

# COMMONWEALTH OF MASSACHUSETTS

## CIVIL SERVICE COMMISSION

100 Cambridge Street; Suite 200  
Boston, MA 02114  
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**JEFFREY HICHBORN,**

*Appellant*

v.

**MASSACHUSETTS  
ENVIRONMENTAL POLICE,**

*Respondent*

Docket Number:

G1-24-026

Appearance for Appellant:

Hailey Ferguson, Esq.  
Barrault and Associates, LLC  
3 Boulevard Street  
Milton, MA 02186

Appearance for Respondent:

Eric P. Klein, Esq.  
Director of Labor Relations  
Executive Office of Energy and  
Environmental Affairs  
100 Cambridge Street, 10<sup>th</sup> Floor  
Boston, MA 02114

Commissioner:

Shawn C. Dooley<sup>1</sup>

## SUMMARY OF DECISION

The Commission affirmed the decision of the Massachusetts Environmental Police (MEP) to bypass a candidate for appointment as an Environmental Police Officer A/B (EPO A/B) as he does not possess the minimum entrance requirements specified for the position by MEP.

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Gretchen Wang with the preparation of this decision.

## **DECISION**

On February 16, 2024, the Appellant, Jeffrey J. Hichborn (Appellant), filed a timely appeal to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2 (b). The appeal challenged the Massachusetts Environmental Police (MEP)'s decision to bypass the Appellant for appointment as an Environmental Police Officer A/B (EPO A/B). On March 26, 2024, the Commission held a remote pre-hearing conference. On June 18, 2024, I conducted an in-person full hearing at the offices of the Commission in Boston. The hearing was recorded via the Webex videoconferencing platform, and copies of the recording were provided to both parties.<sup>2</sup> The Appellant and MEP both filed proposed decisions. For the reasons set forth below, the Appellant's appeal is denied.

## **FINDINGS OF FACT**

The Appellant submitted into evidence 15 exhibits (A.Ex. 1-15). The Respondent submitted into evidence 26 exhibits (R.Ex. 1-26)). Based on the documents submitted and the testimony of the following witnesses:

*Called by MEP:*

- Lieutenant James Cullen, Massachusetts Environmental Police

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<sup>2</sup> A link to the audio/video recording was provided to the parties. 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 they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

*Called by the Appellant:*

- Jeffrey Hichborn, Appellant

and taking administrative notice of all matters filed in this case, pertinent law and reasonable inferences from other credible evidence, a preponderance of the evidence establishes the following facts:

1. The Appellant currently resides in Agawam, Massachusetts and is employed as a police officer in the Agawam Police Department. *(Testimony of the Appellant; A.Ex 15)*
2. The Appellant is a US Navy veteran who was stationed at Naval Station Guantanamo Bay for 18 months as a Gunners Mate. *(Testimony of the Appellant; A.Ex 3)*
3. The Appellant has a high school diploma and currently has 18 hours towards a higher degree. *(Testimony of the Appellant)*
4. On October 29, 2022, the Appellant took and passed the civil service examination for EPO A/B. *(Stipulated Fact)*
5. On February 7, 2023, the state's Human Resources Division (HRD) established an eligible list for EPO A/B. *(Stipulated Fact)*
6. On February 23, 2023, HRD issued Certification No. 09085 to MEP upon which the Appellant was ranked second among those willing to accept appointment. *(Stipulated Fact)*
7. MEP appointed 14 candidates from Certification No. 09085, 14 of whom were ranked below the Appellant.<sup>3</sup> *(Stipulated Fact; R.Ex 4)*

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<sup>3</sup> MEP hired an additional police officer from certification number 07249, which was issued in 2020. This officer was hired off an earlier list due to a military deferment consistent with the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). As this officer was not on the current certification and special circumstances govern his hire, his appointment does not constitute a bypass of the Appellant.

8. MEP is a conservation law enforcement agency housed within the Executive Office of Energy and Environmental Affairs, primarily responsible for the safeguarding and enforcing laws related to the Commonwealth's natural resources. *(Testimony of Lt. Cullen)*
9. MEP enforces laws related to fish and wildlife, protection of endangered species, laws regulating commercial marine vessels, recreational boating, and recreational off-road vehicles. *(Testimony of Lt. Cullen)*
10. The Massachusetts Human Resources Division (HRD) has established minimum entrance requirements (MERs) for the position of EPO A/B. The MEP's minimum entrance requirements are established by HRD pursuant to G.L. c. 31, § 5. *(Testimony of Lt. Cullen; R.Ex 7)*
11. In addition to a high school diploma, applicants must have the following minimum experience or education:
  - At least two years of full-time, or equivalent part-time, professional or paraprofessional experience in wildlife or fisheries conservation or management, natural resources conservation or management, biological or environmental science, forestry, ecology, marine science, conservation law enforcement or related field, or any equivalent combination of such experience and the substitutions below.
  - An associate's degree in environmental science, biology, oceanography, ecology, natural resources management, wildlife management, fisheries management, forestry, conservation law enforcement or related field, may be substituted for up to one year of required experience on the basis of two years of education for one year of experience.

