

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
CIVIL ACTION
No. 21CV335

HAMPDEN COUNTY
SUPERIOR COURT
FILED

MAR 08 2023

PIERRE GRENIER

Jeanne Spade
CLERK OF COURTS

vs.

CITY OF SPRINGFIELD, MASSACHUSETTS, FIRE DEPARTMENT, and CIVIL
SERVICE COMMISSION

DECISION AND ORDER ON PARTIES'
CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

In this action, the plaintiff Pierre Grenier (“Mr. Grenier” or “Grenier”) seeks judicial review pursuant to G.L. c. 30A of a decision by the Civil Service Commission which affirmed the Springfield Fire Department's decision to bypass Mr. Grenier for a promotion. Earlier Grenier had applied to fill one of five vacancies in the position of District Fire Chief for Springfield. The Springfield Fire Department decided to promote five applicants other than Mr. Grenier. Three of the applicants scored lower than Mr. Grenier on a written examination but, in the judgment of the Springfield Fire Department, those applicants outperformed Mr. Grenier on the interviews. This is called a “bypass”.

Mr. Grenier appealed the Springfield Fire Department's promotion decision to the Civil Service Commission, which held a hearing, considered the evidence, weighed the credibility of witnesses, and conducted a de novo review of the Springfield Fire Department's bypass decision. After hearing, the Civil Service Commission found that the Springfield Fire Department was reasonably justified in bypassing Mr. Grenier and that the Springfield Fire Department decision was not rooted in any improper motive, bias, or prejudice.

Mr. Grenier asserts several grounds in seeking to vacate the Civil Service Commission decision and asks that the matter be remanded to the Springfield Fire Department for further hearings. In essence, Mr. Grenier asserts that the Civil Service Commission decision to uphold the three bypasses of Grenier was contrary to basic governing “merit principles” of civil service laws as articulated in G. L. c. 31. Mr. Grenier further asserts that this subject decision was not supported by substantial evidence. All parties moved for judgment on the pleadings. A hearing was held before this court on February 7, 2023. All parties appeared represented by counsel.

Mr. Grenier is a tenured member of the Springfield Fire Department 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 as Acting District Chief in his supervisor’s absence. Mr. 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.

The Springfield Fire Department is staffed by approximately 250 fire service personnel. The department head and appointing authority is Bernard Calvi, the Fire Commissioner. On May 19, 2018, Mr. Grenier took the written examination for District Fire Chief administered by the Massachusetts Human Resources Division. Shortly thereafter, an eligible list for District Fire Chief was published.

Based on the tabulated scores, Mr. Grenier was one of six Springfield Fire Department Captains on the eligible list. His name appeared below two candidates and above three candidates. The six candidates were interviewed by a seven-member panel that included Fire Commissioner Calvi, Springfield Fire Department 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 Human Resources Director.

Candidates' 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 candidates relative ranking on the certification in making his ultimate decisions.

Fire Commissioner Calvi appointed four candidates to District Chief positions. One other was appointed to a staff District Chief position. Mr. Grenier, the only remaining candidate on the list, was bypassed (candidates scoring lower than him were awarded the position). By letter dated January 29, 2020, Fire Commissioner Calvi informed Mr. Grenier of the bypass.

The bypass letter stated three reasons: (1) 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) Grenier was the only candidate who told the interview panel that the Springfield Fire Department 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.” In February 2020, Mr. Grenier filed a timely appeal with the Civil Service Commission.

Promotions within the Springfield Fire Department are governed by G. L. c. 31. First, applicants take a written exam which yields a list of eligible candidates ranked by score, with points added for education and experience, as well as a veteran’s preference. The appointing authority then has “broad discretion” in making its personnel decisions. *Cambridge v. Civil Serv.*

Comm., 42 Mass. App. Ct. 300, 304-5 (1997). See *Goldblatt v. Corporate Counsel of Boston*, 360 Mass. 660, 666 (1971) (appointing authority “may select, in the exercise of a sound discretion, among persons eligible or may decline to make an appointment”). Being on the eligibility list does not confer a right to be appointed, and a candidate’s numerical rank does not dictate who the appointing authority must promote. *Id.*; G.L. c. 31, § 27; *Sherman v. Randolph*, 472 Mass. 802, 811 (2015).

