not take job performance experience into account. He is prohibited by collective bargaining rules from conducting formal performance evaluations and he believed all candidates had good performance records and saw no significant factors that distinguished the performance of one candidate over another. (*Testimony of Calvi*)

19. In particular, Fire Commissioner Calvi did not consider relevant the record of a selected candidate who, ten years ago, had failed a drug test and was written up for insubordination at a fire scene in 2018 which allegedly put the safety of others in jeopardy. (*App.Exh.5; Testimony of Calvi*)

20. Similarly, Fire Commissioner Calvi did take note of Capt. Grenier's considerable experience as an Acting District Chief but discounted that "acting" experience as being a positive factor in comparing Capt. Grenier to the candidates. (*Exh.8; Testimony of Calvi*)

Ability to Exercise Critical Thinking

21. Fire Commissioner Calvi concluded that the candidates whom he selected to bypass Capt. Grenier “outperformed” him in responding to an interview question about how he would handle a fire scenario as Incident Commander, repeating a “dangerous mistake” that “put lives at risk” that Commissioner Calvi said Capt. Grenier had recently committed at an actual fire scene, known as the Crystal Street Fire. (*Exhs.6 & 8; Testimony of Calvi*)

22. The fire scenario presented at the interview showed a hypothetical fire scene depicting a well-involved (fire-consumed) two-story building with the potential that someone was trapped inside. (*Exhs.6 & 7; Testimony of Appellant & Calvi*)

23. Fire Commissioner Calvi found Captain Grenier’s response deficient. Capt. Grenier said he would handle the interview fire scenario, by setting up “opposing attacks”, essentially, using a “deck gun” to stream water to the outside of the building while sending firefighters inside the building with land lines to perform a life-safety search. He graded Capt. Grenier’s response a “2”, as did all of the other four fire service personnel on the interview panel. (*Exh.6; Testimony of Calvi*)

24. Fire Commissioner Calvi also scored the fire scenario responses of one of the lowest ranked selected candidates who bypassed Capt. Grenier a “2”, as did two of the other fire service personnel on the interview panel, one of them giving the candidate a “1” and one giving him no score.⁵ Several of the fire service panelists commented that this other lower ranked candidate had suggested “inappropriate practices” and would place a truck in a “dangerous place”. (*Exh.7c*)⁶

⁵ Overall, two of the four other fire service personnel scored Capt. Grenier higher than this candidate and one scored them equally. (*Exhs. 6 & 7c*).

⁶ The interview notes of the two selected candidates (ranked above Capt. Grenier) also contain comments about “opposing” and “mixed” strategy, on the fire scenario question; one of them getting a “2” from one fire service panel member but getting “3s, “4s” and “5s” from the other fire service panelists on that question. (*Exhs.7b & 7d*)

25. Fire Commissioner Calvi's recollection of Capt. Grenier's performance at the Crystal Street Fire differs significantly from what Capt. Grenier recalls. What is not disputed is the fact that Capt. Grenier was not the first officer on scene, but assumed the role of Incident Commander after another officer, who was responsible for establishing the initial attack strategy, had ordered one company to spray a "master stream" from the outside and ordered additional personnel to prepare to enter the building to attack the fire from within. These "opposing strategies", according to Commissioner Calvi, if implemented, were inconsistent with best practices and could put the lives of the firefighters in the building in jeopardy. (*Testimony of Appellant & Calvi*)⁷

26. According to Capt. Grenier, when he arrived on scene, he could not find the officer who had arrived first. He understood that he needed to make contact with that officer in order to assume command. Before Capt. Grenier had located this officer, or officially assumed command, Fire Commissioner Calvi arrived on scene and they interacted briefly. (*Testimony of Appellant*)

27. Fire Commissioner Calvi noticed the master stream attack and personnel preparing to enter the burning building. He had assumed that Capt. Grenier had ordered the "opposing strategies."⁸ When he perceived that Capt. Grenier was hesitating about what to do, he "counseled" Capt. Grenier that he needed to turn off the master stream before any personnel entered the building before then leaving him to his duties as Incident Commander. (*Testimony of Calvi*)

