

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293**

ALONZO HARDNETT,
Appellant

v.

CASE NO. G1-11-239

TOWN OF LUDLOW,
Respondent

Appellant (Pro Se):

Alonzo Hardnett

Town of Ludlow's Attorney:

Stanley L. Weinberg
Collins & Weinberg
47 Memorial Drive
Shrewsbury, MA 01545

Commissioner:

Paul M. Stein¹

DECISION

The Appellant, Alonzo Hardnett (hereinafter "Hardnett" or "Appellant"), pursuant to G.L.c.31, § 2(b), seeks review of the decision of the Town of Ludlow (hereinafter "Town"), acting by and through its elected Board of Selectmen, to bypass him for an original appointment to the position of Firefighter/Paramedic with the Ludlow Fire Department.

The appeal was timely filed with the Civil Service Commission (hereinafter "Commission") on July 29, 2011. A pre-hearing was held on August 24, 2011. A full hearing

¹ The Commission acknowledges the assistance of Law Clerk Beverly J. Baker, Esq., in the drafting of this decision.

was held on March 28, 2012 at the offices of the Commission. The Town called two witnesses: Fire Chief Mark Babineau and the Chairman of the Board of Selectmen, Mr. Aaron Saunders. The Appellant testified on his own behalf. The witnesses were not sequestered. Seventeen exhibits were admitted into evidence at the hearing and one document was marked for identification. In addition, one post-hearing exhibit was accepted into evidence. A digital recording of the hearing was made. Both parties submitted post-hearing briefs.

FINDINGS OF FACT

Based upon the documents entered into evidence, the stipulations of the parties, and the testimony of the witnesses, I make the following findings of fact:

1. The Town of Ludlow is a municipal corporation whose fire department is subject to Civil Service Law. The Ludlow Fire Department operates on a full-time basis and is currently comprised of twenty-nine uniformed personnel: the Chief, five Captains, and twenty-three Privates (Firefighter/Paramedics). There are currently two female firefighters and no African American firefighters employed at the Ludlow Fire Department. (Testimony of Babineau)

2. The Board of Selectmen (hereinafter "Board") is the appointing authority for members of the Ludlow Fire Department. The typical hiring process begins with the request of a civil service certification. Candidates from the certification then submit an application for employment. A background check is conducted and employment references are contacted. Each candidate is interviewed by a panel consisting of the Fire Chief and the Captains. The application packages are submitted to the Board. Each candidate is then interviewed by members of the Board. The Fire Chief makes a recommendation to the Board after considering all the information collected. The Board gives significant deference to the Fire Chief's recommendation in making its appointment decision. (Testimony of Babineau, Saunders; Exhibits 7-11, 18, 19)

3. On or about April 24, 2010, the Appellant took and passed the examination for Firefighter exam number 4813. (Exhibit 15)

4. During 2010, the Ludlow Fire Department had three vacancies for the position of Firefighter/Paramedic. On or about December 1, 2010, an eligibility list for the Firefighter/Paramedic position was established by the Human Resources Division (hereinafter “HRD”). On or about January 6, 2011, HRD issued Certification number 202996 to the Ludlow Fire Department for three permanent full-time firefighters. Pursuant to a request from the appointing authority, additional names were provided by HRD on or about March 4, 2011. (Testimony of Babineau, Saunders; Exhibit 15)

5. The Appellant was ranked first on the certification list, among those willing to accept employment. (Exhibits 15, 16)

6. An application for employment previously filled out by the Appellant in connection with a prior year’s hiring process was on file with the Ludlow Fire Department. The Fire Chief encouraged the Appellant to update the application. The Appellant had an opportunity to look at the application, but declined to update it and stated that it “should be fine.” (Testimony of Babineau, Appellant)

7. The other five candidates who were willing to accept employment with the Ludlow Fire Department filled out and submitted current employment applications to the Fire Chief. (Testimony of Babineau; Exhibits 9-11)

8. On page nine of the Appellant’s application package, in the portion addressing his employment history with the Granby Fire Department, the Appellant failed to provide a response following the “Reason for Leaving” question. (Exhibit 8)

9. As part of the background investigation, the Fire Chief contacted the current and prior employers provided by the candidates and included any information he obtained in their application packages. (Testimony of Babineau; Exhibits 8-11)