A higher scoring candidate may be bypassed in favor of a lower scoring one if there is a “reasonable justification” for the bypass, and a statement of reasons for deviating from the scored ranking is provided. Justifiable reasons for a bypass include subpar interview answers and performance. See *Sherman*, 472 Mass. at 811, citing *Flynn v Civil Serv. Comm.*, 15 Mass. App. Ct. 206, 208 (1983). The goal of the processes for filling civil service vacancies is to assure that promotions are based on merit (abilities, knowledge, and skills) and not arbitrary or improper bases (politics, favoritism, bias, prejudice, or personal connections). G.L. c. 31, § 1; *Sherman*, 472 Mass. at 804; *City of Beverly v. Civil Serv. Comm.*, 78 Mass. App. Ct. 182, 189 (2010).

Review by Civil Service Commission is *de novo* and “focus[es] on the fundamental purposes of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions, including, of course, promotions, and to protect efficient public employees from political control.” *City of Beverly*, 78 Mass. App. Ct. at 189. If the Civil Service Commission finds by a preponderance of the evidence on its *de novo* review that there was a “reasonable justification” for the decision to bypass a higher scoring candidate, it will affirm. *Sherman*, 472 Mass. at 809. “Reasonable justification” exists where there are “adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” *Id.* On these hiring and promotion decisions, the Civil

Service Commission “owes substantial deference to the appointing authority’s exercise of judgment....” *Id.* at 810.

Grenier, as the bypassed candidate seeking judicial review under G. L. c. 30A, § 14, bears the burden of proving the invalidity of the Civil Service Commission decision and overcoming the presumption that the Civil Service Commission’s decision was valid. See *Faith Assembly of God v. State Bldg Code Comm.*, 11 Mass. App. Ct. 333, 334 (1981). *Andrews v. Division of Med. Assistance*, 68 Mass. App. Ct. 228, 231 (2007).

The Court may set aside the Civil Service Commission’s decision only if Mr. Grenier proves that his substantial rights were prejudiced and that the decision was either (a) based on an error of law, (b) unsupported by substantial evidence, or (c) arbitrary, capricious, or an abuse of discretion. G.L. c. 30A, § 14(7); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 689 (2012). In reviewing an agency decision, the court is required to “give ‘due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.’” *Springfield v. Department of Telecomm. & Cable*, 457 Mass. 562, 567 (2010), quoting G. L. c. 30A, § 14 (7). The review is confined to the record. G. L. c. 30A, § 15. The court must also defer to the agency’s determinations of fact and its reasonable inferences drawn from the record. See *Flint v. Commissioner of Pub. Welfare*, 412 Mass. 416, 420 (1992).

“Thus, a court may not displace an administrative board’s choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo.” *Gauthier v. Director of the Office of Medicaid*, 80 Mass. App. Ct. 777, 783 (2011) (quotations and citations omitted). A court may, however, reverse, remand, or modify an agency decision if the “substantial rights of any party may have been prejudiced because the agency decision is based on an error of law or an unlawful procedure; is arbitrary

and capricious or unwarranted by facts found by the agency; or is unsupported by substantial evidence.” G. L. c. 30A, § 14 (7).

Here, Grenier maintains that the Civil Service Commission's denial of the bypass appeal was impermissible. First, Grenier argues that the Civil Service Commission erred when it determined that the interview process utilized by the Springfield Fire Department justified the bypass of Grenier. Grenier claims that the Civil Service Commission raised the interview process to an “exalted level.” He argues that the Civil Service Commission committed an error of law when it permitted the Springfield Fire Department to rely on two interview questions to bypass Grenier without first considering Civil Service scores, employment records, work history or performance. One interview question dealt with the candidate’s response to a fire scenario while the other interview question dealt with the candidate’s recommendations for improving the Springfield Fire Department.