Vision for the Department

28. The candidates were asked: "There is always room for improvement in the department, as this industry is always changing. Talk to us about some ideas you have for areas that should

⁷ Springfield submitted an Affidavit from then retired District Chief Guyer who had been at the scene of the Crystal Street Fire in the capacity of "Safety Officer". Chief Guyer did not testify at the Commission hearing, was not subject to cross-examination, and, thus, I give no weight to the uncorroborated hearsay statements in his affidavit. (*Exh.10*)

⁸I do not credit Fire Commissioner's testimony that he heard Capt. Grenier give the order setting up "opposing strategies, but credit Capt. Grenier's testimony that he did not. It is not disputed that the order was never implemented.

be looked at in this department and what you would suggest be done to improve them.”

(Exhs.6 & 7)

29. The interview panelists’ notes state that Capt. Grenier responded that he felt the department was going in a positive direction, both as to staffing and equipment, and he would want it to maintain its current path. He offered no specific ideas for any changes. *(Exh. 6; Testimony of Appellant & Calvi)*

30. Fire Commissioner Calvi scored Capt. Grenier’s response a “1”. He considered this response unimaginative and an attempt to curry favor by praising him for how he ran the department. *(Exh.6; Testimony of Calvi)*.

31. Two of the other fire service personnel on the interview panelist scored Capt. Grenier’s response a “3” and two scored him a “2”, one noting his response was “no real answer.” *(Exh.6)*

32. All of the other candidates cited specific areas for improvement. Nearly all mentioned the need for more training, especially for recently hired new firefighters. Several mentioned the importance of public outreach and “accountability” (being sure everyone is doing the job they are supposed to be doing). *(Exh.7)*

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L.c.31, §1. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); MacHenry v. Civil Serv. Comm’n, 40 Mass.App.Ct. 632, 635 (1995), rev.den., 423 Mass.1106 (1996)

Original and promotional appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on

the applicable civil service “eligible list”, using what is called the 2n+1 formula. G.L.c. 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L.c.31, §27; PAR.08(4)

A person may appeal a bypass decision under G.L.c.31, §2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’ ” Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient” and upon “failure of proof by the [appointing authority}, the commission has the power to reverse the [bypass] decision.”)

The governing statute, G.L.c.31,§ 2(b) gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102

(1997) The commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*, then the occasion is appropriate for intervention by the commission.”. *Id.* (*emphasis added*) See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

ANALYSIS

Education and Experience

As the Appellant correctly points out, the examination scores awarded to the Appellant and other candidates on the certification for Deputy Fire Chief include pre-determined points for the candidate’s prior education and experience (E&E) as established by the Massachusetts Human Resources Division (HRD) pursuant to its broad statutory discretion to provide credit for such education and experience as HRD designates, weighted as twenty percent (20%) of the final examination score,. G.L.c.31, §22, ¶1. See, e.g., Cataldo v. Human Resources Division, 23 MCSR 617 (2010)⁹

This embedded accounting for E&E, however, does not preclude an appointing authority from considering candidates’ relative education and experience when appropriate, so long as it does not undermine the credits awarded as part of the examination process prescribed by HRD. For example, when two candidates have tie scores, an appointing authority would be justified to pick a candidate who held an advanced degree over one who did not, in effect, using the educational record as a “tie-breaker”, although the scores had already accounted for those differences (i.e., the

⁹ Pursuant to the requirement to give veterans preference in civil service appointments, in promotional appointments, two points are added to this weighted final examination score (i.e., written test score + education & experience points). See Personnel Administration Rules, PAR.14(2). Thus, as the only veteran among the candidates, Capt. Grenier’s place on the certification for Springfield Deputy Fire Chief (with a score of 80) was determined by adding two points to his examination score of 78.

