

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
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COLLEEN HEATH,
Appellant

v.

MASSACHUSETTS PAROLE BOARD,
Respondent

G2-06-140

Appellant's Attorney:

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Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Colleen Heath (hereafter "Heath" or "Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the Massachusetts Parole Board (hereafter "Appointing Authority" or "Parole Board") for bypassing her for promotional appointment to the position of Parole Officer A/B. A full

hearing was heard on December 20, 2007 at the offices of the Civil Service Commission. Three tapes were made of the hearing.

FINDINGS OF FACT:

Thirty-nine (39) joint exhibits were entered into evidence at the hearing. Based upon these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- George Valentgas, Deputy Chief of Field Services
- Leila Carver, Deputy Chief of Field Services

For the Appellant:

- Colleen Heath, Appellant

I make the following findings of fact:

1. In the spring of 2006, the Massachusetts Parole Board had eight (8) openings for the position of Parole Officer A/B. (Testimony of Valentgas, Exhibits 1 & 2)
2. On March 7, 2006, the Appellant's name appeared on the departmental promotional Certification No. 4380009 for the position of Parole Officer A/B. (Exhibits 1 and 3).
3. Only seven (7) people on the promotional Certification No. 4380009 signed as willing to accept the promotional appointment. (Exhibit 1).
4. Also on March 7, 2006, the names of other candidates for the position of Parole Officer A/B appeared on the open examination Certification No. 4380008. (Exhibit 2)
5. The Massachusetts Parole Board filled a total of eight (8) Parole Officer A/B positions from Certification Nos. 4380009 and 4380008. (Exhibits 1-4)
6. The Parole Board employed an interview panel as part of the evaluation process for the candidates. The interview panel consisted of Chief of Field Services Mike Brown, Deputy Chief of Field Services George Valentgas and Deputy Chief of Field Services Leila Carver. (Exhibit 5).
7. A total of seventeen (17) candidates were interviewed. (Exhibits 6 and 22).

8. The Appellant was on the promotional certified list, Certification No. 4380009. (Exhibit 1).
9. The Appellant had a score of 79 on her civil service examination and was ranked first on the promotional list Certification No. 4380009. (Exhibits 1-4).
10. The interview panel asked each candidate the same series of eight (8) questions. (Exhibit 5).
11. Each candidate was given a numerical value (one (1) through four (4)) for a series of four (4) categories, with one (1) being "below average," two (2) being "average," three (3) being "above average" and four (4) being "excellent." (Exhibit 5). The four (4) categories were "Education/Work Experience," "Problem Solving Skills/Judgment," "Interpersonal Skills," and "Initiative/Related Experience." (Exhibit 5). Within each category were a series of subcategories which included, among other things, overall work history, related work history, previous supervisory experience, response or thought pattern in answering questions, ability to deal with people, and desire to be a Field Parole Officer. (Exhibit 5).
12. The panel evaluated not only each candidate's response to the questions, but also the speed in response. Speed in answering was claimed to be important because it was believed that Field Parole Officers are often required to respond quickly to highly stressful, and even dangerous, situations. However the candidates were not given prior notice that speed in answering was a factor in evaluating there answers. No direct relationship between Speed of answering interview questions and actual correct response to a spontaneous situation was established. (Testimony of Valentgas)
13. At the conclusion of the interviews, each member of the interview panel arrived at his or her own numerical score for each subcategory for each candidate. The panel then averaged their scores or formed a "consensus score" for each subcategory and then added them to get a final overall interview evaluation score, for each candidate ("interview evaluation score"). (Testimony of Valentgas)
14. The interview evaluation scores of the seventeen (17) candidates ranged from fifty-five (55) down to thirty-three (33). Of all seventeen candidates interviewed, the Appellant was