The first fire scenario considered was Grenier’s performance at the scene of the Crystal Street Fire. On de novo review before the Civil Service Commission, it was determined that Grenier did not order the “opposing strategies” approach to attacking the fire (contrary to what had been found by the Springfield Fire Department). The Civil Service Commission did, however, determine that Grenier hesitated on whether to cancel or proceed the “opposing strategies” until Fire Commissioner Calvi intervened and gave him the guidance he needed to act.

The second fire scenario considered by both the Springfield Fire Department and the Civil Service Commission was Grenier's performance at the interview regarding a hypothetical fire scenario. The Civil Service Commission determined that Grenier’s uncertainty in decision-making revealed itself as documented in the “consistent” interview notes taken independently by the fire service personnel on the interview panel, not just Fire Commissioner Calvi. Here, Grenier contends

that the Springfield Fire Department's evaluation of the fire scenario question was faulty because Grenier did not order the "opposing strategies" approach when combatting the Crystal Street Fire. Grenier's logic does not follow through consistently. The Civil Service Commission also found that Grenier did display uncertainty in deciding to act at the Crystal Street fire scene as well as uncertainty in responding to the fire scenario hypothetical during the interview. The indecision in and of itself supported the decision to bypass Grenier. This Court is not able to evaluate how important that testimony was to the bypass decision. The Springfield Fire Department and the Civil Service Commission both independently found that it was important. There is no substituted judgment available in this proceeding.

Each candidate was asked the following interview question: "There is always room for improvement in the department, as this industry is always changing. Talk to us about some ideas." The Civil Service Commission found that Grenier was the only candidate who answered that the Springfield Fire Department should remain on its current path and that "nothing can be done better in the department." The Springfield Fire Department panel concluded that Grenier's answer demonstrated a "lack of understanding of the department as a whole" and "how this particular industry evolves." For this reason, the Springfield Fire Department gave Grenier a below average score on this question because Grenier offered no specific suggestions for improvement.

In the matter before the Court, Grenier contends that questions regarding improvement of the Springfield Fire Department did not address the essential functions of the position of District Chief. This argument lacks logic and departs from common sense. The Civil Service Commission found that Grenier's response was the poorest of all candidates, and the response was weighed against him by both the Springfield Fire Department and the Civil Service Commission. There was no error of law in doing so. If this court were reviewing the matter de novo, this particular response

might not be given much weight. A reasonable fact finder could conclude based on this answer that Grenier would be a good fit. The court does not have that statutory authority, however. It is reasonable, but not inescapable, that the answer be held against Grenier.


Finally, Grenier argues that the bypass was impermissible because the Springfield Fire Department “lumped together all three bypasses into one bypass letter and justification.” This argument has mere technical merit but is substantively unavailing. The party appealing from an administrative decision has the burden of proving its invalidity. See *Coggin v. Massachusetts Parole Bd.*, 42 Mass. App. Ct. 584, 587 (1997). Grenier has not met his burden of proof to demonstrate that the prior administrative hearing was based on an error of law, unsupported by substantial evidence, or otherwise not in accordance with the law.

The balance of Grenier’s arguments are unavailing.

ORDER FOR JUDGMENT

For the foregoing reasons, it is **ORDERED** that the Plaintiff Pierre Grenier’s Motion for Judgment on the Pleadings is **DENIED** and the City of Springfield Fire Department and Civil Service Commission’s Cross-Motion for Judgment on the Pleadings is **ALLOWED**.

Judgment shall enter for the Defendants without costs.



MICHAEL K CALLAN
Justice of the Superior Court

DATE: March 8, 2023