candidate without a degree actually would have scored higher on the written examination portion in such a hypothetical). Similarly, an appointing authority might justify selecting for promotion a candidate who had demonstrated proficiency by accumulating considerable “acting” time in the position for which he or she is aspiring over another candidate with a close, but lower overall score who had little such experience, even though HRD would have included credit for such acting experience in the E&E scoring component.¹⁰

Here, however, Springfield attempts to distinguish Capt. Grenier (without a college degree) from at least one candidate without a degree on the grounds that the other candidate, was “close” to earning his degree (8 credits short) but Capt. Grenier (12 credits short) apparently was not. Moreover, the relative examination scores of the other candidate (72 – with 70 being the passing grade) is not so close to Capt. Grenier’s score of 80, (or 78 without his veteran’s preference) that the distinction Springfield makes is justified as a “tie-breaker”. As to the other distinctions Springfield would make about Capt. Grenier’s lack of continuing education, neither the bypass letter, nor the preponderance of the evidence, established the precise differences in experience and education on which Springfield relied, basing this reason solely on undocumented assertions that are insufficient to meet the burden of proof imposed on Springfield to justify the reasons for a bypass decision.

In sum, Springfield did not meet its burden to establish that Capt. Grenier’s bypass was reasonably justified by an inferior record of education or experience.

Interview Performance

The other two reasons that Fire Commissioner Calvi provided for his decision to bypass Capt. Grenier stem from what Fire Commissioner Calvi characterized as unsatisfactory responses to

¹⁰ In the present appeal, Springfield discounted Capt. Grenier’s considerable “acting” time in the position of Deputy Fire Chief, essentially, holding him to a higher standard due to his experience in his interview performance, as further discussed later in this Decision.

questions on two specific subjects during the interview: (1) the fire scenario; and (2) recommendations for improving the department. Although this is a closer call, I find that, taken together, Capt. Grenier's responses provide a sufficiently reasonable basis to bypass him in favor of the three lower ranked candidates. In making this determination, I take into account the fact that the position of Deputy Fire Chief is a senior position in the SFD command structure that warrants a corresponding level of deference when making such a decision.

Public safety agencies are properly entitled, and often do, conduct interviews of potential candidates as part of the hiring process. In an appropriate case, a properly documented poor interview may justify bypassing a candidate for a more qualified one. See, e.g., Dorney v. Wakefield Police Dep't, 29 MCSR 405 (2016); Cardona v. City of Holyoke, 28 MCSR 365 (2015). Some degree of subjectivity is inherent (and permissible) in any interview procedure, but care must be taken to preserve a "level playing field" and "protect candidates from arbitrary action and undue subjectivity on the part of the interviewers", which is the lynch-pin to the basic merit principle of civil service law. See e.g., Malloch v. Town of Hanover, 472 Mass. 783, 796-800 (2015); Flynn v. Civil Service Comm'n, 15 Mass. App. Ct. 206, 208, rev.den., 388 Mass. 1105 (1983); Pilling v. City of Taunton, 32 MCSR 69 (2109); Conley v. New Bedford Police Dep't, 29 MCSR 477 (2016); Phillips v. City of Methuen, 28 MCSR 345 (2015); Morris v. Braintree Police Dep't, 27 MCSR 656 (2014);

I credit Springfield for taking some thoughtful measures to provide an interview process that was designed to be reasonably fair and not overly subjective or arbitrary, including, in particular, the inclusion of four senior level public safety officials (two from inside the SFD and two from outside departments), the use of a semi-structured format in which candidates were asked a pre-determined set of questions, and use of a scoring system that provided for independent assessment of each candidate's answers. When, as here, the recollections of the witnesses differed as to the

content of some of the interview colloquy, it would have been helpful for me to have had access to a recording of the interviews. This deficiency was ameliorated here, however, by the fact that most of the interview panelists took copious notes which, for the most part, are remarkably consistent, and that enabled me to adequately corroborate which disputed version of the interviews to credit.