- one of three to receive the lowest interview evaluation score of thirty-three (33). (Exhibit 6).
15. The panel selected two (2) candidates from the promotional Certification No. 4380009 for appointment who were ranked below the Appellant. Two other candidates on the promotional certification, both female, were not considered for appointment; one withdrew and the other was disqualified. (Exhibits 1 & 3, testimony of Valentgas).
 16. The other six (6) other candidates were selected for appointment from the open Certification No. 4380008. (Exhibit 4).
 17. All of the candidates who were chosen initially were male. After one applicant withdrew, Candidate Mary Aguilar was given the position. Female candidates were ranked 9th, 12th, 14th, 16th and 17th on their interview evaluation out of the 17 candidates interviewed. (Exhibit 6 Exhibit 22).
 18. Candidate Mary Aguilar was given a "2" for related work experience on her interview evaluation form, although she had over eighteen years experience in the military police, nuclear security and the police department. (Exhibit 28).
 19. The Appellant testified that in addition to her application, she attached to her application: her resume, copies of her Employee Performance Review Forms for six years from 1997 to 2006, and her Master's Thesis abstract. (Testimony of Appellant, Exhibits 16, 17 and 18).
 20. Chief Brown tried to summarize the panel's reasons for bypassing the Appellant in a memorandum to Maureen Walsh, Chairman of the Parole Board, and Donald Giancioppo, the Parole Board's Executive Director, as follows:

[T]his candidate ranked 15th out of the other candidates interviewed, candidate Heath as not prepared for this interview not familiar with the essential functions of a Field Parole Officer. (Exhibit 22).
 21. Chief Brown's memorandum explained that the panel selected and recommended for hire eight (8) candidates who had experience and "were able to demonstrate their understanding, ability, interest and willingness to perform the essential functions of a Field Parole Officer (FPO)." (Exhibit 22). Chief Brown's memorandum further noted that:

Field Parole Officers have vast authority in the community, carry an agency issued firearm, have domicile vehicle privileges and frequently work independently in challenging and dangerous environments. The selected candidates possessed superior problem solving skills, sound and tempered judgment as shown in their responses and thought pattern in answering questions relevant to the functions as an FPO and their background, experience and education are more appropriate for the requirements of the job. (Emphasis added) (Exhibit 22).

22. However, the claimed reasons for bypassing the Appellant omitted any specific claim regarding the ability, knowledge or skills that the Appellant lacked for the promotional position. The Appointing authority could have simply reviewed the Appellant's, resume and her past performance reviews, EPRS's and considered them in conjunction with the interview performance to make a substantive objective evaluation of this nine year employee. (Testimony and Exhibits, Exhibits 16, 17, & 22)
23. An employee in a promotional situation would reasonably expect his or her employer to review and incorporate past performance reviews (EPRS) in the process of evaluation for the promotion. Here, the Appellant actually provided copies of her past EPRS's with her application and the Parole Board had independent access to it, since they held her personnel file. However, the Board failed to review same in this evaluation process despite a statutory reference for it. See G.L. chapter 31, § 6A & 6B (Administrative notice, testimony, Exhibit 17)
24. Chief Brown's memorandum stated the reasons for the selection of other candidates were their "... superior problem solving skills, sound and tempered judgment" shown by their "responses and thought pattern in answering questions" and "their background, experience and education are more appropriate for the job." The Appellant with nine years experience as a Parole Officer, excellent EPRS's, other relevant experience, a Masters Degree in Applied Sociology and a Masters Thesis on Boston Street Gangs rebutted this bald assertion with objective and substantive evidence. (emphasis added) (Exhibits 16, 17, 18 & 22)
25. The reasons for the bypass were approved by Executive Director Donald Giancioppo on May 19, 2006. . Chief Brown's memorandum was then submitted to the Department of Correction's Human Resources Division and received on May 22, 2006. The hiring

packets including each candidate's job application and interview evaluation form also were submitted to the Department of Correction's Human Resources Division. (Exhibit 22)

