

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

BRADLEY HEARD,  
*Appellant*

v.

G1-19-203

DEPARTMENT OF CORRECTION,  
*Respondent*

Appearance for Appellant:

Bradley Heard  
*Pro Se*

Appearance for Respondent:

Joseph Santoro <sup>1</sup>  
Department of Correction  
PO Box 946, Industries Drive  
Norfolk, MA 02056

Commissioner:

Cynthia A. Ittleman, Esq.

DECISION

On October 1, 2019, Bradley Heard (“Appellant”), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Department of Correction (“DOC” or “Respondent”) to bypass him for original appointment to the position of Correction Officer (CO I). On October 15, 2019, a pre-hearing conference was held at the offices of the Commission, which was followed by a full hearing at the same location on December 13, 2019.<sup>2</sup> The hearing was digitally recorded.<sup>3</sup> The Appellant did not submit a

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<sup>1</sup> Attorney Norman Chalupka represented the Department of Correction in this appeal until he filed a post-hearing brief in this case but he no longer works at the Department.

<sup>2</sup> 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.

<sup>3</sup> 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 he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases,

post-hearing brief. The DOC submitted a post-hearing brief on January 10, 2020. As indicated below, based on the facts in this case and the applicable law, the appeal is denied.

**FINDINGS OF FACT:**

Nine (9) exhibits were entered into evidence by the Respondent; the Appellant did not offer any exhibits. Pursuant to my request, the Respondent provided supplemental documentation that was added to Exhibit 9 after the close of the hearing, permitting Exhibit 9 to be entered into the record in full. Based upon the documents entered into evidence and the testimony of:

*For the Appointing Authority:*

- Drew Duplessis, Background Investigator
- Eugene Jalette, Supervising Identification Agent

*For the Appellant:*

- Bradley Heard, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

*Appellant's Application*

1. The Appellant was born in Holyoke, MA and has been employed in the customer service and hospitality industries for most of his adult working career. He received his GED through Holyoke Community College in 2014. His current employment, obtained through a temporary agency, is with a company that produces plastic cases. (Exs. 3 and 8; Appellant Testimony).

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this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

2. The Appellant took the civil service examination for Correction Officer (CO I) on October 20, 2018. He was ranked 64th on Certification No. 06084. (Stip. Facts).
3. The Appellant applied for a position with the DOC as a CO I in March 2019 for consideration for appointment to the July 2019 Academy. (Appellant Testimony; Jalette Testimony).
4. As part of the hiring process, the DOC conducts background checks of all applicants, who sign a Background Investigation Request and Waiver authorizing the DOC to check with past employers, conduct a criminal record check, and conduct interviews with references. (Ex. 3; Jalette Testimony).
5. Mr. Duplessis, who has worked at the DOC and as a police officer for many years and who has received training in conducting background investigations, conducted the Appellant's background investigation. He has conducted over 40 such investigations. (Duplessis Testimony).
6. Mr. Duplessis's process for conducting a background investigation is to first call and meet candidates' references, and then contact the candidates' former and current employers. He confirms candidates' educational backgrounds by going to the institutions where candidates have received their education and then conducts home visits. He structures his investigations this way so that he will be able to inquire about any issues or concerns raised with the candidate at the home visit. (Duplessis Testimony).
7. The DOC reviews all applicants' Criminal Record Offender Information (CORI) as part of the hiring process. The CORI gathers information from the NCIC National Crime Information Center (NCIC); National Crime Information Center Interstate Identification

Index (NCIC III); Board of Probation Criminal History for Massachusetts (BOP); and the Interstate BOP. (Ex. 8; Duplessis Testimony).

*Review of Appellant's CORI*

8. The Appellant's BOP demonstrated that the Appellant had several arraignments and two abuse prevention orders issued against him. (Ex. 5).
9. On December 5, 2016, an Abuse Prevention Order (restraining order) was issued against the Appellant by the Lynn District Court. The order was issued based on an affidavit of "Ms. B" stating that the Appellant had widely disseminated inappropriate pictures of her on social media; had shared her telephone number with strangers; had called her from different numbers "day and night"; and, while he dated Ms. B, had threatened to kill her and tried to choke her. (Ex. 6, 9). The *ex parte* restraining order was in place for two weeks and was dismissed on December 20, 2016. (Id.)
10. The BOP shows that the Appellant was arraigned at Lynn District Court as follows:
  - 4/26/2016 Stalking/Following
  - 4/26/2016 Threatening
  - 6/7/2016 Intimidation
  - 12/7/2016 Threatening
  - 12/7/2016 Intimidation
  - 12/7/2016 ThreateningThese charges were dismissed. (Ex. 6; Appellant Testimony).
11. On July 22, 2015, the Appellant was arraigned for the crime of Larceny in Lynn District Court. This case was dismissed. (Ex. 6).