First, as to the fire scenario, I credit the Appellant's testimony that, as to the Crystal Street Fire, Fire Commissioner Calvi erroneously assumed that Capt. Grenier had ordered what seemed to be "opposing attacks". The preponderance of the evidence established that, if any such order were entered, it was issued by his predecessor as Incident Commander. However, I also credit Commissioner Calvi that, when he arrived on scene, he perceived Capt. Grenier to be uncertain whether to countermand the order on his own, without conferring with his predecessor, prompting Fire Commissioner Calvi's comment to shut off the master stream.¹¹ This uncertainty also comes through in the consistent interview notes taken independently by the fire service personnel on the panel, not just Fire Commissioner Calvi, concerning the similar situation presented to Capt. Grenier in the interview fire scenario:

- One panelist: "Not Real specific on tactics. . . opposing strategy (off-Def.)".
- Another noted" "Ladder company search, ground gun . . . not sure".
- Another noted: "Seemed not sure of assignment. Started to use master stream then have members enter building with hand lines. No direct decisions given to specific companies."

Second, the fire service personnel, not just Fire Commissioner Calvi, uniformly reported that, in his response to the question about improving the department, Capt. Grenier stated that he

¹¹ Fire Commissioner Calvi characterized his interaction with Capt. Grenier at the Crystal Street Fire as "counselling". Capt. Grenier does not deny the interaction and testified "it depends what you mean by counselling", which corroborates my conclusion that, while Capt. Grenier did not originate the order to set up opposing attacks, he was hesitating whether to cancel or proceed until Fire Commissioner Calvi intervened and gave him the guidance he needed to act.

believed the department is going in the right direction and he would “maintain the current path.” Capt. Grenier was the only candidate who received predominately below average scores on this question, because he offered no specific suggestions for improvement, despite the express wording of the question: “There is always room for improvement in the department, as this industry is always changing. Talk to us about some ideas” Fire Commissioner Calvi explained that this question was intended to provide a candidate the opportunity to demonstrate initiative and independent judgment expected of a District Fire Chief. All of the other candidates offered concrete and generally parallel suggestions, such as the need to beef up training and improve public outreach. I credit Fire Commissioner Calvi’s explanation that Capt. Grenier’s response was the poorest of all the candidates and, especially, given his seniority and experience acting as a District Fire Chief, his inability to come up with even one suggestion, raised a legitimate concern about his readiness to assume an elevated level of responsibility on a permanent basis.

Disparate Treatment

I considered the Appellant’s contention that Fire Commissioner Calvi harbored an animus or bias against Capt. Grenier. Whatever negative opinions Fire Commissioner Calvi had formed, some of them accurate and some not, they are all based on his percipient knowledge and perception derived from Capt. Grenier’s on-the-job performance and did not come from an unlawful bias or undue political or personal favoritism toward any of the other candidates.

I also have considered the Appellant’s argument that Fire Commissioner Calvi did not weigh the candidates’ prior disciplinary history in making his selections, nor did he provide the interview panel with any personnel records for any of the candidates. The Appellant points out that at least one candidate had a prior disciplinary history while the Appellant did not. Springfield notes that, pursuant to collective bargaining rules, discipline of SFD firefighters has a short shelf life and is removed after one year from the personnel file. The Commission also has expressed concern that

remedial discipline should not be a “forever” bar to original or promotional appointments. The Commission should not intervene when, as here, an appointing authority reasonably determines (especially in accordance with its collective bargaining rules) that prior discipline is too stale to be used as a basis for disqualification.

Finally, I have also considered that Capt. Grenier was not the only candidate who furnished a problematic answer to the fire scenario question. If his response were the only deficiency in his interview performance, it would have presented a stronger argument for disparate treatment. Here, however, Capt. Grenier’s poor interview performance went beyond one question and, in particular, his undistinguished response to the question on improving the department separates him from the other candidates and, taken together, justifies Springfield’s decision to bypass him for a senior command position in favor of others whose documented performance, overall, was better.

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Pierre Grenier, CSC Docket No. G2-20-020, is **denied**.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 3, 2021.

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:

William J. Fennell, Esq. (for Appellant)

Mary Kelleher, Esq. (for Respondent)