

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street; Suite 200
Boston, MA 02114
(617) 979-1900

KYLE GUINDON,
Appellant

v.

DEPARTMENT OF CORRECTION,
Respondent

Docket Number:	G1-24-045
Appearance for Appellant:	Kyle J. Guindon, <i>Pro se</i>
Appearance for Respondent:	Eamonn M. Sullivan, Esq. Labor Relations Advisor Department of Correction 50 Maple Street, 1 st Floor Milford, MA 01757
Commissioner:	Shawn C. Dooley ¹

SUMMARY OF DECISION

The Commission overturned the decision of the Department of Correction (DOC) to bypass a candidate for appointment as a Correction Officer I (CO I) and ordered his reconsideration after DOC conducted a flawed review process in which the Appellant was not given the opportunity to address the reason for bypass developed by DOC after the Appellant was granted a conditional offer of employment. The relief being granted here will allow for a fair, impartial and thorough review of the candidate.

¹ The Commission acknowledges the assistance of intern Gretchen Wang with the preparation of this decision.

DECISION

On April 4, 2024, the Appellant, Kyle J. Guindon (Appellant), filed a timely appeal to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(b). The appeal challenged the Department of Correction (DOC)'s decision to bypass the Appellant for appointment as a Correction Officer I (CO I). On May 21, 2024, the Commission held a remote pre-hearing conference. On July 23, 2024, I conducted an in-person full hearing at the offices of the Commission in Boston. The hearing was recorded via the Webex videoconferencing platform, and copies of the recording were provided to both parties.² The Appellant and DOC both filed proposed decisions. For the reasons set forth below, the Appellant's appeal is allowed.

FINDINGS OF FACT

DOC submitted into evidence nine exhibits (R.Ex.1-9). The Appellant did not submit any exhibits. Based on the documents submitted and the testimony of the following witnesses:

Called by DOC:

- Matthew Beaudet, Deputy Director, DOC Human Resources Department

Called by the Appellant:

- Lieutenant Samantha Tomassi, Department of Correction
- Kyle Guindon, Appellant

² A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

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

1. The Appellant is a resident of Pawtucket, Rhode Island, and earned his GED from a community college. *(R.Ex 5)*
2. The Appellant is 31 years old. *(R.Ex 8)*
3. The Appellant acknowledges that, while in high school and shortly thereafter, he engaged in drug use and eventually sought and received treatment related to this drug use. *(R.Ex 8)*
4. On January 18, 2013, the Appellant was involved in an altercation in the course of which he cracked the victim's windshield, but subsequent charges of assault and destruction of property were dismissed. *(R.Ex 5 and 9)*
5. After recreational use of marijuana was legalized in Massachusetts, the Appellant began using marijuana as a sleep aid but stopped using marijuana a year prior to his application as a CO I. *(R.Ex 8, Testimony of the Appellant)*
6. At the time of his application, the Appellant had been working as a "budtender" at a marijuana dispensary for three years. *(R.Ex 3, Testimony of the Appellant)*
7. On June 3, 2023, the Appellant took the civil service exam for CO I and received a score of 91. *(Stipulated Fact)*
8. On July 15, 2023, the state's Human Resources Division (HRD) established an eligible list for CO I. *(Stipulated Fact)*
9. On September 27, 2023, HRD issued Certification No. 09513 to DOC upon which the Appellant was ranked 31st among those willing to accept appointment. *(Stipulated Fact)*

10. DOC appointed 46 candidates from Certification No. 09513, 30 of whom were ranked below the Appellant. (*Stipulated Fact*)
11. As part of the hiring process, DOC, prior to granting the Appellant a conditional offer of employment, conducted a traditional (non-medical) background investigation of the Appellant. (*R.Ex 5, Testimony of Dep. Dir. Beaudet*)
12. Deputy Director Beaudet was a member of the committee responsible for reviewing the Appellant’s application and background investigation.³ (*Testimony of Dep. Dir. Beaudet*)
13. The Appellant successfully passed the background investigation and, on January 9, 2024, was granted a conditional offer of employment, subject to various conditions including a medical evaluation, which consists of a traditional medical examination, a drug screening, a psychological screening, and a completed Industrial Health Questionnaire. (*Testimony of Dep. Dir. Beaudet, R. Ex. 6*)
14. The Appellant passed the drug screening without issue. (*Testimony of Dep. Dir. Beaudet*)
15. Some years ago, HRD developed a “Model Plan for Psychological Screening of Entry-Level Public Safety Positions” (“HRD Model Plan”), which was distributed to DOC for reference when creating their own official psychological screening plan. (*Jane Doe v. DOC*)
16. DOC, in turn, developed its own “Model Plan for Psychological Screening of Entry Level COs” (“DOC Model Plan”), consistent with HRD’s Model Plan. (*Jane Doe v. DOC*)

³ The Appellant voluntarily disclosed his 2013 arrest. During the interview process the Appellant discussed the specifics with the DOC investigator including that the charges were dismissed. This information was included in his pre-employment background investigation report dated December 14, 2023.

