

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MARION HEATH,
Appellant

v.

G2-09-313

DEPARTMENT OF
TRANSITIONAL ASSISTANCE,
Respondent

Appellant's Attorney:

Pro Se
Marion Heath

[REDACTED]

Respondent's Attorney:

Daniel LePage
Assistant General Counsel
Department of Transitional
Assistance
600 Washington St., 4th Floor
Boston, MA 02111

Commissioner:

Christopher C. Bowman

DECISION

The Appellant, Marion Heath (hereinafter "Heath" or "Appellant"), pursuant to G.L. c. 31, § 2(b), is appealing her non-selection for the promotion to Benefits Eligibility Referral Social Worker C (hereinafter "BERS C") at the Brockton Call Center by the Department of Transitional Assistance (hereinafter "Department" or "Appointing Authority").

The appeal was filed with the Civil Service Commission (hereinafter “Commission”) on July 22, 2009. A pre-hearing conference was held on September 15, 2009. The Appellant filed a Motion for Summary Decision on October 23, 2009 and the Department filed an Opposition to Motion for Summary Decision on November 20, 2009. A hearing on the motions was held on January 4, 2010, and summary decision was denied. A full hearing was held on March 11, 2010 at the Civil Service Commission. Two (2) of the witnesses, Lilian Romero and Darlene Hines, were sequestered. The hearing was digitally recorded. Post-hearing briefs were submitted by the parties.

Findings of Fact

Twenty-eight (28) exhibits were entered into evidence at the hearing (Appointing Authority Exhibits 1-3 and Appellant Exhibits 1-25. Based on the documents submitted and the testimony of the following witnesses:

For the Appointing Authority:

- Lilian Romero, Regional Director, Southern Region, Department of Transitional Assistance;
- Darlene Hines, Director of Centralized Eligibility and Processing Unit, Department of Transitional Assistance;

For the Appellant:

- Maureen Martin;
- Marion Heath, Appellant

I make the following findings of fact:

1. The Appellant is a permanent civil service employee in the position of Benefits Eligibility Referral Social Worker A/B (“BERS A/B”) at the Plymouth office of the Department of Transitional Assistance. She was made permanent after passing a civil service exam. The Appellant has been employed by the Department for twenty-five

(25) years, and has worked in the Plymouth office for the past five (5) years. Prior to working for the Department, the Appellant worked for the Department of Social Services for five (5) years. (Testimony of Appellant; Appellant Exhibits 2 & 4)

2. The Appellant currently works in the Department's Food Stamp Program (now referred to as "SNAP"). Her responsibilities include creating RFAs, processing new food stamp applications, customer service, acting as a liaison within the community, daily maintenance on cases, and compiling statistics. She is assigned her own caseload of approximately 800 cases that she manages from intake through closing of the case. As part of her case management duties, she makes determinations regarding eligibility for food stamps, and monitors clients for continuing eligibility. The Appellant's Director has chosen her for two (2) outreach positions; one with the Plymouth Housing Authority, and the other with WIC, a low-income food assistance program for needy young mothers. (Testimony of Appellant)
3. On April 6, 2009, the Department posted a promotional opportunity for internal candidates for the position of BERS C at the Brockton Call Center, with the functional title of Supervisor. (Appointing Authority Exhibit 1)
4. The Appellant applied for the BERS C position at the Brockton Call Center on April 7, 2009 by submitting a cover letter, resume, and her most recent EPRS. (Testimony of Appellant; Appellant Exhibit 2)
5. Nine (9) candidates applied for the position and all were interviewed, including the Appellant. (Testimony of Appellant; Appellant Exhibit 6)
6. The interviews were conducted by a panel that included Lilian Romero, Regional Director of the Southern Region; Marissa Cutts, Director of Brockton TAO; and

Darlene Hines, Acting Assistant Director of Brockton TAO.¹ (Testimony of Romero; Testimony of Hines; Appellant Exhibit 6)