26. On June 12, 2006, Alexandra McInnis, Director of Personnel for the Department of Correction's Division of Human Resources, sent a letter to the Appellant informing her that she was not selected for the position. (Exhibit 32).
27. The two candidates on the promotional list who bypassed the Appellant were candidates Scopa and Scott. However, Scott was not a Parole Board employee at the time of this promotion and evidence of his qualification to appear on this Departmental promotional certification, was not produced at this hearing. See G.L. chapter 31, § 8, 9 & 10 (Administrative notice, Exhibits 1, 3, 4 and testimony of Valentgas)
28. A representative for the personnel administrator, (HRD) of the Commonwealth did not appear at this Civil Service Commission hearing and no evidence was presented on behalf of HRD. (Exhibits and testimony)
29. Candidate Scopa's job application indicated that he had experience as a Transitional Parole Officer at the Massachusetts Parole Board, as a Quality Control Manager at Placewares, as a Groupworker/Supervisor at the Massachusetts Department of Youth Services and as an Assistant Classification Officer at the Hillsborough County Department of Correction. (Exhibit 7).
30. Candidate Scott's job application indicated that he was currently employed as a Police Officer with the Belchertown Police Department, previously as a Parole Officer I at the Massachusetts Parole Board, prior to that as an Armed Response Officer at the Yankee Rowe Nuclear Power Station, and as an SGT – Shift Supervisor at OSV in Sturbridge Village. (Exhibit 11).
31. The Appellant, Colleen Heath, has been employed by the Massachusetts Parole Board as a Parole Officer I since March of 1997. Her current assignment is at the Massachusetts Treatment Center for the Sexually Dangerous. She has previously been assigned to the Massachusetts Boot Camp, Massachusetts Alcohol and Substance Abuse Center and Old Colony Correctional Center. She also had a number of temporary assignments including MCI Cedar Junction and the Plymouth County House of Correction. Heath testified

- extensively on the duties that she performed as a Parole Officer and her desire to be promoted to the position of Parole Officer A/B. (Testimony of Appellant, Exhibits 15, 16, 17, 18)
32. The Appellant's resume states that she worked as a Program Specialist for the May Center from March 1996 to August 1996 (approximately 6 months) and did Relief Work for the Greentree Boys Program from November 1995 to February 1996 (approximately 4 months). The Appellant's resume indicates that she attended the University of Massachusetts at Boston from 1996-1999 and received a Master of Arts in Applied Sociology. Her abstract for her Master's Thesis covered Boston's gang activity. The Appellant's resume indicates that she attended Bridgewater State College from 1991 to 1995 and earned a Bachelor of Science in Sociology and Psychology. (Exhibit 16 & 18)
 33. Heath's 2005-2006 Employee Performance Review Form (EPRF) at the Parole Board stated that Ms. Heath's work performance over the past year was "exceptional." Other EPRF's call Heath an "asset" and a "pleasure" to work with. Heath indicated that she was never formally disciplined by an employer. (Exhibit 17, Testimony of Appellant)
 34. All of the Appellant's experience, performance and education show a demonstrated interest in the field of criminal justice. Prior to the Parole Board, Heath worked as a program specialist for the May Center which involved verbal conflict resolution and physical restraint of inmates. Prior to the May Center, Heath worked at the Greentree Boys Program as a relief worker. (Exhibit 16, 17 & 18, Testimony of Appellant)
 35. The interview panel gave the Appellant a score of four (4) for her Education and Training and a three (3) for her overall work history. However the panel did not consider the Appellant's background information, including: resume, EPRS's, education and Master's thesis on Boston gang violence, in this promotional appointment. The panel was also unaware that at the time, that the Appellant had just returned from family medical leave after having her second child. (Exhibit 21)
 36. Valentgas testified that Candidates Scopa and Scott received overall interview evaluation scores of fifty-four (54) and fifty (50) as compared to the Appellant's score of thirty-three (33). (Compare Exhibits 10, 14 with Exhibit 21).

