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NOTIFYCOMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2014-02638-GJOEL HENDERSON,
Plaintiff/Petitioner,vs.CIVIL SERVICE COMMISSION and CITY OF LYNN,
Defendant/Respondents.MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to G. L. c. 30A, § 14, the plaintiff, Joel Henderson ("Henderson"), appeals the unanimous decision (one commissioner not participating) dated July 24, 2014 of respondent Civil Service Commission (the "Commission"), upholding a decision of respondent City of Lynn's Fire Department (the "Department") to bypass Henderson for a firefighter position. The Court heard oral argument on June 18, 2015. For the below reasons, Henderson's motion is DENIED, and the Commission's decision is AFFIRMED.

RELEVANT FACTS AND PROCEEDINGS BELOW

The dispositive facts and prior proceedings for purposes of this motion are in essence undisputed. In 2010, Henderson took and passed a civil service exam for a firefighter position. R. 37.¹ In April 2012, Henderson's name appeared on a certified list of prospective hires; he passed a drug test and advanced to an interview with the Department. R. 199.

¹ "R. __" refers to the Administrative Record.

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As part of the hiring process, the Department obtained Henderson's criminal offender record information ("CORI") report. The CORI report indicated that, in 1998, Henderson had been charged with felony and misdemeanor marijuana offenses. The felony charges were continued without a finding; Henderson was convicted and placed on probation for possession of marijuana, a misdemeanor. The CORI report also reflected a 1999 marijuana possession charge that had been continued without a finding, a 2001 assault and battery charge that had been dismissed, and criminal history information from when Henderson had been a minor. R. 89-90; 199.

During Henderson's interview, Department members asked him questions about offenses reflected in his CORI report. R. 200. The interviewers noted that Henderson's "answers appeared slightly evasive to questions regarding past indiscretions," R. 163, and that his answers to questions about his juvenile conduct "were vague and appear to blame others for situations." R. 166.

On November 13, 2012, the Department notified Henderson that he was not being selected for a firefighter position. R. 106-107. The letter cited several favorable factors supporting Henderson's selection, R. 106, then listed the reasons why he had not been selected, including: (1) multiple charges for possession of marijuana; (2) admitted use of marijuana in 2011, after taking the firefighter exam; (3) minimizing his own involvement and blaming others for his marijuana offenses; (4) a "consistent pattern of evasiveness" during his interview when asked about "negative aspects" of his background; and (5) his employment history in a similar occupation including being dismissed from a Boston EMS job in 2008 by the Boston Public Health Commission because his clinical skills did not meet Boston EMS standards. R. 106-107.

Of the firefighters selected from the certified list, 15 were ranked lower than Henderson. R. 202. At least one selected applicant had a 2006 motor vehicle charge that had been continued without a finding. R. 137.²

Henderson filed a timely appeal, and a hearing was held before the Division of Administrative Law Appeals (“DALA”) on February 25, 2013. R. 197. On May 22, 2014, the First Administrative Magistrate of DALA issued a recommended decision upholding the Department’s bypass of Henderson. R. 196-214. The DALA magistrate found that the Department had reasonable justification to bypass Henderson, “based on his criminal history, a history of drug use combined with the recent drug use, his employment history, and his interview performance.” R. 214.³

Henderson filed a timely objection to the recommended decision. R. 215. On July 24, 2014, the Commission adopted the recommended decision in part, unanimously with one Commissioner not participating. R. 240. The Commission found that the Department had offered multiple reasons for the bypass, including Henderson’s employment history which included termination from Boston EMS for not meeting its performance standards and his admitted marijuana use shortly before the 2011 hiring cycle. The Commission held that “[b]ased on those reasons alone, the City had reasonable justification to bypass [Henderson].” The Commission expressly declined to consider the Department’s use of Henderson’s CORI information during his interview or

² The record indicates that several other firefighters who were hired had charges that had been dismissed, or charges as to which no disposition appears in the record. See Docket # 10 at 3-4, citing R. 137-151.

³ The recommended decision included a detailed analysis of the Department’s use of Henderson’s CORI information during the interview process. However, as discussed below, the Commission did not rely on this analysis or the Department’s use of CORI information in its decision.

the DALA magistrate's analysis of that use. R. 240. Henderson timely appealed to this Court.

DISCUSSION

A. The Legal Standard

Pursuant to G.L. c. 30A, § 14(7), this Court may reverse, remand, or modify an agency decision only if the decision is "based on an error of law, unsupported by substantial evidence, unwarranted by facts found on the record as submitted, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law."

Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 868 (1997).

Petitioner bears the burden of demonstrating the invalidity of the Commission's decision.

Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App.

Ct. 470, 474 (1989). In reviewing an agency decision, the Court is required to "give due

weight to the experience, technical competence, and specialized knowledge of the

agency, as well as to the discretionary authority conferred upon it" by statute. G.L. c.

30A, § 14(7) (1997); see Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420

(1992); Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713,

721 (1988). The reviewing court may not substitute its judgment for that of the agency.

Southern Worcester County Regional Vocational Sch. v. Labor Relations Comm'n, 386

Mass. 414, 420-21 (1982), citing Olde Towne Liquor Store, Inc. v. Alcoholic Beverages

Control Comm'n, 372 Mass. 152, 154 (1977).

B. Application of the Legal Standard

General Laws, c. 31, § 2(b), requires the [C]ommission to determine, on the basis of the evidence before it, whether the appointing authority sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification for the action taken by the appointing

authority. Reasonable justification in this context 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 Commission, 447 Mass. 233, 241 (2006) (quotations and additional citations omitted).

It is undisputed that, during Henderson's interview by the Department, he was asked about his 1998 misdemeanor conviction for possession of marijuana and felony marijuana charges that were continued without a finding. Under G. L. c. 151B, § 4(9), it is unlawful to discriminate against a job applicant based upon either a violation of law in which no conviction resulted or a misdemeanor conviction where the date of conviction or completion of any term of incarceration, whichever is later, occurred at least five years prior to the job application date. In its bypass decision, the Department cited Henderson's prior criminal conduct and his evasiveness when asked about this conduct. However, the Department also offered other reasons for the bypass, including Henderson's employment history which included termination from Boston EMS for not meeting its performance standards and his admitted use of marijuana after he had taken the civil service exam in 2010 for the firefighter job. See *supra* at 2. The DALA magistrate cited all of these reasons in his recommended decision.

The Commission affirmed and adopted the DALA magistrate's recommended decision only in part. The Commission expressly declined to rely on the Department's use of CORI information, finding that the Department had "reasonable justification" for bypassing Henderson based upon his employment history including termination from Boston EMS for not meeting its performance standards, and his admitted use of

marijuana after taking the civil service exam in 2010. This decision was supported by the evidence and not contrary to law.

Henderson argues that the Department's decision was not "guided by...correct rules of law" because the interviewers' use of CORI information violated Massachusetts employment law. However, this Court reads the "reasonable justification" standard, and the relevant case law, as requiring the Commission to approve a town's decision to bypass a job applicant, as long as the town provides some reasons that are supported by law and the decision is not the result of prejudice. See Brackett, 447 Mass. at 241-242 (court must be highly deferential to Commission in its determinations of reasonable justification for hiring decisions); Flynn v. Civil Service Commission, 15 Mass. App. Ct. 206, 210-211 (1983) (Commission's approval of bypass decisions was proper, notwithstanding appointing authority's failure to follow some of its own procedures); Town of Arlington v. Civil Service Commission, MICV2009-00476 (Super. Ct. Dec. 22, 2009) (unpublished) (Commission's approval of bypass was proper, because it relied on the proper reason, not the improper reasons, for town's decision).

The Department clearly had the right to consider Henderson's employment history including his termination from Boston EMS and his admitted marijuana use after taking the 2010 civil service exam in making its bypass decision. The Commission expressly and appropriately relied on these factors in affirming the Department's decision, and expressly did not rely on the Department's use of CORI information.⁴ Implicitly, the Commission decided that the Department's decision was not the result of prejudice, an entirely reasonable conclusion, given the favorable factors supporting

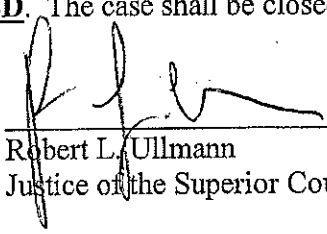
⁴ To the extent that the Department violated G. L. c. 151B, § 4(9), it appears that Henderson had a separate remedy under Massachusetts employment law, in addition to this administrative appeal. See Fernandes v. Attleboro Housing Authority, 470 Mass. 117, 123-124 (2014).

Henderson's application that the Department cited in its November 2012 letter to Henderson. See *supra* at 2. Applying the deferential standard of review that is required under G. L. c. 30A, § 14, the Court denies Henderson's motion for judgment on the pleadings and affirms the Commission's decision.

CONCLUSION AND ORDER

Plaintiff's Motion for Judgment on the Pleadings (Docket # 10) is **DENIED**. The Commission's July 24, 2014 decision is **AFFIRMED**. The case shall be closed.

Dated: June 29, 2015



Robert L. Ullmann
Justice of the Superior Court