7. Lilian Romero testified on behalf of the Department. She has been the Regional Director of the Southern Region for the Department for approximately two (2) years and seven (7) months. Prior to this, she was Assistant Director for the Department of Rental Assistance for Subsidized Programs for the Metro Boston Health Partnership. She was with this agency for approximately seventeen (17) years, and in the Assistant Director position for a little over two (2) years. Romero was a credible witness, with a fairly good recall of the interviews that were conducted for the BERS C position. (Testimony of Romero)
8. The interview panel followed the hiring procedures that were provided by the Human Resources department of the Executive Office of Health and Human Services (hereinafter “EOHHS”). The practice is for EOHHS to handle the job posting, check the submitted resumes for minimum requirements, and forward the hiring package to the interview panel. The package provided by EOHHS also included specific questions for the panel to ask the applicants during the interviews. Based on the answers to the interview questions, the panel was to complete a form entitled “Interview Assessment,” in which they were to answer questions about each candidate’s demonstrated ability to do the job and rank the candidates in various categories from one (1) to five (5), with a score of “1” being the best and “5” being the worst. (Testimony of Romero; Appointing Authority Exhibit 3; Appellant Exhibit 9)

¹ At the time of the Commission hearing, Ms. Hines was no longer employed at Brockton; her current position is the Director of the Centralized Eligibility Processing Unit in Boston.

9. The eight (8) categories in which the panel scored the candidates on the Interview Assessment were: 1) Communication/Interpersonal skills; 2) Adaptability; 3) Relevant Education/Work Experience; 4) Commitment/Motivation/Initiative; 5) Organizational Skill; 6) Ability to Perform Job Function; 7) Managing Diversity/Diversity Awareness; and 8) Supervisory/Management Skill. The documents show that each interviewer was to complete her own Interview Assessment, and then a final Interview Assessment was completed for each candidate, which appears to summarize the interviewers' individual assessments. At the end of the Interview Assessment form, the panel answered whether they were recommending the candidate for the position. (Testimony of Romero; Appointing Authority Exhibit 3)
10. The Appellant received a total score of "26" on the Interview Assessment. The interview panel did not recommend her for the position. (Testimony of Romero; Appointing Authority Exhibit 3; Appellant Exhibit 6)
11. The selected candidate, Samuel Rodriguez (hereinafter "Rodriguez") received a total score of "9," the best score of all the candidates. The best score a candidate could have received was an "8." (Testimony of Romero; Appellant Exhibit 20).
12. Rodriguez does not have permanent civil service status. (Stipulation of Department)
13. Romero recommended Rodriguez for the position by memo to Lorraine Woodson, Civil Rights Manager, on June 15, 2009. Romero stated that "[a]fter interviewing and assessing nine (9) very qualified candidates for the position of BERS C, Samuel Rodriguez has been selected as our recommendation for the supervisor position for the Brockton Call Center TAO." Romero testified that this was a form letter and is

the same letter used for other promotions. Romero signed the letter, and she acknowledged in her testimony that the information within the letter could have been changed, such as the number of qualified candidates that were interviewed.

(Testimony of Romero; Appellant Exhibit 6)

14. The Appellant was informed of her non-selection for the position by letter dated June 25, 2009 from Marissa Cutts. In the letter, it was stated that the Department interviewed “several well qualified candidates for the position.” The reasons checked off on the Appellant’s Non-Selection Form were “Ability to do the job” and the sub-category, “Interview.” (Appellant Exhibit 5)

15. Romero testified that she knows the Appellant because she is currently a BERS A/B at the Plymouth office. (Testimony of Romero)

16. Romero testified that the qualities the interview team were looking for in a candidate for the position included: 1) knowledge of the relevant regulations; 2) ability to mentor and be a coach to the staff; 3) ability to oversee three (3) to four (4) members of the team; 4) demonstrated ability to anticipate and solve problems; and 5) demonstrated knowledge of the program. (Testimony of Romero)

17. In Category 1 of the Interview Assessment, “Communication/Interpersonal Skills,” the Appellant received a “2.” The comments indicate that she “had generally good answers to interview questions,” and Romero testified that most of her answers were “really good.” (Testimony of Romero, Appointing Authority Exhibit 3)