37. Valentgas testified that Candidates Scopa and Scott gave superior interviews. (Compare Exhibits 10 and 14 with Exhibit 21). For example, both candidates who bypassed the Appellant on the promotional list received scores of four (4) for the subcategory of "Response or thought pattern in answering questions" (Exhibits 10 and 14), whereas the Appellant received only a two (2) for this subcategory (Exhibit 21).
38. Valentgas and Carver testified that the Appellant did not give an appropriate answer to the situation question. Specifically, Question No. 7 reads as follows:
- You conducted an unannounced home visit on a parolee you are supervising and came upon the following scenario: The front door to the residence is partially opened and you can hear loud voices and breaking glass from inside. You enter the residence and find your parolee in the kitchen with a choke hold on his girlfriend and a knife to her throat. What do you do. (Exhibits 5 and 21).
39. Valentgas testified that Chief Brown's notes from the interview with the Appellant stated as follows with respect to Question No. 7: "Call on my radio to let somebody know what's going on. Use a verbal approach. I would want to be aggressive but not threatening. If all else failed and he started cutting her I don't know what I would do, because I don't know what I would be allowed to do. . . ." (Exhibit 19).
40. Valentgas testified that his notes read as follows with respect to the Appellant's response to Question No. 7: "Call on radio – let others know – verbal intervention – look for assistance – try to physically intervene – if necessary. Need to know appropriate protocol." (Exhibit 20).
41. Carver testified that her notes read as follows with respect to the Appellant's response to Question No. 7: "Call for help / verbal approach / physically intervene only if he starts to cut the victim. Aggressive approach but verbally attempt to calm parolee. Physical attack may get involved somehow however, training would help interviewee to respond accordingly." (Exhibit 31).
42. Both Valentgas and Carver testified that physically intervening in the above referenced scenario would not be an appropriate response to the situation because it could put the Parole Officer and the victim in even greater danger. They further testified that the appropriate response would be to call for back up, intervene from a distance, along with

trying to deescalate the situation. This is essentially the same answer that the Appellant gave. Valentgas admitted that the Appellant gave the same answer to this question as candidate Scopa, who bypassed her for promotion.(Testimony of Appellant, Valentgas and Carver)

43. Valentgas testified that the other candidates hired from the open Certification No. 4380008 had better overall job experience than the Appellant and performed better in their interviews than did the Appellant. (See Exhibits 23 through 28).
44. Both Valentgas and Carver testified that they did not see the Appellant's resume and did not consider it in evaluating her qualifications. However they did see the other candidates' resumes and considered them in their evaluations. They did not see the Appellant's past EPRS's and therefore did not consider them. They were not aware of the Appellant's Masters Thesis and therefore did not consider it. Valentgas had not been familiar with the Appellant prior to the interview yet had been familiar with some of the other candidates including Scopa. Carver said that Scott brought a letter of recommendation to the interview and that letter was considered in the evaluation process. Valentgas thought that Scopa and Scott "demonstrated interest, excitement and enthusiasm for the job" They were not aware that the Appellant had returned from family medical leave just three months prior to the interview. (Testimony of Valentgas and Carter)
45. Carver believed that Scott "felt the importance of the job he was applying for" and was very impressed with Scott's past experience, education (M.A. in criminal justice) and holding a license to carry a firearm. However, Carver admitted that possessing a license to carry or an FID card were not requirements for the job. She also admitted that considering the other candidates resumes while not the Appellant's was a mistake. She also admitted that at the interview, she believed the Appellant had only 7 years experience as a Parole Officer I when she actually had 9 years experience. Under cross-examination, Carter admitted that the Appellant's experience and education was at least equal to Scott's. (Testimony of Carver)

46. Both Carter and Valentgas emphasized that the Appellant's appearance or dress at the interview was "casual" or "less than casual" and earned her a low score of "1". (Testimony of Valentgas and Carter)
47. The Appellant testified at this Commission hearing wearing a dress blouse and slacks, which she testified is the exact same outfit she wore to the interview. I find that her outfit is appropriate for a business interview. Her demeanor is that of a confident well educated professional, reflective of her experience and educational credentials. She did not exaggerate or embellish her answers. She spoke and read quickly while testifying, her answers were appropriate and responsive. She looked directly at the hearing officer while testifying. She responded appropriately under cross-examination. She believed her interview went well and thought that she received positive responses from the interview panel. She was asked during the interview if she was then working part-time and she answered – Yes. She was asked if she would be willing to work full-time and she again answered – Yes, I would be willing to work full-time. She was told that the job was "24/7" and she answered that it would be "No problem". She told the panel that she previously had an FID card and could get it back if it were required for the job. I find her demeanor to be appropriate and I find her to be a credible witness. (Exhibits and demeanor and testimony of Appellant)
48. Heath's interview was evaluated pursuant to an interview application form with eight standard questions. Heath was given an overall low total score of 33, which ranked 15 out of the 17 candidates interviewed. On a ranking scale of 1 as below average and 4 as excellent. Candidate Heath was given: a "2" on her related work experience, a "1" on her Appearance, a "2" on Poise, a "1" on previous supervisory experience, a "1" on Affiliations/Memberships and a "1" on Military History/Training. However, Heath was given a "3", above average, on her understanding of the job responsibilities. This score alone appears to contradict the Parole Board's stated reasons for bypass (Exhibits 2, 5, 21, 34).