- A bachelor's or higher degree in environmental science, biology, oceanography, ecology, natural resources management, wildlife management, fisheries management, forestry, conservation law enforcement or related field, may be substituted for up to two years of required experience on the basis of two years of education for one year of experience.
- One year of education equals 30 semester hours or its equivalent. Education completed toward a degree will be prorated on the basis of the proportion to the requirements actually completed. (*R.Exs 6-7; Testimony of Lt. Cullen*)

12. To determine whether a candidate meets the minimum entrance requirements, MEP asks the candidates to submit any documentation that the candidate feels is relevant to document how the candidate meets the minimum entrance requirements. (*R.Ex 6; Testimony of Lt. Cullen*)

13. Candidates receive notices from MEP which outline the minimum entrance requirements and provide the following instructions:

If you are claiming 2 years of full-time related experience (or the equivalent in part-time work), you will need to “show the math” and demonstrate how the part time experience adds up to 2 years of full-time related experiences (based on a 40 hour work week)

Time spent as a traditional city, town or state police officer does not, in and of itself, count as “related experience” for purposes of meeting our entrance requirements.

If claiming an educational substitution for the experience, make sure you indicate your specific “major” (i.e., wildlife biology, marine sciences, etc.) with your degree information.

Degrees in “Criminal Justice Administration” are not considered to be “related degrees” for purposes of meeting our entrance requirements. (*R.Ex 6*)

14. Following the submission of documents, MEP invites the candidate to a panel interview with members of MEP patrol staff, senior officers, and HR management to provide each candidate an opportunity to discuss their qualifications and establish how they meet the necessary minimum entrance requirements. (*Testimony of Lt. Cullen*)
15. The Appellant submitted a resume detailing his experience and a letter with a detailed account of his experiences at the Naval Station Guantanamo Bay and as an Agawam Police Officer. (*R.Ex 23; Testimony of Lt. Cullen*)
16. Though the Appellant went into detail about how his experience coincided with environmental law enforcement, it did not show any direct responsibility for environmental enforcement. (*Testimony of Lt. Cullen; Testimony of the Appellant*)
17. Aside from the Appellant’s stated years at each position, the Appellant’s submission to the MEP Panel did not include any quantified breakdown of his time working on environmental or related issues. (*R.Ex 23; Testimony of Lt. Cullen; Testimony of the Appellant*)
18. MEP counts both full-time and part-time experience working in a related environmental field, using approximately 2000 hours of part-time experience equivalent to one year of full-time work experience. To meet the minimum entrance requirements, a candidate must demonstrate that they have 4000 hours of experience in wildlife or fisheries conservation or management, natural resources conservation or management, biological or environmental science, forestry, ecology, marine science, conservation law enforcement or related field. (*Testimony of Lt. Cullen; R.Ex 6*)

19. If a candidate claims they meet the minimum entrance requirements through experience, they must quantify their work and/or military experience to account for the 4000 hours. A candidate must articulate the duties they performed and how often they performed those duties. (*Testimony of Lt. Cullen; R.Ex 6*)
20. There are many roles within each branch of the military and a candidate must explain what duties they performed, how these duties relate to the requirements set forth by MEP, and how often they performed those functions to account for the 2 years (4000+ hours) of related experience. (*Testimony of Lt. Cullen*)
21. MEP did not give the Appellant credit for any experience due to insufficient documentation and the Appellant's inability to quantify the duties he performed. (*Testimony of Lt. Cullen; A.Ex 7*)
22. The lower-ranked candidates who were appointed over the Appellant provided significant documentation as to how they met the MEP's minimum entrance requirements. (*R.Exs 9-22*)
23. On December 28, 2023, MEP informed the Appellant that he was bypassed for appointment due to his failure to meet the minimum entrance requirements for the position of EPO A/B. (*Stipulated Fact*)
24. Following the pre-hearing, as requested by the Commission, the Appellant submitted into evidence a breakdown of his experience in the Navy and as an Agawam Police Officer as it relates to hours to satisfy the MERs. (*A.Ex 10, Appellant's Testimony*)