18. In Category 3, “Relevant Education/Work Experience,” the Appellant received a “2.” The comments on the Interview Assessment state that she “has attended good training courses. Long history in social work – doing it since 1980.” In explaining why the

Appellant received a “2” in this category while other candidates received a “1,”

Romero testified that the scores on the Interview Assessment are based on answers to all of the questions, not just one question, and other candidates answered the questions differently. (Testimony of Romero; Appointing Authority Exhibit 3)

19. In Category 6, “Adaptability,” the Appellant received a “4.” The comments on the Interview Assessment in this category state, “mentioned had no weaknesses – demonstrates little room for growth. Gave an example of how to get co-workers attention in a meeting she sat underneath the table. She felt that was a way to communicate with co-workers who she felt were talking about her while she was in the room during a meeting while working in Brockton TAO in past.” Regarding this comment, Romero recalled that after being asked an interview question, the Appellant gave an example of an incident that occurred when she worked at the Brockton office and the staff had difficulty with the fact that she was part-time. At a group meeting, the staff members were whispering about the Appellant, so she went under the table and said, “now you can talk about me because I’m no longer in the room.” Romero testified that she was in shock after hearing this story. (Testimony of Romero; Appointing Authority Exhibit 3)

20. In Category 8 of the Interview Assessment, “Supervisory/Management Skills,” the Appellant received a “4.” Romero testified that this was an important category, and not a good score. The comments on the Interview Assessment state “didn’t discuss during interview.” (Testimony of Romero; Appointing Authority Exhibit 3)

21. Romero testified that following the interviews, the panel discussed each candidate. When discussing the Appellant, they focused on her story regarding the meeting with

co-workers where she got under the table. Romero testified that although most of the Appellant's answers were good, she changed her assessment of Appellant after this story. Romero testified that it did not display that the Appellant could handle certain stressors and a supervisor in a call center has to be able to handle stress every day.

(Testimony of Romero)

22. Darlene Hines (hereinafter, "Hines") testified on behalf of the Department. She is currently the Director of the Centralized Eligibility Processing Unit of the Department at 600 Washington Street in Boston, a position she has been in since February 2010. Prior to this, she was the Acting Assistant Director in Brockton for approximately one and one-half (1 ½) years, and prior to that, she was the Director of the Dudley office. She has been employed by the Department for approximately thirty (30) years. For the reasons more specifically detailed below, I do not find Hines to be credible with regard to her relationship with Rodriguez, the selected candidate. In other areas, Hines's memory of the interview does not appear to be as strong as Romero's, but for the most part, her testimony of Appellant's responses at the interview are consistent with Romero's. (Testimony of Hines)

23. Hines did not know Appellant prior to the interview. (Testimony of Hines)

24. Hines recalled that at the Appellant's interview, the Appellant discussed an incident at the Brockton office where staff members were talking about her, so she got under the table so they could continue to talk about her. Hines testified that she was shocked because this was not what she expected to hear and it was an out of the ordinary reaction. She testified that nobody should act that way, especially someone in a leadership position. (Testimony of Hines; Appointing Authority Exhibit 3)

25. Regarding Question # 2 of the interview, which was “[w]hy do you want to be a supervisor?”, Hines testified that she was looking for more conversation as to why the Appellant was looking to advance, not just for financial gain. (Testimony of Hines; Appointing Authority Exhibit 3)
26. Hines testified that Appellant answered Question # 3, “[w]hat areas do you need to improve in order to become a good supervisor?” by saying that she had no weaknesses, but did find time management a challenge and was working on it. Hines testified that she drew from this that Appellant had no room for growth. (Testimony of Hines; Appointing Authority Exhibit 3)
27. Hines did not review the Appellant’s resume or EPRS. (Testimony of Hines)
28. Hines testified that she described the Appellant as passive-aggressive in Category 2, “Adaptability,” of her individual Interview Assessment because the Appellant was mild-mannered and meek. Hines testified that she does not know whether “passive-aggressive” is a mental health diagnosis, she does not have a degree in mental health, and she meant the term as an assessment of how the Appellant presented herself. (Testimony of Hines; Appointing Authority Exhibit 3)
29. Regarding Category 5, “Organizational Skill,” in which she scored the Appellant a “4,” Hines did not recall specific examples of organization that the Appellant provided at the interview. (Testimony of Hines; Appointing Authority Exhibit 3)
30. In Category 7, “Managing Diversity/Diversity Awareness,” Appellant was scored a “3.” Hines testified that the score was average, and she was looking for someone to go “above and beyond.” Hines did not recall how the Appellant related her personal experiences with diversity to practices at the Department, although she did recall that