49. According to Valentgas' interview notes and his testimony, Heath listed seven functions of a parole officer in response to question #2. In response to question #7, a stress situation or scenario question, Heath responded that she would radio for back-up and verbally intervene. (Exhibit 20).
50. Candidates from the promotional list and candidates from the open competitive lists were ranked together on interview performance. The rankings were intermingled and no preference was given to departmental promotional candidates. (Exhibit 6).
51. All of the candidates who were chosen initially were male. After one applicant withdrew, Candidate Mary Aguilar was given the position. (Exhibit 22). Female candidates were ranked 9th, 12th, 14th, 16th and 17th on their interview evaluation out of the 17 candidates interviewed. (Exhibit 6).
52. Anthony Scopa a bypassing candidate had six and half years experience as a parole officer, and was working on a bachelor's degree. (Exhibit 7). For comparison, Appellant had nine years experience as a parole officer and had a Master's degree. (Exhibit 15-16).
53. On their Interview Application forms, Scopa was given a "4" for related work experience and a "4" for work history, while Appellant was given a "2" and a "3" respectively. (Exhibits 10, 21). Prior to the Parole Board, Scopa had been a quality control manager for Placewares and his responsibilities included shipping/receiving, data entry and customer service. (Exhibit 7).
54. According to Valentgas' interview notes, Scopa listed five functions of a parole officer in response to question #2. In response to question #7, a situation question, Scopa responded that he would call for back-up and give verbal instructions. (Exhibit 20). Scopa was given a 54 on his interview evaluation ranking.

55. Six individuals from the open competitive certification were also hired by the Parole Board, again bypassing the Appellant. Their interview evaluation forms and applications were submitted as exhibits. (Exhibits 23 through 28).
56. Candidate Mary Aguilar was given a “2” for related work experience on her interview evaluation form, although she had over eighteen years experience in the military police, nuclear security and the police department. (Exhibit 28).
57. Candidate Andrew Vignali was also given a “2” for related work experience and his experience included work as a mail clerk and a package sorter. (Exhibit 27)
58. Leila Carver, Deputy Chief of Field Services, testified that she did not consider Heath’s entire hiring package, although she did consider other candidates’ packages. Appellant testified that she submitted her exhibits 16 through 19 with her application. The application itself also shows that Appellant did submit her EPRS’s, resume and letters of recommendation. (Testimony of Appellant, Page 4 of Exhibit 34).

CONCLUSION:

In reviewing hiring and promotional decisions, The Commission seeks to ensure that basic merit principles prevail in the selection process. Chapter 31 defines “basic merit principles” as requiring that employees be selected and advanced on the basis of their relative ability, knowledge and skills, that they are assured fair and equal treatment in all aspects of the personnel administration, and that they are protected from arbitrary and capricious actions. The main method by which the Commission and the Human Resources Division (HRD) ensure the application of basic merit principles in the hiring and promotional process is through the use of civil service exams and eligibility lists.

The eligibility lists are compiled, except for preferences, mainly on the basis of civil service examination scores. However, the competing candidates must first “pass” the exam before they receive consideration. The personnel administrator, prior to the exam, determines the entry requirements for qualification to take the exam and the passing requirement for the exam. The candidates also receive credit for their relevant training and experience. This credit is calculated by HRD and added on to the candidate’s exam score for a final civil service score.