12. A second restraining order was issued against the Appellant on October 10, 2008 for actions involving the mother of the Appellant's son. This order was extended for one year. (Ex. 6; Appellant Testimony). The Appellant did not contest the extension of the order. (Appellant Testimony).
13. In 2002 and 2005, the Appellant was arraigned in Holyoke District Court on minor misdemeanor charges. The 2002 case was dismissed after being continued without a finding and the 2005 charge was dismissed. (Ex. 6; Appellant Testimony).

*DOC Review of Application*

14. On March 19, 2019, the DOC sent the Appellant a letter stating that the DOC had reviewed the Appellant's Criminal Record Offender Information (CORI) and that "based on the review, the DOC **may** be inclined to make an adverse decision." The letter explained how the Appellant could get information about correcting his CORI and provided contact information at the DOC if the Appellant had questions. (Ex. 5)(emphasis in original).
15. Mr. Duplessis conducted a home visit with the Appellant on April 26, 2019. He spoke with the Appellant about the job responsibilities, possible assignment locations, and the Appellant's history on the BOP. At that interview, the Appellant said that the restraining order and charges against him were issued in April, June, and December of 2016 stemmed from incidents with a former girlfriend that were ultimately dismissed. He alleged that the 2016 larceny charge was the result of his former girlfriend believing he had stolen her phone and alleged that she had later found the phone at home. The Appellant asserted that the restraining order of December 2016 was not renewed because, according to him, the allegations against him were false; when the Appellant showed the judge that his former girlfriend had been contacting him on social media, the judge did not extend the order.

Further, the Appellant alleged to Mr. Dupressis that the 2016 criminal charges against him were based on allegations of a “a female acquaintance that was mentally unstable”. (Ex. 8; Duplessis Testimony, Appellant Testimony).

16. Mr. Duplessis contacted the Appellant’s reference, who described the Appellant as “very well liked,” “dependable and good with customers,” and a “hard worker, dependable, followed direction well, “and is a “very motivated and a good person.” Another reference stated that the Appellant was a good communicator and that he would be eligible for re-hire. (Ex. 6; Duplessis Testimony).
17. At the end of the background investigation report, Mr. Duplessis wrote that the positive aspects of the Appellant’s application included professional and employment references and that the Appellant speaks and understands Spanish as a second language. The negative aspects listed on the report were the Appellant’s history of involvement with the criminal justice system, no experience with shift work, and no valid Massachusetts Firearms Identification Card or License to Carry. (Ex. 6; Duplessis Testimony).
18. Mr. Jalette, who has worked for the DOC since 2013 and is now the Supervising Identification Agent, reviews candidates’ files and background investigation reports. He looks for qualities that show the applicants are suitable for work in the DOC environment. Undesirable traits include poor work history, a pattern of criminal history, and recent criminal history. Because the DOC is a paramilitary organization, he assesses candidates for their suitability to work in a stressful environment. When hiring, he looks at “the totality of the circumstances.” (Jalette Testimony).
19. When reviewing the Appellant’s file, Mr. Jalette was concerned about the Appellant’s BOP, specifically, the pattern of behavior shown by two restraining orders. He noted that the

behavior causing the restraining orders could continue into the Appellant's employment as a CO I. He was also concerned that one of the restraining orders had occurred fairly recently. In addition, that the crimes with which the Appellant was charged related to domestic problems were problematic for the Appellant's candidacy. (Jalette Testimony).

20. The next stage of review included review of the Appellant's materials by the DOC Commissioner, the Director of Human Resources, and Mr. Jalette, all of whom were continuously present at the meeting to review candidates. The Commissioner reviewed all material in each candidate's file, including the positive and negative aspects.<sup>4</sup> (Jalette Testimony).
21. The DOC decided to bypass the Appellant. In the non-consideration letter sent to the Appellant and dated August 7, 2019, the DOC wrote that the Appellant was not considered for the July 7, 2019 Academy because he had failed the background investigation:

“Background Investigation: Failed Background due to your Criminal Offender Record Information (CORI) specifically 2 restraining orders that expired in 2016 and 2009, adult arraignments for Threatening (2 counts) Intimidation (2 counts), Intimidation (2 counts), and stalking; additionally in 2015 you were arraigned for larceny, . . .” [and the letter went on to recount that the Appellant had been arraigned twice before, in 2002 and 2005, on minor misdemeanor charges].

### *Legal Standard*

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, “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

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<sup>4</sup> Three DOC Deputy Commissioners were present for some, but not all of the meeting. (Jalette Testimony).