17. The DOC Model Plan requires that psychological screening will be the last step in the hiring process and that, prior to the screening, the candidate must receive a conditional offer of employment from DOC. DOC must provide the candidate with a written description of the screening process along with notification and a brief explanation if the DOC finds the candidate unqualified. (*Jane Doe v. DOC*)
18. For over 13 years, DOC has contracted with Dr. John Madonna through his professional organization, Chandler Psychological Services, to conduct the psychological prescreening of all applicants to DOC for Correction Officer positions. (*Jane Doe v. DOC*)
19. Stage I of the DOC Model Plan requires either Dr. Madonna, a clinical psychologist licensed by the Commonwealth and Rhode Island, or his associates to administer two personality tests. (*Jane Doe v. DOC*)
20. Stage II of the DOC Model Plan requires Dr. Madonna and the associates under his direction, who must be clinical psychologists licensed in the Commonwealth, to examine the two tests' results, review the background information provided by the DOC (concerning criminal convictions, relevant medical information, if any, and information from interviews with employers, teachers, and associates), and conduct a Stage II clinical interview of the candidate, taking into consideration such factors as the candidate's personal history, age, education, occupation, ethnicity, and first language. (*Jane Doe v. DOC*)
21. If, after evaluating the results of the psychological test and clinical interview, the Stage II psychologist decides that there is no clear evidence that the candidate has any psychological disorder or characteristic that will prevent the candidate from fulfilling the

essential functions of the position with reasonable accommodation, the clinician will so report and the candidate will continue in the hiring process. (*Jane Doe v. DOC*)

22. If the Stage II clinician finds that the candidate has a psychological disorder or characteristic that would prevent them from fulfilling the essential functions of the position, Dr. Madonna notifies DOC which, in turn, notifies the candidate how to proceed to a Stage III evaluation if they wish to continue to be considered for appointment. (*Jane Doe v. DOC*)
23. Stage III of the DOC Model Plan requires one of three designated board-certified psychiatrists licensed by the Commonwealth of Massachusetts to review the candidate's file, conduct a clinical interview, and evaluate the candidate. (*Jane Doe v. DOC*)
24. The "sample letter to advise the candidate of the need to make an appointment with the psychiatrist," provided by the Model Plan, states: "If the psychiatrist disagrees with the psychologist's recommendation, you will be considered to have been found qualified by the psychological screening. You will then be considered qualified for appointment if you have also passed the medical screening." (*Jane Doe v. DOC*)
25. On February 14th, 2024, the Appellant underwent a psychological evaluation, conducted by Dr. Madonna, as part of the pre-employment screening process. (*R.Ex 7, Testimony of Dep. Dir. Beaudet*)
26. In his report, Dr. Madonna noted that the Appellant seemed to lack insight and clarity of thought, citing his confusion when answering two questions about his background. The report also highlighted the Appellant's past drug dependency. It noted that the Appellant had completed rehabilitation by his 22nd birthday, but that he had "continued to use cannabis until last year." Lastly, the report claimed that the Appellant had stated that he

“primarily peddled contraband to support his drug habit.” Dr. Madonna concluded that the Appellant was not qualified for the position of CO-I. (*R.Ex 7*)

27. On March 11, 2024, the Appellant underwent a second psychological evaluation, conducted by Dr. Eugene Goldwater.⁴ (*R.Ex 8*)

28. Dr. Goldwater’s report noted that the Appellant had presented as cordial, serious, and to-the-point, with coherent and relevant responses to questions and no clear issue with recall. He noted that the Appellant’s job history raised questions of reliability but acknowledged that the Appellant “seemed to have overcome early demons” and had a stable, healthy lifestyle with supportive relationships. Dr. Goldwater ultimately concluded that the Appellant was qualified for the position of corrections officer. (*R.Ex 8*)

29. In a letter dated May 3, 2024, DOC informed the Appellant that he was bypassed for the position of CO I due to “information in psychological reports.” (*Stipulated Fact, R.Ex 2*)

30. The Appellant did not tell Dr. Madonna that he peddled contraband and did not know how Dr. Madonna had come to such a conclusion in his report. (*Testimony of the Appellant*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing 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,

⁴ Dr. Goldwater is one of three designated board-certified psychiatrists licensed by the Commonwealth of Massachusetts as set forth in the DOC model plan.

(2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Basic merit principles in hiring and promotion calls for regular, competitive examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates 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 Administrative Rules, PAR.09. To deviate from that formula, an appointing authority must provide specific, written reasons—positive or negative, or both, consistent with basic merit principles—to affirmatively justify 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 had shown, by a preponderance of the evidence, that it has “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. 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, 543 (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 must be “more probably than not sound and sufficient”).