The role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was *reasonable justification* for the action taken by the appointing authority.” *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997) (emphasis added). Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928). *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 214 (1971). G.L. c. 31, §. 2(b) requires that bypass cases be determined by a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991). ; G.L. c. 31, § 43. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. *City of Cambridge*, 43 Mass. App. Ct. at 304. In this case, the bypass of the Appellant was not based on adequate reasons or supported by credible evidence and violated

basic merit principles since the Appellant was not treated equally and her bypass was arbitrary and capricious. See Thomas v. City of Westfield, Case No. G-416S (1999)

The Appellant has shown that the Appointing Authority's actions were neither weighed by an "unprejudiced mind" nor guided by the "correct rules of law." *Selectmen of Wakefield, supra*. Mistakes in applying the rules of law and a bias in the interview process have rendered the Appointing Authority's actions arbitrary and unreasonable. The Appointing Authority here made no effort to properly identify the Appellant and acquaint themselves with her past performance as a nine year employee. They gave higher evaluation scores to competing male candidates with less experience and less educational credentials. Accordingly, the Appointing Authority has not met its burden to prove a reasonable justification for the by-pass of Appellant.

First of all, the Appointing Authority did not follow the correct rules of law in bypassing Appellant. A bypass occurs when an appointing authority appoints a person whose name appears lower on a certification than that of a person who is not appointed. *Bielawski v. Personnel Administrator of the Division of Personnel Administration*, 422 Mass. 459, 460. In the present case, Heath was not awarded the position of Parole Officer A/B despite the fact that her civil service examination score of 79 placed her first in the promotional Civil Service Score rankings for the position. Two individuals from the promotional list with a lower score, and six individuals from the Open Competitive List were hired.

According to M.G.L. c. 31 §27:

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 is not the highest. Such an appointment of a person whose name was not highest shall be effective only when such statement of reasons has been received

by the administrator. The administrator shall make such statement available for public inspection at the office of the department. M.G.L. c. 31 § 27.

The Personnel Administration Rules state:

Such statement shall indicate all reasons for selection or bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission. (PAR 8(3)).

This statute has been interpreted to mean that the administrator must accept and approve the statement of reasons, rather than simply receive it. *Thomas MacHenry v. Civil Service Commission*, 40 Mass. App. Ct. 632, 635.

The statement of reasons for not offering Heath the promotion states in its entirety: “Colleen Heath, (Civil Service Score of 79) was ranked 15th out of other candidates interviewed, candidate Heath was not prepared for this interview and not familiar with the essential functions of a Field Parole officer.” (Exhibit 22). Relying solely on this generalized statement, the Appointing Authority has not have shown that it justifiably bypassed Heath.

Substantive evidence received in evidence at the hearing is contrary to the Appointing Authority’s statement of reasons. According to Valentgas’ interview notes and his testimony, Heath listed seven functions of a parole officer in response to question #2. Carver’s testimony and notes also show that Heath was familiar with the essential functions of a parole officer. (Exhibit 31). On her interview evaluation form, Heath was given a “3,” meaning above average on her understanding of the job responsibilities. (Exhibit 21). Applying Personnel Administration Rule 8(3) to the facts in this case, the Appointing Authority cannot have met its burden in this case.

Furthermore, pursuant to PAR 8(3) the Appointing Authority should be barred from introducing any other reasons for bypassing the Appellant which were not cited in the statement of reasons. None of the reasons given by the Appointing Authority in its Pretrial Memorandum were cited in the statement and are not properly before the Commissioner.

Secondly, the Appointing Authority did not appear to follow the correct rules of law with regard to the civil service certifications. The Personnel Administration Rule states:

PAR.07 Civil Service Eligible Lists

- (3) When eligible lists for the same position are established as the result of open competitive and promotional examinations, names shall be certified first from the promotional examination, second from the reemployment list if the administrator has established such a list pursuant to M.G.L. c. 31, § 40, third from the list established from the open competitive examination.

In this case, the Appointing Authority intermingled the promotional and open competitive lists in violation of the above rule. Rather than being first on the promotional list based on her civil service examination score, Appellant became ninth on the intermingled list. (Exhibit 6). The intent of the rule is to promote hiring from within an agency first: the Appointing Authority's actions are to the contrary.