## **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting selecting and advancing employees on the basis of their relative ability knowledge skills” and “assuring that all employees are protected against coercion for political purposes and

are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm’n*, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Basic merit principles in hiring and promotion calls for regular, competitive examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L. c. 31 §§ 6 through 11, 16 through 27; Personnel Administrative Rules, PAR.09. To deviate from that formula, an appointing authority must provide specific, written reasons—positive or negative, or both, consistent with basic merit principles—to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority had shown, by a preponderance of the evidence, that it has “reasonable justification for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. *Boston Police Dep’t v. Civil Service Comm’n*, 483 Mass. 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Service Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification ... means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by

correct rules of law’’. *Bracket v. Civil Service Comm’n.*, 447 Mass. 233, 543 (2006); *Commissioners of Civil Service v. Municipal Ct.*, 359 Mass. 211, 214 (1971), and cases cited. See also *Mayor of Revere v. Civil Service Comm’n.* 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. See, e.g., *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303-305, *rev. den.*, 428 Mass. 1102 (1997). However, the governing statute, G.L. c. 31 § 2(b), gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority’s action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” *Id.*

MEP’s minimum entrance requirements for the position of EPO A/B are directly related to the subject of natural resource and environmental protection and reasonably related to the requirements of the job. See *Lalli v. Massachusetts Environmental Police*, G1-20-173 (2021). The Commission has made clear that, absent proof that job requirements are arbitrary or unequivocally irrelevant to the performance of the duties required of the position, it will defer to the interpretation given to those requirements by the appointing authority, who is best situated and informed on those matters. See *Harrell v. Massachusetts Environmental Police*, 33 MCSR 30 (2020). See also *Graham v. Department of Conservation & Recreation*, 31 MCSR 337 (2018) (DCRs definition of “major park” and other terms); *Trubiano v. Department of Conservation & Recreation*, 31 MCSR 298 (2018) (definition of “major recreational area” and “heritage park”).

## ANALYSIS

MEP has shown by a preponderance of evidence that it was reasonably justified to bypass the Appellant for appointment as an EPO A/B as he was unable to show that he met the minimum entrance requirements specified for the position by MEP.

MEP clearly outlines the minimum entrance requirements for the position in its hiring package given to all candidates. These requirements call for education and experience totaling the equivalent of two years (4000+ hours) directly related to wildlife or fisheries conservation or management, natural resources conservation or management, biological or environmental science, forestry, ecology, marine science, conservation law enforcement. Additionally, MEP reminded the candidates that they needed to “show the math” as to how they meet the two-year (4000+ hour) requirement.

In his submission, the Appellant submitted a resume and a letter outlining his experience. The resume focused on his responsibilities in the U.S. Navy at Naval Station Guantanamo Bay and in the Agawam Police Department. The letter detailed his responsibilities, tasks, and common encounters in both experiences, but failed to quantify any of this experience in regard to how it related to the fields outlined in the MERs. During his interview with MEP, he again failed to quantify his experience. Upon request by the Commission, the Appellant submitted a more detailed breakdown of his experiences by hours. However, he failed to distinguish time spent on non-environmental duties from those he claimed to satisfy the MERs for his time at Guantanamo Bay. Though he estimated that 10-20% of his time as an Agawam police officer were spent on duties that could satisfy the MERs and calculated the hours accordingly, he failed to explain how he arrived at this estimate. Further, even in this additional submission, the Appellant failed to sufficiently demonstrate how his duties related to the fields outlined in the MERs. For example,

as a Gunners Mate, his responsibilities didn't concern environmental protection and enforcement, and his description of the endangered species in Guantanamo Bay and the conservation efforts that the naval station practiced did not demonstrate direct involvement on the part of the Appellant. As an Agawam Police Officer, he detailed several occasions where he was tangentially involved with nature-related assignments, such as assisting with a water rescue. However, he failed to detail or quantify his involvement as it related to any environmental aspect of the assignment, such as being on shore and ready to assist during a bridge jumper rescue operation and not being on the boat involved in the actual rescue operation. Ultimately, the Appellant was unable to demonstrate how his experience could satisfy the MERs.

## CONCLUSION

For the above reasons, MEP's decision to bypass Jeffrey J. Hichborn for the position of Environmental Police Officer (EPO A/B) is affirmed. The appeal filed under Docket No. G1-24-025 is hereby *denied*.

Civil Service Commission

/s/ Shawn C. Dooley  
Shawn C. Dooley  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair, Dooley, Markey, McConney, and Stein, Commissioners) on October 3, 2024.

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 to:

Hailey Ferguson, Esq. (for Appellant)

Eric P. Klein, Esq. (for Respondent)