10. The three candidates appointed all had positive work references. (Testimony of Babineau; Exhibits 9-11)

11. In a written letter of recommendation that was included in the Appellant's application package, Mr. Richard J. Gaj, Sr., retired Fire Chief of Granby, stated that the Appellant "always did his job well as a firefighter and EMT" and "his personality was good." However, Mr. Gaj also commented that the Appellant had "issues with his coworkers" that did not affect the Appellant's work in the department, "but during the daytime he would stay more by himself at the station." (Exhibit 8)

12. When the Fire Chief contacted an operational supervisor at the Appellant's current place of employment, Am-B-Care Ambulance, Mr. Robert Chapdelaine would not comment on the Appellant's performance as an employee. Mr. Kirill Adzigiery, Director of Operations at the Appellant's more recent employer, National Ambulance, gave an unfavorable work reference. According to the Fire Chief's testimony, Mr. Adzigiery was reluctant to speak with him and when asked about the Appellant, Mr. Adzigiery said "not good." When the Fire Chief asked Mr. Adzigiery if he would hire the Appellant again, given the opportunity, to which Mr. Adzigiery responded "no." The Fire Chief also spoke to Chief Russ Anderson at the Granby Fire Department, the Appellants previous employer. Chief Anderson would not comment on the Appellant's employment history with the Granby Fire Department. (Testimony of Babineau; Exhibit 8)

13. Notwithstanding the Appellant's contention that Am-B-Care has a policy of not providing references to prospective employers, the operational supervisor of Am-B-Care at the time, Mr. Chapdelaine, did provide a positive reference for candidate Zachary Vozella. Neither the Fire Chief nor the Board had knowledge that such a policy was in place at Am-B-Care at the time of the appointments. (Testimony of Babineau, Saunders; Exhibits 13, 17)

14. In the Fire Chief's experience, prior employers are usually unwilling to discuss negative aspects of an employee's performance but are typically willing to discuss positive aspects. (Testimony of Babineau)

15. The Fire Chief also conducted criminal record (CORI) checks on each candidate and included this information in the application packages. (Testimony of Babineau; Exhibits 8-11)

16. The three candidates appointed by the Board had clean criminal records. (Exhibits 9-11)

17. The Appellant's CORI check revealed that he had three assault and battery misdemeanor convictions that arose out of a single incident that occurred in 1997 in the Town of Amherst, Massachusetts. (Exhibit 8; Testimony of Appellant)

18. The Appellant has maintained a clean criminal record since the 1997 misdemeanor convictions, which took place approximately fifteen years ago. The Appellant testified that he is not the same person he was fifteen years ago. (Exhibit 8; Testimony of Appellant)

19. The specific details of the events underlying the Appellant's assault and battery convictions were not offered as evidence during the hearing. However, both the Appellant and the Fire Chief provided testimony that there was an incident with the Appellant's brother that the Appellant became involved with. (Testimony of Appellant, Babineau)

20. On or about April 27, 2011, the Fire Chief and Captains conducted interviews with all six candidates. Prior to the interviews, the Captains were given the candidates' application packages

to review in preparation for the interview. The Captains were instructed not to discuss the candidates prior to the interviews. Each interview lasted approximately fifteen to twenty-five minutes. The candidates were asked consistent questions, with slight variations based on each candidate's particular application information. (Testimony of Babineau)

21. It is the Fire Chief's belief that he is responsible for hiring the "best candidate possible." Public perception is very important, as is trust, given the close working quarters and nature of the work. Criminal background was a factor, but it was not the only factor. The candidates' respective education levels, grade point averages, work history, and experience levels were also evaluated. (Testimony of Babineau)

22. The Fire Chief stated that during the Appellant's interview with the Fire Chief and Captains, the Appellant gave a vague response when he was asked what happened, with respect to the Appellant's misdemeanor convictions. According to the Fire Chief's testimony, the Appellant stated that the misdemeanor convictions arose out of an incident with the Appellant's brother, with which the Appellant got involved, and the event occurred a long time ago. (Testimony of Babineau)