Finally, the evidence presented establishes a bias in the interviewing process that is not the result of an "unprejudiced mind." The rankings of the candidates were arbitrary and presented a bias against women. All of the candidates who were chosen initially were male. Female candidates were ranked 9th, 12th, 14th, 16th and 17th on their interview evaluation out of the 17 candidates interviewed. (Exhibit 6).

Candidate Mary Aguilar was given a "2" for related work experience on her interview evaluation form, although she had over eighteen years experience in the military police, nuclear security and the police department. (Exhibit 28). Candidate Andrew Vignali was also given a

“2” for related work experience and his experience included work as a mail clerk and a package sorter. (Exhibit 27). These rankings are incomparable.

Candidate Anthony Scopa had six and half years experience as a parole officer, and was working on a bachelor’s degree, while Appellant had nine years experience as a parole officer and already had a Master’s degree. On their Interview Application forms, Scopa was given a “4” for related work experience and a “4” for work history, while Appellant was given a “2” and a “3” respectively. (Exhibits 10, 21). Prior to the Parole Board, Scopa had been a quality control manager for Placewares and his responsibilities included shipping/receiving, data entry and customer service. (Exhibit 7). Yet, Scopa was ranked and selected over the Appellant.

Heath gave the same or a similar answer to the “stress or scenario question” that the bypassing male candidates gave but received a lower score. It appears as if the panel believed that only a male could properly address that question. Heath received a below average score of “1” for military history/training, a subcategory which probably favors males. Heath also received a below average score of “1” for “appearance” and an average score of “2” for “poise.” All of the male candidates received higher marks for appearance. It appears that the Panel preferred candidates in men’s clothing. The Appellant appeared and testified at the Commission hearing dressed in the identical outfit she wore to the interview and this hearing officer found that outfit to be appropriate for a business interview.

The Appellant testified that during her interview she was asked if she would be willing to work full time, and she replied that she was. It is noted that the Appellant was on maternity leave during 2006 and had two young children. However, her testimony that she informed the interview panel that she was willing to work full time to advance her career was undisputed and the inquiry should go no further. Any preconceptions or stereotypes otherwise about women or

young mothers are not appropriate and violate equal employment laws. *See e.g., Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (finding gender stereotypes violate of Title VII).

Both George Valentgas and Leila Carver, panel members, testified that they did not consider Heath's entire application package, but did consider the entire packages of the other candidates. Appellant testified that she submitted her Joint Exhibits 16-19 with her application. The application itself also shows that Appellant did submit her evaluations and letters of recommendation. (Page 4 of Exhibit 34).

For the foregoing reasons, the stated reasons for bypass submitted by the Parole Board and approved by the HRD are not sufficiently established, based on a preponderance of the evidence as presented. Accordingly, the Appointing Authority did not have a reasonable justification for bypassing Appellant for the Parole Officer A/B appointment. Therefore, the appeal on Docket No. G2-06-140 is *allowed*.

It is further ordered that, pursuant to the powers inherent in Chapter 534 of the Acts of 1976, as amended by Chapter 310 of the Acts and Resolves of 1993, the Commission hereby grants equitable relief to the Appellant and orders HRD to place the Appellant's name at the top of the existing and/or next certification requested by the Parole Board, for the position of Parole Officer A/B for such a time that she shall receive at least one opportunity for consideration. Further, should she be promoted, Colleen Heath's seniority date, for civil service purposes only, shall be established retroactive to the date of this bypass.

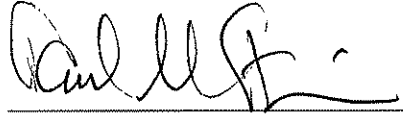
Civil Service Commission

A handwritten signature in black ink, appearing to read "Daniel M. Henderson", is written over a horizontal line.

Daniel M. Henderson,
Commissioner

By vote of the Civil Service Commission (Henderson, Marquis, Stein and Taylor, Commissioners); Bowman absent on September 11, 2008.

A true record. Attest:

A handwritten signature in dark ink, appearing to be "Paul H. F.", written over a horizontal line.

Commissioner

A motion for reconsideration may be filed by either party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Renee J. Bushey, Atty.

Heather E. Hall, Atty.

John Marra, Atty. HRD