she answered the question by sharing a personal experience she had with a doctor.

(Testimony of Hines; Appointing Authority Exhibit 3)

31. In Category 7, Rodriguez was scored a “1.” Hines’s interview notes state “very religious,” “we are all God’s children,” “private feelings should be left at the door,” and “you learn new things with different cultures.” Hines stated that she wrote down what Rodriguez said, and “very religious person” were his words. When asked how much weight she gave to that response, she responded, “I don’t know. In pounds? I don’t know what you’re looking for.” I find that Hines’s demeanor became defensive when responding to this line of questioning and she did not give a satisfactory answer as to how much weight the answers regarding religion factored into her score for Rodriguez. (Testimony of Hines; Appellant Exhibit 25 (missing))
32. Hines testified that she knew Rodriguez prior to his interview because she supervised his unit in Brockton and completed his personal evaluations. She testified that she had no personal relationship with him and did not know him prior to his job in Brockton. On her individual Interview Assessment for Rodriguez, she scored him “1” in every category, which was the best score possible. (Testimony of Hines; Appellant Exhibit 25)
33. Emails between Rodriguez and Hines were entered into evidence. They included the following:
- May 8, 2009 [from Rodriguez to Hines]: “Thanks again Darlene. I really do appreciate all your help and guidance. It’s not often that you can find someone that will legitimately help you out. So it definitely doesn’t go unnoticed. Thanks. Happy Mother’s Day and have an awesome weekend.”

June 12, 2009 [from Rodriguez to Hines]: “Hey there, just a heads up. I saw today’s schedule and “N” is showing to leave at 2 pm.² She left at 2 yesterday and also took an hour and a half on Wednesday for some testing that her kid needed. Don’t know if that was put on revision. Might want to check on this. Monday’s [sic] and Friday’s [sic] are her days to stay until 5. It seems like every Monday she’s not here and has been leaving early on Friday’s [sic] (if she’s here). If I take over this unit, this stuff will fly No [sic] longer!!!! Have a good one.”

Hines testified that these emails did not affect her evaluation of Rodriguez because she “can’t do that, can’t sway toward them, can’t be a friend and supervisor and do something like that.” She claims that she instructed Rodriguez not to send her any more emails. I do not credit Hines’s testimony in this regard. (Testimony of Hines; Appellant Exhibit 21)

34. Rodriguez used Hines’s daughter, Tia Rodriguez, as one of his references for the BERS C position. Hines testified that, at the time of the interview, she did not know that Rodriguez had used her daughter as a reference, she did not know how Rodriguez and her daughter knew each other, and that she never talked to her daughter about Rodriguez. She speculated that her daughter may have trained Rodriguez, but she was not sure. I do not find this testimony credible, given the friendly relationship between Rodriguez and Hines that is evident from the emails between them, especially since Rodriguez wished Hines a Happy Mother’s Day. I also do not find it credible that a member of the interview panel would not have been aware that one of the candidates used her own daughter as a reference. (Testimony of Hines; Appellant Exhibit 20)

35. Hines testified that the Appellant probably could be a supervisor somewhere else, but Brockton is different because the position has to monitor calls, answer questions, and

² Full name of “N” redacted as it is irrelevant to this case and to protect the employee’s privacy.

do reports. Without a lot of experience, this is a lot to learn. She testified that the Appellant has the ability to be a supervisor at some point. (Testimony of Hines)

36. Hines testified that she concluded that the Appellant was not qualified for the position based on the interview; part of the reason being her story about getting under the table. (Testimony of Hines)

37. The Appellant testified on behalf of herself, as well as representing herself *pro se*.

Her testimony was credible, and it was clear that she is an experienced and dedicated social worker.