23. Following the interviews, the Fire Chief and Captains independently ranked the candidates from one through six based on the candidates' interview performance and the information collected during the application process. The Fire Chief and Captains then discussed the rankings as a group, with the Fire Chief being the last person to share his rankings. The Fire Chief and Captains were unanimous with respect to the top three candidates: Mr. Peter Guertin was ranked first, Mr. Matthew Niles was ranked second, and Mr. Robert Dooley was ranked third. The Appellant was ranked sixth. (Testimony of Babineau, Exhibit 18)

24. The Fire Chief characterized the Appellant's interview as "average." The Fire Chief denied that the Appellant would not work well if appointed, but stated that the other candidates would be better, based on how they interviewed, job references, criminal background checks, and other considerations. The Fire Chief testified that race was not a factor. (Testimony of Babineau)

25. The Fire Chief provided the Board with the candidates' application packages, which included the work references and criminal background checks. (Testimony of Babineau)

26. On or about May 3, 2011, the Board interviewed all the candidates, using a set of nearly identical questions. There were, however, some minor variations in the questions based on information in each candidate's application package. (Testimony of Saunders; Exhibits 7, 19)

27. At the conclusion of the interviews, the Board received the Fire Chief's recommendation. The Fire Chief recommended Mr. Guertin, Mr. Niles, and Mr. Dooley for appointment. The Board then discussed the candidates and unanimously voted to appoint these candidates. (Testimony of Babineau, Saunders; Exhibits 7, 19)

28. In making the appointments, the Board relied significantly on the Fire Chief's recommendation and the candidates' interviews with the Board. The decisions were made with the objective of selecting the best possible firefighters for the Town. (Testimony of Saunders)

29. Mr. Saunders testified that the Appellant's work related references were a deciding factor for the Board. Mr. Saunders expressed that he has concerns when an employer will not provide a reference. During the Appellant's interview with the Board, the Appellant was questioned about the timeliness of some of the letters of reference in his application package that dated from 2009. The "somewhat contradictory" reference provided by the retired Fire Chief of Granby also gave

the Board “pause for concern.” In comparison, the other candidates’ had positive work references. (Testimony of Saunders; Exhibits 7, 8-11, 19)

30. According to Mr. Saunders, the Appellant’s criminal history was not a disqualifying factor in and of itself. Mr. Saunders acknowledged that the Appellant’s misdemeanors occurred a while ago but also stated that the significance of the passage of time in the context of criminal history depends on the nature of the offense. In the Appellant’s case, the misdemeanors were for assault and battery, a violent offense. In contrast, the appointed candidates all had clean criminal backgrounds. (Testimony of Saunders)

31. Mr. Saunders testified that the Appellant provided vague answers during his interview with the Board. Specifically, Mr. Saunders stated that when the Appellant was asked why he left his employment with the Granby Fire Department, the Appellant’s response was: “[t]here were a lot of things that went on, I’d just like to basically say it was time to move on.” The Board did not ask the Appellant any further questions surrounding his departure from Granby Fire Department during the interview. (Testimony of Saunders; Exhibits 7, 19)

32. On cross-examination, the Appellant responded in the affirmative when asked if he had been terminated from the Granby Fire Department for insubordination and endangering public safety. In addition, the Appellant received a written warning during his employment with National Ambulance. However, at the time the appointments were made, the Board was unaware of this information. (Testimony of Appellant; Appellant Br. 1; Resp’t Supplemental Statement & Aff. 2)

33. During the interview with the Board, the Appellant was given the opportunity for closing remarks. The Appellant stated: “no matter how it works out I believe I was treated fairly and I was really honored to sit in front of [these] gentlemen.” At the Commission hearing, the

Appellant said he made this remark without knowing about the other candidates' qualifications and he was trying to be humble and polite. (Exhibits 7, 19; Testimony of Appellant)

34. After the interviews, but prior to making the appointments, Mr. Saunders made the following comment during the Board meeting:

I think the forthrightness of all the candidates was certainly refreshing; all the questions were answered in a very straightforward manner. Even, and I think the interviewees could tell, even if it wasn't what we wanted to hear, and I think that is an important quality. Because we don't think we want a bunch of yes men or yes women running around the emergency services for representation to the Town.

(Exhibit 7)

35. On or about May 10, 2011, the Board mailed written notices to HRD, to the candidates appointed, and to the Appellant, who was bypassed, providing the reasons for the decisions that were made regarding the three original appointments to the position of Firefighter/Paramedic.

