

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

KURT W. HAMPE,

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

Docket number:

G1-23-195

Appearance for Appellant:

Kurt W. Hampe, *Pro Se*

Appearance for Respondent:

Joseph McClellan, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Shawn C. Dooley

SUMMARY OF DECISION

The Commission affirmed the decision of the Boston Police Department to bypass the Appellant for appointment as a police officer based on his prior criminal conduct involving orchestrated shoplifting.

DECISION

On October 5, 2023, the Appellant, Kurt W. Hampe (Appellant), pursuant to the provisions of G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from a decision by the Boston Police Department (BPD) to bypass him for original appointment to the position of

Boston police officer.¹ A remote pre-hearing conference was held via videoconference (Webex) on November 7, 2023. I held a remote full hearing via videoconference (Webex) on February 13, 2024. The hearing was recorded via Webex.² On March 15, 2024, the parties filed proposed decisions. For the reasons set forth below, Mr. Hampe's appeal is denied.

FINDINGS OF FACT

The Respondent entered seven exhibits into evidence and none were submitted by the Appellant.

Based on the documents submitted and the testimony of the following witnesses:

Called by the BPD:

- Detective Kenisha Benjamin (Detective Benjamin), Recruit Investigation Unit (RIU), Boston Police Department
- Deputy HR Director Teori Shaw-Boyce (Director Shaw-Boyce), Boston Police Department

Called by the Appellant:

- Kurt Hampe, Appellant

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

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

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.

Appellant's Background and Civil Service Process

1. The Appellant is a life-long Massachusetts resident, born in Quincy and raised in the Greater Boston area. *(Testimony of Appellant)*
2. He is a 2008 high school graduate and has attended community college but has not earned a degree. *(Testimony of Appellant)*
3. On March 16, 2022, the Appellant took the civil service examination for police officer and received a score of 93. *(Stipulated Facts)*
4. On September 9, 2022, HRD issued Certification #08848 to the BPD. *(Stipulated Facts)*
5. The Appellant was granted residency preference and his name appeared in a tie group in the 78th rank on certification #08848. *(Stipulated Facts)*
6. On September 17, 2022, the Appellant attended the BPD's orientation session. *(Stipulated Facts)*
7. On October 1, 2022, the Appellant submitted his completed application of employment to the Boston Police Department. *(Exhibit 6)*
8. The Appellant signed an attestation on page 4 of the application, stating:

I understand that any appointment tendered to me by the Boston Police Department will be contingent upon the results of a complete character and fitness investigation, and I am aware that willfully withholding information or making false statements on this application will be the basis of rejection of my application, or dismissal from the Boston Police Department. I agree to these conditions and hereby certify that all statements made by me on this application are true and complete, to the best of my knowledge. *(Exhibit 6)*
9. On September 26, 2023, the Department sent a letter via certified mail to the Appellant informing him of the Department's decision to bypass his original appointment to the position of Boston police officer. *(Exhibit 1)*

10. Sited in this letter as reasons for bypass was BPD's concern over the Appellant's "criminal conduct, truthfulness, and judgement." (*Exhibit 1; Testimony of Deputy Director Shaw-Boyce*)

Appellant's Criminal History

11. In December of 2013, the Appellant began his employment as a part-time seasonal security officer at Macy's in Natick. On December 5, 2013, he was caught and arrested for participating in the planning and execution of internal organized retail crime. The Appellant misused his position as a security officer by carefully coordinating specific time slots in which he would allow family members to remove merchandise from the store without paying for it when he was the only security officer on duty. According to the police report, there were two other individuals involved who were noted to have been fully involved and/or acting as "lookouts" or "get away drivers". (*Exhibit 3*)

12. The Appellant's larceny involved dozens of articles of clothing stuffed into strollers. The Appellant was alleged to have taken five women's suits, twenty articles of women's clothing, six separate menswear polos, thirty-six articles of men's tops, and six pairs of men's pants. (Testimony of Det. Benjamin; Testimony of the Appellant; Exhibit 3)

13. On December 9, 2013, the Appellant was arraigned in Natick District Court and was charged with Larceny over \$250, as well as conspiracy, for an alleged planned theft that he committed while on duty at Macy's. (*Exhibit 3*)

14. On March 12, 2015, the Appellant made an Admission to Sufficient Facts (CWOFF) for Larceny over \$250. The conspiracy charge was dropped at the request of the Commonwealth. (*Exhibit 4*)

15. Detective Kenisha Benjamin of the Recruit Investigation Unit (RIU) was the officer assigned to conduct the Appellant's background investigation during the 2023 class cycle. (*Testimony of Det. Benjamin*)

16. Page 7 of the BPD application asks applicants if they have ever been terminated from a job.

The Appellant checked "Yes" and provided the following written explanation:

In December of 2013, I took on a part time job, working as a seasonal detail security officer for Macy's in Natick, MA. [] During this time, I was also working full time as a Loss Prevention store detective [] in Boston. My [family members] suggested that I allow [family members] to enter the store when I was the only one working, and allow them to steal themselves winter clothes. Without evaluating the risk and dynamic of the situation, I foolishly agreed. I told my co-worker from my full time job about this, and he called Macy's and explained to them what I was planning to do. The managers of Macy's and Natick P.D. intercepted the theft on the day that I planned to execute it. As a result, I was charged with conspiracy of larceny and terminated from both of my jobs.

(*Exhibit 3*)

17. As part of the investigation, Det. Benjamin requested that the Appellant provide a written explanation regarding the 2013 larceny incident in Natick as well as for other criminal charges that he had disclosed on his application. (*Testimony of Det. Benjamin*)

18. On December 4, 2022, the Appellant emailed Det. Benjamin, the following written explanation regarding the larceny charge:

During the holiday season of 2013, I had been working full time but decided that I wanted to pick up a seasonal job on the side for some extra holiday shopping money. I got hired at Macy's in Natick as a part-time seasonal security officer. I wanted to impress my [family member] by allowing my [family members] to come to the store when I was working and let them take winter clothes without paying. I made the conscious decision to allow it. I told my coworker at my other job about it, and he called the store and alerted them of my actions.