38. The Appellant testified that she is qualified for the position because of her favorable EPRSs, letters of reference and appreciation from clients, her professionalism, customer service skills, knowledge of the job, and the way she can put people at ease in difficult circumstances. She testified that she is “always” attending trainings, even if not required, and that she was recommended for a promotion in April 2008 by two (2) managers who had over seventy (70) years combined experience (although she did not receive that promotion). (Testimony of Appellant; Appellant Exhibits 12, 23 & 24)

39. The Appellant testified that her supervisory experience includes the fact that she was a Homeless Coordinator, which was a BERS A/B, for five (5) years. This position was later upgraded to a BERS C, which is the same specification as a supervisor, without a change in functions of the position. She also testified that she was the go-to person for homeless clients and acted as a liaison to other agencies and shelters.

Earlier in her career, she worked as a Social Worker 3 and, if the supervisor was out,

other workers would ask for her advice and assistance with cases. (Testimony of Appellant)

40. The Appellant testified that at the interview, she explained that motivating workers and keeping them on task is critical for a supervisor because when workers are not motivated, it leads to non-productivity and poor morale. She then referenced an incident that occurred five (5) to six (6) years prior when she worked in Brockton part-time. She explained to the interview panel that her co-workers were unhappy because she was not on the same duty schedule. At a meeting, where there was no supervisor present, the co-workers were venting about the Appellant's part-time status. As a response to this, the Appellant pushed her chair away from the table and lowered her head for "mere seconds," which was enough for the staff to realize she was there and stop talking about her. Her co-workers then moved on with the discussion. The Appellant testified that she never told the interview panel that she sat under the table at the Brockton meeting. She also claims that she did not demonstrate these actions at the interview, she only described them verbally. When asked to demonstrate at the Commission hearing, she lowered her head and torso down toward her lap. She testified that it was a non-aggressive technique to take the attention away from the bully, and it was effective. (Testimony of Appellant)
41. The Appellant also testified that when asked about her weaknesses at the interview, she responded that she does not think she has weaknesses, but time management is a challenge. (Testimony of Appellant)
42. The Appellant has a Bachelor's degree and approximately twenty-five (25) years of employment at the Department. (Testimony of Appellant; Appellant Exhibit 2)

43. Rodriguez has a Bachelor's degree and approximately two (2) years of experience at the Department. His prior experience includes approximately two and one half (2 ½) years at a health and human services agency in San Diego, and approximately seven (7) years as a supervisor and cashier at a pizza restaurant. (Appellant Exhibit 20)
44. Maureen Martin (hereinafter, "Martin") testified on behalf of the Appellant. She currently works for Massachusetts Rehabilitation Commission, but she had previously been with the Department for twenty (20) years, most recently as a BERS A/B in the Fall River Centralized Office. Martin met the Appellant when they both worked at the Quincy office. Martin and the Appellant last worked together in 2003. I find Martin to be a credible witness with knowledge of the Department from her many years of service, although her testimony was generally not relevant as she was not involved with the hiring process for the position at issue. (Testimony of Martin)
45. Martin testified that her first Food Stamp supervisor came out of Food Stamp training one (1) week before Martin did, and that this supervisor said that they (i.e., the supervisor and Martin) would learn together. (Testimony of Martin)
46. Martin testified that any supervisor within the Department should be able to just step into a call center supervisory role. I find that this testimony is not relevant, as there is no evidence that Martin ever worked as a supervisor for the Department. (Testimony of Martin)
47. The Appellant filed a timely appeal of the Appointing Authority's decision to the Civil Service Commission.

