

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

ALGIMANTAS HARRELL,
Appellant

CASE NO. G1-19-065

v.

**MASSACHUSETTS
ENVIRONMENTAL POLICE,**
Respondent

Appearance for Appellant:

Algimantas Harrell, Pro Se

Appearance for Respondent:

Julia O’Leary, Esq.
Counsel, Massachusetts Secretary of
Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Commissioner:

Paul M. Stein

DECISION

The Appellant, Algimantas Harrell, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), to contest his bypass for appointment as an Environmental Police Officer A/B (EPO A/B) with the Massachusetts Environmental Police (MEP).¹ A pre-hearing conference was held at the Commission’s Boston office on April 16, 2019, and a full hearing was held at that location on July 12, 2019, which was digitally recorded.² Three (3) exhibits (*Exhs. 1 through 3*) were received in evidence. Neither party chose to file a proposed Post-Hearing Decision. For the reasons stated below, Mr. Harrell’s appeal is denied.

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 Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD 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.

FINDINGS OF FACT

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

Called by the Appointing Authority:

- MEP Lieutenant James Cullen

Called by the Appellant:

- Algimantas Harrell, 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:

1. The Appellant, Algimantas Harrell, resides in Acushnet, MA. He is an agricultural technical high school graduate where he focused on arboriculture. He holds a Bachelor's Degree in Criminal Justice from Curry College. He has been employed as a permanent, full-time Police Officer with the New Bedford Police Department (NBPD) since February 2013, where his duties include assignment to the NBPD Marine Unit. He also works as a landscaper. He has served with the US Army Reserve since 2008, currently assigned as a Special Agent with a Military Police unit. He is a certified firearms instructor. (*Exhs. 3 & 4; Testimony of Appellant & Lt. Cullen*)

2. Officer Algimantas took and passed the civil service examination for EPO A/B and his name appeared ranked #6 on Certification #05821 dated September 20, 2018 issued to the MEP by the Massachusetts Human Resources Division (HRD), from which MEP eventually hired nine (9) candidates, of which one or more were ranked below Mr. Algimantas. (*Stipulated Facts*)

3. The MEP is a law enforcement agency of approximately 70 officers whose primary mission includes protection of the environment and natural resources through enforcement, education and outreach, with jurisdiction over the entire Commonwealth coexistent with the Massachusetts State Police, as well as in the state's territorial waters (3 mile limit) and "customs waters" (up to twelve miles offshore). (*Testimony of Lt. Cullen; Administrative Notice [https://www.mass.gov/service-details/the-massachusetts-environmental-police-our-mission]*)

4. Because the unique focus of the MEP on protection of the Commonwealth's environment and natural resources covers a range of specialized and technical subjects (e.g., fish and wildlife, protection of endangered species and laws regulating boating and recreational vehicles), the minimum entrance requirements for the position of EPO A/B are tailored to fit this mission. In particular, in addition to the requirement of a high school diploma, applicants must have

“ . . .at least two years of full-time, or equivalent part-time, professional or para-professional experience in wildlife or fisheries conservation or management, natural resources conservation or management, biological or environmental science, forestry, ecology, marine science, conservation law enforcement or related field, or any equivalent combination of such experience and the substitutions below.

Substitutions:

An Associate's degree in environmental science, biology, oceanography, ecology, natural resources management, wildlife management, fisheries management, forestry, conservation law enforcement or related field, may be substituted for one year of the required experience on the basis of two years of education* for one year of experience.

A Bachelor's or higher degree in environmental science, biology, oceanography, ecology, natural resources management, wildlife management, fisheries management, forestry, conservation law enforcement or related field, may be substituted for the required experience on the basis of two years of education* for one year of experience.

*One year of education equals 30 semester hours or its equivalent. Education completed toward a degree will be prorated on the basis of the proportion of the requirements actually completed.”

*(Exh. 2; Testimony of Lt. Cullen)*³

5. The experience that meets these entrance requirements includes such full-time jobs as a Harbormaster, Park Ranger, Fish & Game Warden, Coast Guard duty and Marine Fisheries scientists and technicians. It also may include part-time, seasonal or volunteer work as an assistant Harbormaster or Shellfish Constable, as well as employment or volunteer work for the Division of Fisheries & Wildlife, the Audubon Society or similar conservation organizations.

(Testimony of Lt. Cullen)

³ The entrance requirements are established by approval from HRD, with input from the various stakeholders (e.g., Department of Fish & Game, Department of Conservation & Recreation, Department of Environment Experience) See G.L.c.31, §5 & §18.