(Exhibits 1-6)

36. The Appellant's declination letter contains the following statement:

Based on your interviews with the Fire Chief and Board of Selectmen, and the information received, they found you were convicted of (3) level three misdemeanors, you had no work related references from your current employer and unfavorable work references from former employers including unspecified issues with your coworkers.

(Exhibit 1)

37. The declination letter addressed to Mr. Zachary Vozella expressly states as a reason for his bypass: "during the interview process, you did not communicate well with respect to your answers to questions asked of you." (Exhibit 5)

38. Fire Chief Babineau was a good witness. He answered questions during examination and cross-examination without hesitation. He was able to recall and explain in detail his past experiences with the Appellant and the appointment process. I found Fire Chief Babineau's testimony credible. (Testimony and demeanor of Babineau)

39. Mr. Saunders was also a good witness. His demeanor was professional and he recalled the events surrounding the appointment process in detail. Mr. Saunders provided calm, clear responses throughout his testimony. However, at times, he seemed slightly cautious or overly careful in phrasing his responses. I found Mr. Saunders' testimony credible. (Testimony and demeanor of Saunders)

40. The Appellant did not state in his application package that he had been terminated from his position at the Granby Fire Department. The Appellant also failed to disclose this information during his interviews with both the Fire Chief and the Board. The Appellant testified that he left the Granby Fire Department after "administrative changes." It was only during cross-examination that the Appellant admitted that he was terminated from the Granby Fire Department for insubordination and endangering public safety. By omitting the fact that he was terminated from both the application package and his own testimony, it is apparent that the Appellant was not being completely truthful with respect to his employment history. (Exhibit 8; Testimony of Appellant, Babineau, Saunders)

CONCLUSION

After reviewing the testimony and documents presented in this matter, I conclude that the Town has proven by a preponderance of evidence that there was reasonable justification to bypass the Appellant.

The authority to bypass a candidate for original appointment to a permanent civil service position is set forth in G.L.c.31, § 27, which states, in pertinent part:

If an appointing authority makes an original or promotional appointment from a certification of any qualified person other than the qualified person whose name appears highest, and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator a written statement of his reasons for appointing the person whose name was not highest.

Rule PAR.08(4) of the Personnel Administration Rules, promulgated by the Human Resources Division, provides that when a candidate is to be bypassed, the appointing authority must make a full and complete statement of all the reasons to justify the bypass. “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.” PAR.08(4).

Upon an appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. *Brackett v. Civil Serv. Comm’n*, 447 Mass. 233, 241 (2006). Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and correct rules of law.” *Comm’rs of Civil Serv. v. Municipal Ct.*, 359 Mass. 211, 214 (1971) (quoting *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 485 (1928)). An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. See *City of Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 189 (2010).

“In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” *City of Beverly*, 78 Mass. App. Ct. at 187 (quoting *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” *Falmouth v. Civil Serv. Comm’n*, 447 Mass 814, 823 (2006). “[T]he commission does not act without regard to the previous decision of the town, but rather decides whether ‘there was reasonable justification for the action taken by the appointing

authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” *Id.* at 824 (quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983)). As a result, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown.” *City of Beverly*, 78 Mass. App. Ct. at 188.

“In making that analysis, the commission must focus on the fundamental purposes of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions” *City of Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 Mass. 1102 (1997) (citing *Murray v. Second Dist. Court of E. Middlesex*, 389 Mass. 508, 514 (1983); *Kelleher v. Personnel Adm’r of the Dept. of Personnel Admin.*, 421 Mass. 382, 387 (1995); *Police Comm’r of Bos. v. Civil Serv. Comm’n*, 22 Mass. App. Ct. 364, 370, *rev. den.*, 398 Mass. 1103 (1986)). “When there are, in connection with personnel decisions, 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.” *City of Cambridge*, 43 Mass. App. Ct. at 304. “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *Id.* (citing *Sch. Comm’n of Salem v. Civil Serv. Comm’n*, 348 Mass. 696, 698-99 (1965); *Debnam v. Belmont*, 388 Mass. 632, 635 (1983); *Comm’r of Health & Hosps. of Bos. v. Civil Serv. Comm’n*, 23 Mass. App. Ct. 410, 413 (1987)).