Conclusion

G.L.c.31, §15 provides the process for the provisional promotion of civil service employees within a departmental unit in the absence of a suitable eligible list from which to make a permanent promotion. The statute prescribes, in relevant part:

An appointing authority may, with the approval of the administrator . . . make a provisional promotion of a civil service employee in one title to the next higher title in the same departmental unit. Such provisional promotion may be made only if there is no suitable eligible listNo provisional promotion shall be continued after a certification by the administrator of the names of three persons eligible for and willing to accept promotion to such position.

If there is no such employee in the next lower title who is qualified for and willing to accept such a provisional promotion the administrator may authorize a provisional promotion of a permanent employee in the departmental unit without regard to title, upon submission to the administrator by the appointing authority of sound and sufficient reasons therefore, satisfactory to the administrator. If the administrator has approved the holding of a competitive promotional examination pursuant to section eleven, he may authorize the provisional promotion of a person who is eligible to take such examination, without regard to departmental unit.

A provisional promotion pursuant to this section shall not be deemed to interrupt the period of service in the position from which the provisional promotion was made where such service is required to establish eligibility for any promotional examination.

G.L.c.31, §15

It has been long established that “[p]rovisional appointments or appointments through noncompetitive examinations are permitted only in what are supposed to be exceptional instances. . .” City of Somerville v. Somerville Municipal Employees Ass’n, 20

Mass.App.Ct. 594, 598, 481 N.E.2d 1176, 1180-81, rev.den., 396 Mass. 1102, 484 N.E.2d 103 (1985) citing McLaughlin v. Commissioner of Pub. Works, 204 Mass. 27, 29,

22 N.E.2d 613 (1939). However, the passage of decades without the personnel administrator holding competitive examinations for many civil service titles, and the professed lack of funding to do so any time in the near future, has meant that

advancement of most civil service employees is accomplished by means of provisional

promotions under Section 15. Thus, as predicted, the exception has now swallowed the rule and “a promotion which is provisional in form may be permanent in fact.” Kelleher v. Personnel Administrator, 421 Mass. 382, 399, 657 N.E.2d 229, 233-34 (1995).

As much as the Commission regrets this state of affairs, and has repeatedly exhorted parties in the public employment arena to end the current practice of relying on provisional promotions (and provisional appointments) to fill the majority of today’s civil service positions, the Commission must honor the clear legislative intent to allow such a procedure for provisional promotions. If there is a flaw in the statutory procedure, it is a flaw for the General Court to address. See Kelleher v. Personnel Administrator, 421 Mass. at 389, 657 N.E.2d at 234. Thus, the Commission’s initial determination in the instant case is whether the Department’s provisional promotion of Samuel Rodriguez was lawful under Chapter 31.

First, the plain meaning of Section 15 allows only “civil service employees” to be provisionally promoted. A “civil service employee” is a person with an original or promotional “appointment” under Civil Service law, which, in the official (as opposed to labor) service, means an appointment pursuant to G.L.c.31, §§6 or 7, following competitive examination. See G.L.c.31, §1. A “civil service employee” is different from a “provisional employee” who is appointed without having passed an examination. Id. See also Pease v. Department of Revenue, 22 MCSR 284; Poe v. Department of Revenue, 22 MCSR 287 (2009); Garfunkel v. Department of Revenue, 22 MCSR 291 (2009).

Second, Section 15 also seems to require that a provisionally appointed “civil service employee” be “in one title” below the “next higher title” into which the appointment is made; if the promotion involves advancement other than the “next higher title”, the

provisional promotion requires the appointing authority to provide, and HRD to approve, “sound and sufficient” reasons for the promotion.

Therefore, only an employee with permanency in a civil service title may be provisionally promoted under Section 15, either from the “next lower title” or by skipping a title. The plain meaning of Section 15 allows only “civil service employees” to be provisionally promoted. In this case, since it is undisputed that Rodriguez does not hold civil service permanency in any title, and Section 15 is the applicable statute here, Rodriguez’s provisional promotion was not lawful under civil service law.