6. Presently, and historically, a Criminal Justice college degree and/or the work of a typical municipal police officer have not been considered acceptable education and/or experience by the MEP to meet the entrance requirements for EPO A/B. The few exceptions are some coastal municipalities that operate their own Marine Units, which do handle some of the same type of boating safety issues as the MEP. For a brief period, a prior MEP Colonel did decide to hire some officers with traditional law enforcement experience only, with mixed results. According to Lt. Cullen, of the approximately twenty officers hired on that basis, only about one in five (20%) became successful EPOs, with most of the others tending to gravitate back to traditional police work (traffic enforcement, personal and property crimes, etc.) rather than devote their full time and attention to conservation and environmental protection. (*Testimony of Lt. Cullen*)

7. The MEP processes all EPO A/B candidates through an initial screening interview before a panel of MEP senior officers and HR management to provide each candidate with an opportunity to establish they met the necessary minimum entrance requirements. Following his appearance before the screening interview panel, the MEP determined that Officer Harrell did not possess the necessary two years of full-time experience or educational substitute necessary to meet the minimum entrance requirements. (*Exhs. 3 & 4; Testimony of Appellant & Lt. Cullen*)⁴

8. By letter dated November 8, 2018, MEP Lt. Colonel Anthony Abdal-Khabir informed Officer Harrell that he was bypassed for appointment due to his failure to meet the minimum entrance requirements for the position of EPO A/B. (*Exh.1*)

9. This appeal duly ensued. (*Claim of Appeal*)

⁴ At the Commission hearing, Officer Harrell explained that his military duty included deployment overseas as a Military Police Inspector who was responsible for customs screening of personnel who were completing their tours of duty to search for any plants or other materials that would be harmful to the natural environment of the United States. This information was not brought to the MEP's attention prior to the bypass and, as the duty lasted for less than three months, it would not have changed the MEP's decision. Similarly, Lt. Cullen was familiar with Officer Harrell's agricultural high school experience, as he sits on the school's advisory board, and is familiar with the curriculum, which includes many subjects that relate to natural resources conservation and environmental science. (*Testimony of Appellant & Lt. Cullen*)

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)

Basic merit principles in hiring and promotion calls 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, 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 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 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 “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. 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.”

City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (*emphasis added*) 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 MEP has shown by a preponderance of the evidence that it was reasonably justified to bypass the Appellant for appointment as an EPO A/B on the grounds that he did not possess the minimum entrance requirements specified for the position as approved by HRD. These requirements call for education and experience that is directly related to the subject of natural resource and environmental protection that are reasonably related to the requirements of the job

and have been uniformly applied to all candidates (save for a brief, less than successful experiment that enabled a few candidates to be hired whose qualifications were limited to general police work). The Commission has made clear that, absent proof that job requirements are arbitrary or unequivocally irrelevant to the performance of the duties required of the position, it will defer to the interpretation given to those requirements by the appointing authority, who is best situated and informed on those matters. See, e.g., Graham v. Department of Conservation & Recreation, 31 MCSR 337 (2018) (DCR’s definition of “major park” and other terms); Trubiano v. Department of Conservation & Recreation, 31 MCSR 298 (2018) (definition of “major recreational area” and “heritage park”).

In the case of Officer Harrell, neither his degree in Criminal Justice nor his general law enforcement experience as a New Bedford Police Officer fit the type of education and experience that MEP deems necessary to meet the minimum entrance requirements. The few months that he spent as a customs inspector in the Marines may qualify, but it falls far short of the two years necessary. His high school diploma from an agricultural technical high school, where he was exposed to a curriculum that included courses in environmental science and conservation that are not available to students in a traditional high school, is one of the “educational” substitutions on the MEP’s interview screening sheet, but is not referenced in the HRD approved educational substitutes incorporated as part of the minimum entrance requirements. The MEP was unable to provide an explanation for the origin of this discrepancy. If as the MEP contends, it does not, and has never accepted high school level experience as qualifying education, it would behoove the MEP to make the appropriate changes to its forms.

In sum, Officer Harrell has many attributes that would serve him well in the job of an EPO, including a life-long interest in environmental issues and some military experience as a customs

inspector and private sector experience as a landscaper that does seem fairly related to the job, as well as six years of service as a sworn New Bedford police officer. There would be nothing unreasonable for MEP to consider his unique blend of “General Police Work Plus” a “good fit” (putting him on a par with the one in five EPOs previously appointed by MEP without strict compliance with the literal definition of the entrance requirements), but, the MEP has provided reasonable justification not to do so, strictly and uniformly interpreting the requirements needed to qualify him for appointment.

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Algimantas Harrell is ***denied***.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on January 30, 2020.

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:

Algimantas Harrell (Appellant)

Julia O’Leary, Esq. (for Respondent)