The declination letter sent to the Appellant by the Board on or about May 10, 2011, provides three reasons for the Appellant’s bypass: first, the Appellant’s criminal history; second, the Appellant had no work related references from his current employer; and third, the Appellant

had unfavorable work references from former employers. At the hearing, Mr. Saunders alluded to an additional reason for the bypass; Mr. Saunders testified that when the Appellant was asked about his reasons for leaving Granby Fire Department, the Appellant's response was vague and gave him "pause for concern." Throughout his testimony, Mr. Saunders placed emphasis on the Appellant's allegedly vague response to a single question. However, the Appellant's declination letter did not provide any indication that vagueness during the Board interview was a reason for the Appellant's bypass. As a result, pursuant to PAR.08(4), the Appellant's alleged vagueness is not a proper subject for the Commission to consider.

The Appellant's criminal history is the first reason provided by the Board for the bypass. Specifically, during the appointment process, a background check revealed that the Appellant had three level-three misdemeanor convictions for assault and battery. These convictions arose from a single incident that occurred in July 1997. There is no question that a firefighter must be honest, trustworthy, and dependable in order to properly perform the duties required of a public safety official. *E.g., Matthews v. City of Bos.*, 22 MCSR 450, 452 (2009). As such, a candidate's criminal background is a serious and legitimate concern for an appointing authority. "The Commission has long held that an applicant's arrest record, even in the absence of a conviction, is entitled to some weight by the appointing authority in making its decision." *Labriola v. Town of Stoneham*, 25 MCSR 36, 38 (2012) (citing *Thames v. Bos. Police Dep't*, 17 MCSR 125, 127 (2004); *Soares v. Brockton Police Dep't*, 14 MCSR 109, 110 (2001); *Brooks v. Bos. Police Dep't*, 12 MCSR 19, 20 (1999); *Frangie v. Bos. Police Dep't*, 7 MCSR 252, 253 (1994)).

In order for an appointing authority to rely on a record of prior criminal conduct as the grounds for bypassing a candidate, there must be a sufficient nexus between the prior misconduct

and the candidate's current ability to perform the duties of the position to which he seeks appointment. The amount of time that has passed since the misconduct occurred, the nature of the offense, and evidence of the candidate's subsequent record are factors that should be taken into account on a case-by-case basis. *See e.g., Langston v. Cambridge Police Dep't*, 7 MCSR 178, 179 (1994); *Dowd v. Lowell Fire Dep't*, 14 MCSR 31, 32 (2001); *Ellis v. Dedham*, 17 MCSR 30, 31 (2004).

In this appeal, the Town relies on the existence of the Appellant's criminal record, without any indication that it considered the specific nature of the misdemeanor offense, beyond the presumption that it was a violent offense. Nor did the Town justify why this single, isolated incident that took place approximately fifteen years earlier warranted the conclusion that the Appellant was unsuitable for current employment when he has maintained a clean criminal record and there is no evidence of any subsequent violent behavior. If this was the only reason provided by the Town for the Appellant's bypass, the Commission would have grave doubt that the bypass decision would be in compliance with basic merit principles, as defined by G.L.c.31, § 1.

The Town gave two additional reasons for the bypass: the Appellant's lack of work related references from his current employer and unfavorable work references from his former employers.

As to the Appellant's current employer, Am-B-Care, when contacted by the Fire Chief as part of the background investigation, Robert Chapdelaine, an operational supervisor, would not comment on the Appellant's performance as an employee. At the hearing, the Appellant presented evidence that Am-B-Care has a policy not to provide references for employees. The full extent of this policy and how strongly it is enforced is unknown, but there appears to be at

least one exception in the case of a pre-employment background check that requires an in-person interview by a fire department, in which case Am-B-Care will provide an “honest, no holds barred assessment of an employee’s performance,” but nothing in writing. At the time of the appointments, neither the Fire Chief nor the Board had knowledge that such a policy was in place at Am-B-Care Ambulance. Despite this policy, Mr. Chapdelaine provided the Fire Chief with a positive reference for candidate Zachary Vozella. The Appellant could not provide an explanation as to why Mr. Vozella received a reference and he did not, other than to testify that Mr. Chapdelaine was later fired from Am-B-Care. There is no evidence, however, that Mr. Chapdelaine’s termination had any connection with Am-B-Care’s employee reference policy.