The Commission recognizes that the “provisional” landscape now operates under somewhat fictitious assumptions, but the statutory language still must be enforced as written to the extent possible. Since it is not possible for the Commission to envision the entire universe in which appointing authorities currently employ “provisional” appointments and promotions, out of necessity, the Commission intends to move cautiously in this area. Thus, for now, the Commission is not disposed to invalidate the promotion in this particular case that was erroneously filled by a candidate without any civil service permanency.

By such holding, the Commission does not intend to leave the Appellant, and other similarly-situation civil service employees, without any recourse, however. In a series of recent cases, the Commission has held that an appellant who has appealed an unlawful provisional promotion, such as the one here, is entitled to a full Commission hearing to determine if the appellant was qualified for the position at issue. If the Commission finds for the appellant, then the Appointing Authority will be ordered to put such appellant in line for at least one additional consideration for the future selection for the promotion in

question. See also Pease v. Department of Revenue, 22 MCSR 284; Poe v. Department of Revenue, 22 MCSR 287 (2009); Garfunkel v. Department of Revenue, 22 MCSR 291 (2009). Thus, the Appellant's full hearing on March 11, 2010 was to determine whether she was qualified for the position of BERS C, Supervisor of the Brockton Call Center.

The Appellant argues that she was qualified for the BERS C position and that the interview panel did not evaluate her fairly because they were biased toward the selected candidate. To prove this, she offered testimony and exhibits highlighting her extensive twenty-five (25) year career with the Department. There is no question that the Appellant is an experienced and effective social worker: she has received favorable EPRS's and accolades from clients; she handles an extensive caseload; she frequently attends trainings; and she has been selected by her supervisors for additional duties, such as community outreach and to act as a liaison with other organizations. However, there were some comments that came up in her interview, as pointed out by the Appointing Authority, that do call into question whether she was qualified for the position.

The Appointing Authority cites certain answers to questions that were problematic, such as the Appellant's claim that she had no weaknesses, and that it meant she had no room for growth. The Appellant explained that she presented her response to state that she had "challenges," rather than weaknesses, and used time management as an example. It is the Commission's opinion that this was an appropriate response, as "challenge" can be synonymous with "weakness" in this context, and that the Department scored the Appellant too harshly with respect to this response.

Another area in which the Appointing Authority scored the Appellant low was "Supervisory/Management Skills." The Appellant's Interview Assessment states that this

category was not discussed during the interview, but the Appellant claims that she did bring up various supervisory experiences in the course of answering the interview questions. At the hearing, she explained what she considers to be her supervisory experience, although most of it seems to be more along the lines of being a mentor and a “go to” person for less-experienced social workers. However, it is questionable how much direct supervisory experience the Department could have required or expected, given that this was a promotional opportunity available for those in the position of BERS A/B, which is not a supervisory position. With this in mind, it is reasonable that candidates should only be expected to outline how previous experience could provide a solid background to parlay into a supervisory role, as the Appellant explained.

The main concern of the Appointing Authority, however, was one specific example the Appellant gave in response to an interview question. As the Appellant testified, during the interview she explained how it was important to motivate workers because of the problems that unmotivated workers can cause. On this point, the testimony of the Appellant and Appointing Authority diverge. The Appointing Authority claims that the Appellant then explained that when she worked at the Brockton Call Center, she was part-time, and the other workers resented her for this. At a meeting, they were complaining about her part-time status, so the Appellant crawled under the table and told them they could now talk about her because she was not there. The Appellant claims that this is an exaggeration, and she only told the interviewers she pushed her chair away from the table and lowered her head at the Brockton meeting. When asked to demonstrate these actions at the Commission, she lowered her head and torso down toward her lap.

I find Romero and Hines to be more credible than the Appellant in this regard, as their testimony was consistent with each other, despite being sequestered. Their testimony was also consistent with the comments on the group Interview Assessment for the Appellant. However, even if the Appellant had only lowered her torso toward her lap, and did not actually get under the table, she acted inappropriately at this meeting with co-workers in Brockton. To use this situation as an example of motivating employees is troubling. Also troubling is the fact that the Appellant still feels that she did the right thing in Brockton and that it was an effective technique; so much so that she wanted to highlight it in an interview. A person moving into a supervisory position will be expected to handle subordinates and deal with difficult situations involving them every day. The way to handle such situations is through direct communication and verbal conflict resolution. Most certainly, a supervisor who gets under the table or even lowers her head down toward her lap as a response to a difficult situation is not handling the conflict in a direct or appropriate way. The fact that the Appellant does not understand this calls into question her ability to be an effective supervisor.