As a result, I was arrested and charged with conspiracy of larceny.

The process in court took years. Ultimately, I was charged with misdemeanor, but accepted a CWAF (*CWOF*) / two years of probation.

Please note: 2013 was an extremely difficult year for me. Because of my actions, I lost everything; my jobs, my friends, my car, all my money, and my pride. To say it was humbling would be an understatement. I was forced to switch industries and to look at my life differently. I felt broken. Because of this soul-searching experience, I became a different person. I appreciated things differently and I cringe when I think about what kind of other mistakes I would've made had I not hit rock bottom in 2013. The police played a huge role in my journey of bettering myself, and it would be incredible if I could pass that on to others.

(Exhibit 7)

19. The Appellant's written explanation states that he "was charged with a misdemeanor." But the Appellant was charged with, and ultimately admitted to sufficient facts to, Larceny over \$250³ pursuant to G.L. 266 § 30, which is a felony in the Commonwealth of Massachusetts. *(Exhibits 2 and 4)*
20. In the Appellant's written explanation, he only lists this as a singular shoplifting instance but during testimony before the commission he admits this happened on at least three occasions. *(Exhibit 2, Testimony of Det. Benjamin; Testimony of the Appellant)*
21. On or about January 12, 2023, Det. Benjamin presented a Privileged and Confidential Memorandum (PCM), which contained a summary of her investigation of the Appellant's background to the roundtable.
22. Thereafter, the roundtable reviewed Det. Benjamin's PCM, discussed the Appellant's history, and decided to bypass the Appellant. (Exhibit 7, Testimony of Deputy Director Shaw-Boyce)

³ In 2018, Section 30 of 266 was amended to increase the threshold for a felony charge from \$250 to \$1200. The Appellant was alleged to have stolen between \$5,000 and \$7,000 worth of clothing.

APPLICABLE LEGAL STANDARD

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., Mass. 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).

Basic merit principles in hiring and promotion and other provisions of the civil service law call for regular, competitive qualifying 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). Appointments are then 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, §§ 6-11, 16-27; Personnel Administration Rules, PAR.09. In order 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 has 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, 478 (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 “more probably than not sound and sufficient”).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., Falmouth v. Civil Service Comm’n, 61 Mass. App. Ct. 796, 801 (2004), citing Cambridge, 43 Mass. App. Ct. at 303-305; Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den., 398 Mass. 1103 (1986).

ANALYSIS

The BPD appointing authority has shown, by a preponderance of the evidence, that they had reasonable justification to bypass the Appellant for appointment for police officer based on his prior criminal conduct.

The Commission has consistently held that to uphold a bypass based on a candidate’s prior misconduct, an appointing authority must show a nexus between the past misconduct and the candidate’s present ability to perform the duties and responsibilities of a civil service position. See Finklea v. Boston Police Dep’t, 30 MCSR 93 (2017) (unanimously concluding that the BPD failed to show a nexus between the Appellant’s admission to receiving stolen property 14 years prior and his current ability to serve as a police officer); Finklea v Civil Service Commission and Boston

Police Department, Suffolk Superior Ct. (Fahey, J.) 1784CV00999 (Feb. 5, 2018)(affirmed as to this point); Morgan v. Boston Police Dep't, 33 MCSR 131 (2020) (unanimously concluding that the BPD failed to prove a nexus between the Appellant's criminal conduct 16 years prior and his current ability to serve as a police officer); Teixeira v. Dep't of Correction, 27 MCSR 471 (2014) (unanimously concluding that DOC failed to show a nexus between the Appellant's criminal conduct from 20 years prior and his current ability to perform the duties of a Correction Officer); Stylien v. Boston Police Dep't, 31 MCSR 154, 209 (2018) (overturning bypass based on a lack of evidence, and consequent failure to indicate a pattern of criminal behavior or poor driving habits).

I have considered that the Appellant's criminal misconduct occurred approximately a decade ago; that he has shown some degree of contrition and accountability; and that he has established a strong work history over several years. Notwithstanding these favorable factors, the admitted criminal misconduct here is distinguishable from the misconduct involved in the prior Commission decisions referenced above for the following reasons. Here, a thorough review of the record shows that the Appellant engaged in a well-planned, highly sophisticated enterprise in which he appears to have secured employment at Macy's for the sole purpose of carrying out his criminal endeavors, with the goal of stealing several thousand dollars of merchandise. Security cameras were re-positioned, special equipment was purchased to remove security tags, and baby strollers were used as decoys as multiple individuals essentially ransacked a retail store. He abused his position as a security guard and now acknowledges that the thefts occurred on multiple occasions. I also considered that these crimes did not occur while the Appellant was in his formative teenage years, but, rather, when he was 23 years old.

Given the serious and brazen nature of the Appellant's prior criminal conduct, the fact that it occurred when he was 23 years old, and that he abused his position of trust of a security guard

to carry out this criminal conduct, I conclude that the Boston Police Department was reasonably justified in concluding that the Appellant is not fit to perform the duties and responsibilities of a police officer today.

CONCLUSION

For all of the above-stated reasons, the appeal of Kurt Hampe under Docket No. G1-23-195 is hereby *denied*.

Civil Service Commission

/s/ Shawn C. Dooley
Shawn C. Dooley
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, & Stein, Commissioners) on June 27, 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)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:
Kurt Hampe (Appellant)
Joseph McClellan, Esq. (for Respondent)