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. See, e.g., *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303-305, *rev. den.*, 428 Mass. 1102 (1997). However, 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 for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” *Id.*

ANALYSIS

The reason put forth by DOC to justify the Appellant’s bypass is not supported by a preponderance of the evidence primarily because of a flawed review process that was not fair, impartial nor reasonably thorough.

DOC’s Model Plan requires psychological screening to be the last step in the hiring process. DOC must provide the candidate with a written description of the screening process along with notification and a brief explanation if DOC finds the candidate unqualified based on a psychological evaluation. Stage I is the administration of two written tests by either Dr. Madonna, a clinical psychologist licensed by the Commonwealth and Rhode Island, or his associates. Stage II requires Dr. Madonna and his associates to examine the test results, review the background information provided by the DOC, and conduct a Stage II interview of the candidate, taking into consideration factors such as the candidate’s personal history, age, education, occupation, ethnicity, and first language. If the Stage II clinician finds that the candidate has a psychological disorder or characteristic that would prevent them from fulfilling

the essential functions of the position, Dr. Madonna notifies DOC which, in turn, notifies the candidate how to proceed to a Stage III evaluation if they wish to continue to be considered for appointment. Stage III of the DOC Model Plan requires one of three designated board-certified psychiatrists licensed by the Commonwealth of Massachusetts to review the candidate's file, conduct a clinical interview, and evaluate the candidate.

The sample letter to candidates who do not pass Stage II, included in the DOC Model Plan, states that if the psychiatrist performing the second psychological evaluation disagrees with the psychologist's "Not Qualified" recommendation, then the candidate will be considered to have been found qualified by the psychological screening. Dr. Goldwater, the psychiatrist who conducted the second psychological evaluation, found the Appellant qualified. In accordance with the DOC Model Plan, this qualification designation superseded the prior adverse determination by Dr. Madonna and the Appellant successfully met the condition that he pass a psychological evaluation.

Notwithstanding this qualified designation, DOC, *after* issuing the Appellant a conditional offer of employment and without *any* additional outreach to the Appellant, forwarded a bypass letter to the Appellant vaguely stating that he was being bypassed due to "information in psychological reports" with the strong implication that he had failed the psychological evaluation, which he had not.⁵

Only *after* the Appellant filed an appeal with the Commission, did DOC then notify the Appellant of the specific "information" in the psychological reports that purportedly formed the

⁵ "No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed ... shall later be admissible as reasons for selection or bypass in any proceeding before the ... Civil Service Commission." Personnel Administration Rule .08(4)

basis for his bypass. According to DOC, they were concerned with information in the first psychological evaluation that the Appellant had purportedly admitted to “peddling contraband” in his youth to support an addiction (which the Appellant maintains stemmed from an opiate a physician had prescribed him). The problem here is that DOC never gave the Appellant the opportunity to address this new allegation prior to rescinding his conditional offer of employment, an essential part of conducting a “reasonably thorough review”. In fact, the Appellant denies ever making that statement to Dr. Madonna, something that DOC never had the opportunity to consider and evaluate.

DOC also raised concerns with the Appellant’s job as a budtender in a dispensary and his recent marijuana use. There are multiple problems with these reasons for bypass. First, prior to granting the Appellant a conditional offer of employment, DOC was already aware that the Appellant was employed as a budtender. Second, employment in a legal, regulated industry in Massachusetts is **not** a valid reason for bypassing a candidate for employment and is contrary to public policy. Relatedly, DOC has not presented any evidence that *prior, legal* use of marijuana is related to whether a candidate can perform the essential functions of a CO I or would compromise DOC’s well-founded policies to prevent contraband in DOC facilities; nor has DOC pointed to any question in the application or background review in which the Appellant denied prior use of marijuana. No evidence in this record establishes use of illicit drugs by the Appellant after his teenage years.

In summary, after failing to complete a fair, impartial and thorough review, DOC failed to provide valid reasons for bypass that are supported by a preponderance of the evidence. The Appellant deserves reconsideration.

CONCLUSION

For all of the above reasons, the appeal of Kyle J. Guindon, filed under Docket No. G1-24-045, is hereby *allowed*. Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- HRD shall place the name of the Appellant at the top of any current or future certification for the position of Correction Officer I in the Department of Correction until he is given one additional consideration for appointment. If the Appellant is granted a conditional offer of employment, he shall be given a psychological evaluation by a psychologist other than the one who conducted the evaluation in this hiring process.
- If the Appellant is appointed as a Correction Officer I, he shall receive the same civil service seniority date as the candidate appointed from Certification No. 09513. This date is for civil service purposes only and is not intended to provide the Appellant with any additional compensation or benefits, including creditable service toward retirement.
- Once the Appellant has been provided with the relief ordered above, the Department shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

Civil Service Commission

/s/ Shawn C. Dooley

Shawn C. Dooley
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair, Dooley, McConney, and Stein, Commissioners [Markey – Absent]) on October 17, 2024.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Kyle J. Guindon (Appellant)

Eamonn M. Sullivan, Esq. (for Respondent)