Despite the above concerns, I am more troubled by the personal bias that was involved in this selection process. It became clear at the hearing that Hines had a closer relationship with the selected candidate than is appropriate for her role as a member of the interview panel. While it would be expected that Hines, as the Acting Assistant Director at the Brockton Call Center, would know and have a working relationship with a worker at the call center, which Rodriguez was, the evidence introduced at the hearing showed that this relationship crossed the line. Specifically, an email from Rodriguez to Hines in which he commented on how certain things would no longer be allowed in the

unit if he were to “take over” was inappropriate. This email was dated prior to the date the recommendation was made on the selected candidate, and begs the question of what further communication was occurring between Hines and Rodriguez about the promotion. Additionally, Rodriguez used Hines’s daughter as one of his references for the position. Hines’s claim that she was not aware of this prior to the interview, and that she never talked to her daughter about Rodriguez, does not have the ring of truth. Lastly, Hines could not or would not answer the question as to how much weight she gave to the fact that Rodriguez was “very religious.” As someone in a management position, she should give *no weight* to this fact, or else will violate employment discrimination laws. It is deeply concerning that Hines either did not know this, or did not care.

It is unknown whether Hines was able to influence the opinions or scores of the other interviewers on the panel. It is somewhat suspect that Rodriguez received an almost-perfect score, especially given the fact that he had only been with the Department for approximately two (2) years prior to this interview. This is not to say that a short-term employee cannot receive high scores during an interview or should never receive a promotion, but it is questionable how his relatively limited experience in the Department, and in the field of social services in general, could have yielded him a score that was only one (1) point short of being perfect.

It has long been recognized that the Commission is guided by the “principle of uniformity and ‘equitable treatment of similarly-situated individuals’” as well as the “underlying purpose of the civil service system ‘*to guard against political considerations, favoritism and bias in governmental employment decisions.*’” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited (*emphasis added*)

Because of the questionable and inappropriate interview process that was tainted by the relationship between Hines and the selected candidate, the Commission holds that the Appointing Authority has not demonstrated that the Appellant was not qualified for the position. Therefore, the Commission will act, pursuant to Chapter 310 of the Acts of 1993, and orders that the Department put the Appellant in line for at least one (1) additional consideration for future selection to a BERS C position, which she would be willing to accept if offered to her, on the same terms under which she should have been considered for the promotion in question. To ensure that the Appellant receive such serious consideration, and, in addition to whatever other rights, if any, she may have, in this particular case, if the Appellant is not selected in favor of another applicant with no civil service permanency, she will be allowed to contest the non-selection in further proceedings before the Commission on the grounds that such non-selection was inconsistent with the requirements of this Decision.

The Commission also recommends that, in the future, the Commissioner of the Department should seek to ensure the selection of fair and impartial interview panels that do not include Hines for interviews involving the Appellant or other candidates seeking the same position. Hines had a personal bias that undermined the interview process for the BERS C position at issue.

As to all other Department civil service positions that the Department fills “provisionally” in the future, until such time as competitive examinations again become available, the Department must specify, in advance, whether the position is being posted as a provisional appointment or a provisional promotion and comply with the applicable provisions of Section 12 or Section 15 as the case may be. In particular, if the position is

posted as a provisional promotion, it must limit selection to permanent civil service employees and, if there is a qualified civil service employee in the next lower title, that candidate must be selected for the provisional promotion.

For all of the above reasons, the Appellant's appeal under G2-09-313 is hereby *allowed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Stein, Commissioners [McDowell – not participating]) on September 23, 2010.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:
Marion Heath (Appellant)
Daniel LePage, Esq. (for Appointing Authority)