The third and final reason given by the Town for the Appellant’s bypass is that the Appellant received unfavorable work references from former employers. The Appellant’s application packet included three positive references: the first from Mr. Dane George, the Appellant’s coworker at National Ambulance; the second from Mr. Robert McQueen, Assistant ALS Coordinator at National Ambulance; and the third from Ms. April Fernandes, the Appellant’s Clinical Supervisor at National Ambulance. These written references are dated from July 2009, except for Mr. McQueen’s letter, which is not dated. The Appellant’s application package also includes a standard separation letter from National Ambulance dated July 10, 2009. However, when the Fire Chief contacted Mr. Kirill Adzigirey, Director of Operations at National Ambulance, he gave the Appellant an “unfavorable” work reference. The Fire Chief testified that Mr. Adzigirey was reluctant to speak with him and when asked about the Appellant, Mr. Adzigirey said “not good.” When Mr. Adzigirey was asked if he would hire the Appellant again, he responded in the negative.

The Appellant suggests that the negative reference he received from National Ambulance may be related to the fact that he left his employment at National Ambulance in order to work for a competitor with a higher call volume. However, the Appellant did not present any evidence or testimony in support of this claim.

The Appellant's application package also contains a written statement from Mr. Richard J. Gaj, Sr., the retired Granby Fire Chief. While Mr. Gaj does provide some positive comments, with respect to the Appellant's performance as an employee, Mr. Gaj also states: "[The Appellant] did have issues with his coworkers. This did not effect [sic] his work on the department but during the daytime he would stay more by himself at the station." When Fire Chief Babineau contacted Granby Fire Department as part of the background investigation, Chief Russ Anderson would not comment on the Appellant's employment history.

The Appellant's lack of work related references from his current employer, combined with the unfavorable references from former employers, provided the Town with legitimate doubt as to the Appellant's suitability for the position. The Town drew a negative inference when neither the Appellant's current employer nor his prior employer, the Granby Fire Department, would provide a work related reference on his behalf. By leaving the "Reason for Leaving" question blank with respect to his employment history with the Granby Fire Department on his application for employment, the Appellant reinforced the Town's concerns. The fact that the Appellant failed to disclose the material fact that had been terminated from the Granby Fire Department, which he later admitted to the Commission, further justifies the Town's legitimate concern regarding the Appellant's lack of work related references and unfavorable references from his current and former employers. When hiring an applicant poses a legitimate risk, whether to take such a risk is for the appointing authority to decide, provided that the appointing

authority has performed due diligence in assessing the risk. *See City of Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 190 (2010) (citing *City of Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 305 (1997)). The Commission concludes that the Town met this standard and had reasonable justification to bypass the Appellant on the grounds that he had no work related references from his current employer and unfavorable references from former employers.

In his post-hearing submission, the Appellant argues that the bypass decision was the product of a “pattern of discriminatory behavior.” The Commission agrees that racial discrimination has no place in public employment. After carefully considering all of the evidence in the record, the Commission cannot reasonably conclude that such unlawful discrimination occurred here. The fact that the Appellant is the only African American to apply since Fire Chief Babineau assumed his position and that the Town has no minority firefighters and only two female firefighters is certainly noteworthy. However, the Appellant did not provide persuasive evidence of specific bias, let alone a pattern of discriminatory behavior.

I do not doubt the Appellant’s sincere desire to serve the Town as a Firefighter/Paramedic. However, the Town has demonstrated, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant. Specifically, the Town bypassed the Appellant due to his lack of work related references from his current employer and unfavorable work related references from former employers, including issues with his coworkers. There is no evidence that the decision was based on political considerations, favoritism, unlawful discrimination, or other bias.

For all of the above reasons, the Appellant’s appeal filed under Docket Number G1-11-239 is hereby *dismissed*.

Civil Service Commission

Paul M. Stein, Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Marquis, McDowell, and Stein, Commissioners [Ittleman – Absent]) on July 12, 2012.

A true record. Attest:

Commissioner

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.

Notice:

Alonzo Hardnett (Appellant)

Stanley L. Weinberg (Town of Ludlow)