Dep't v. Civil Service Comm'n, 483 Mass. 461, 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, 243 (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” and upon “failure of proof by the [appointing authority], the commission has the power to reverse the [bypass] decision.”). 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 that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, *rev. den.*, 428 Mass. 1102 (1997). The commission “. . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority”; however, 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.” *Id.* *See also* Town of Brookline v. Alston, 487 Mass. 278 (2021)(analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law). That said, “[i]t is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington v. McCarthy, 60 Mass. App. Ct. 914, 915 (2004).



In its recent decision in Boston Police v. Civ. Serv. Comm'n and Gannon, 483 Mass. 461 (2019), the SJC confirmed that an Appointing Authority must prove, by a preponderance of the evidence, that the Appellant actually engaged in the alleged misconduct used as a reason for bypass. However, the Court also *reaffirmed* that, once that burden of proof regarding the prior misconduct has been satisfied, it is for the appointing authority, not the commission, to determine whether the appointing authority is willing to risk hiring the applicant.

### *Analysis*

The DOC has established by the preponderance of the evidence that it had reasonable justification to bypass the Appellant for appointment as an CO I based on a failed background investigation. The record supports the DOC's conclusion that the Appellant's multiple arraignments and two restraining orders issued against him demonstrate patterns of behavior the DOC determines to be undesirable in a DOC employee.

While under the age of twenty-one (21), the Appellant was twice charged with petty crimes. One charge resulted in dismissal after a CWOFF and one charge, three years later, was dismissed outright. The first of the two restraining orders against the Appellant was issued in 2008 and was in effect for a full year. The Appellant's second restraining order was issued on December 5, 2016, approximately two years prior to his application at the DOC. This order was based on an affidavit from a former girlfriend who indicated that the Appellant physically abused her, called her "day and night," disseminated photographs of her on social media, and publicly shared her telephone number. The Appellant asserts that the restraining order issued against him in 2016 was the result of the complaints of an "unstable" girlfriend and that the restraining order was not continued beyond the initial temporary order. In addition, the Appellant asserts that the criminal charges against him based on his girlfriend's complaints were all dismissed.

The timing of the charges throughout 2016 cast doubt on the veracity of the Appellant's assertions regarding the criminal charges against him and the restraining order in 2016. Specifically, the Appellant said that his arraignment for Larceny in July 2015 stemmed from Ms. B's false accusation that he stole her phone. This means that the Appellant's conduct towards Ms. B continued from at least July 2015 through April 2016, when he was charged with Stalking and Intimidation, and into June 2016, when he was charged with Intimidation. The Appellant's conduct toward Ms. B. continued into December 2016, when the restraining order and charges of Threatening and Intimidation were issued against him. Thus, even though the Appellant alleges that he was not at fault for the charges and restraining orders issued against him and that the fault lies with Ms. B because she was "unstable," his own misconduct toward her lasted over a year and involved several serious charges resulting in multiple court appearances. This personal history calls into question the Appellant's actions involving his relationships.

It is true that the criminal charges, except the one minor charge in 2002, were dismissed outright. But in certain instances, such misconduct nevertheless supports a law enforcement employer's decision to bypass a candidate. *See Louis v. Department of Correction*, 27 MCSR 31 (2014) (DOC's decision to bypass the Appellant for CO I was justified in light of the Appellant's history of criminal arraignments and restraining orders, despite the absence of any convictions); *Rosa v. Department of Correction*, 24 MCSR 143 (2011)(although the Appellant had no record of criminal convictions, DOC's decision to bypass him was justified based on his two arrests for assault and battery and for discipline while in the military); and *Soares v. Brockton Police Department*, 14 MCSR 109 (2001) (Brockton Police Department did not err in bypassing the Appellant for police officer based on a record of criminal violations and motor

vehicle infractions merely because various court proceedings ended in dismissal or continuances).

In this case, the DOC conducted a thorough review of the Appellant's application and background, and followed the applicable law regarding criminal records, providing the candidate with written notice of his criminal records and an opportunity at his home interview to address his criminal record. As a result of its thorough review, DOC has established by a preponderance of the evidence that a judge, after a hearing, extended a restraining order against the Appellant for one year. That, coupled with a long list of criminal charges, justifies the bypass here.

*Conclusion*

For all of the above reasons, the Appellant's appeal under Docket No. G1-19-203 is hereby ***denied.***

Civil Service Commission

/s/ Cynthia Ittleman

Cynthia Ittleman  
Commissioner  
Civil Service Commission

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Tivnan, and Stein, Commissioners) on June 17, 2021.

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:  
Bradley Heard (Appellant)  
Joseph Santoro (for Respondent)