

COMMONWEALTH OF MASSACHUSETTS

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

VIRGINIA HUSSEY,  
*Appellant*

v.

G1-21-081

CITY OF SOMERVILLE,  
*Respondent*

Appearance for Appellant:

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101 Summer Street  
Boston, MA 02110

Appearance for the Respondent:

Hannah Pappenheim<sup>1</sup>  
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Commissioner:

Christopher C. Bowman<sup>2</sup>  
Cynthia A. Ittleman

SUMMARY OF DECISION

The Commission upheld the City’s decision to bypass the Appellant as a reserve fighter based on the Appellant’s inconsistent and/or incomplete responses on her application and during her interview.

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<sup>1</sup> Attorney Pappenheim no longer serves as counsel for the City of Somerville. This decision is being sent to Assistant City Solicitor Jason Piques, Esq.

<sup>2</sup> Commissioner Ittleman conducted the full hearing regarding this appeal, but she retired from the Commission prior to drafting a decision. For that reason, the appeal was assigned to me. I have reviewed the entire record in this matter, including the audio / video recording of the full hearing and all exhibits.

On April 12, 2021, the Appellant, Virginia Hussey (Appellant or Ms. Hussey), pursuant to G.L. c. 31, § 2(b), filed the instant appeal with the Civil Service Commission (Commission) contesting the decision of the City of Somerville (City) to bypass her for appointment to the position of reserve firefighter. Among the reasons<sup>3</sup> offered by the City to justify the Appellant's bypass were: a) providing conflicting information regarding the reason for leaving prior employment; b) an inability to clearly recall the circumstances regarding discipline at a prior employer; and c) providing inconsistent or incomplete answers on her employment application. On June 29, 2021, I held a remote pre-hearing conference. A remote full hearing was conducted by Commissioner Ittleman on February 2, 2022.<sup>4</sup> The hearing was recorded via Webex and the parties were provided a link to the recording.<sup>5</sup> The parties submitted proposed decisions on March 2, 2022.

**FINDINGS OF FACT:**

Eight Respondent exhibits (R1-R8) and six Appellant exhibits (A1-A6) were entered into evidence at the hearing. Based on the documents submitted, the testimony of the following witnesses:

*Called by the City:*

- Lieutenant Michael Holland, Somerville Police Department
- Chief Charles Breen, Somerville Fire Department

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<sup>3</sup> I have not overlooked other reasons cited by the City for bypassing the Appellant. This appeal can be decided on those cited here.

<sup>4</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>5</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, the recording should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

- Assistant Chief Christopher Major, Somerville Fire Department

*Called by the Appellant:*

- Virginia Hussey, Appellant

and taking administrative notice of all matters filed in the case; pertinent statutes, regulations, policies, stipulations and reasonable inferences from credible evidence; a preponderance of the evidence establishes the following:

1. Somerville, Massachusetts is a city located in Middlesex County, Massachusetts, just two miles north of Boston with a population of approximately 81,000. Approximately 4% of the City's firefighters are female. (Administrative Notice: <https://www.somervillema.gov/about> and annual statistical submission by the City.)<sup>6</sup>
2. The Appellant is a 2004 graduate of Somerville High School where she was a standout athlete. Following graduation, she worked as a warehouse handler for a courier in Medford from September 2005 to March 2006. In March 2006, she enlisted in the United States Army and was stationed at Fort Bragg, NC. She served two deployments in Iraq and was part of the Transportation Unit: 2<sup>nd</sup> Brigade Unit 1-325 AIR E Company. She was honorably discharged in July 2010. (*Testimony of Appellant; Resp. Ex. 2*)
3. On March 24, 2018, the Appellant took the civil service examination for Reserve Firefighter. (*Stipulated Fact*)
4. On September 1, 2018, the state's Human Resource Division (HRD) established a list of eligible candidates for Somerville Reserve Firefighter. (*Stipulated Fact*)

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<sup>6</sup> I did not overlook this glaring dearth of female representation in the Somerville Fire Department when deciding this appeal. Although it shows that the City needs to do a far better job in recruitment of female candidates, it does not change my opinion regarding whether the City was justified in bypassing the Appellant for the reasons stated.

5. On October 2, 2019, HRD sent Certification No. 06668 to the Somerville Fire Department at the request of the Department. The Appellant was ranked fifth among those willing to accept appointment. (*Stipulated Fact*)
6. The Appellant completed the written application provided to her by the Somerville Fire Department on or about October 9, 2019, but the hiring process was put on hold until February 2021. (*Testimony of Breen; Resp. Ex. 2 & 8*)
7. At the time of the hearing, Charles Breen was the Provisional Fire Chief of the Somerville Fire Department. He began his fire career in 1985 as a firefighter. He was promoted to Lieutenant in 1992, Captain in 1996, Deputy Chief in 2012, Chief of Operations in 2015, and ultimately Provisional Fire Chief in 2018. In addition to running the day-to-day operations of the Department, Chief Breen also supervises the Department's hiring process and sits on the hiring panel. Chief Breen chose Christopher Major to be his Assistant Chief and to be a member of the hiring panel. Assistant Chief Major is a veteran. (*Testimony of Breen; Major*)
8. As part of the Appellant's application process, a background investigation was undertaken by Lieutenant Michael Holland of the Somerville Police Department. Lieutenant Holland grew up in Somerville and knows the Appellant, stating that "she has always been nice and pleasant when we interacted." Lieutenant Holland also knows the Appellant's mother who works for the Department of Public Works, and the Appellant's brother, whom he played hockey with for years when they were younger. (*Testimony of Holland*)
9. Lieutenant Holland reviewed the contents of the Appellant's fire department application and all documents the Appellant was required to produce, including her resume, tax returns, residency history, employment history, etc. As part of the background investigation, Lieutenant Holland contacted the Appellant's personal references, employment references,

neighbors, family members, and spoke with the candidate herself. Additionally, Lieutenant Holland ran a check of the Appellant's driver history and ran her identifying information through the Somerville Police Department's internal computer system. (*Testimony of Holland*)

10. The City's Personnel Department, not the investigator assigned to the firefighter candidate, runs the candidate's Criminal Offender Record Information (CORI), which revealed no criminal convictions for the Appellant. (*Testimony of Holland; Resp. Ex. 2 and 3*)

11. While Lieutenant Holland does not run a Board of Probation check on firefighter candidates, he does run an internal search through the Somerville Police Department's computer system. A check of this internal system would reveal when an applicant's name has been mentioned in a Somerville police incident report (either as an alleged witness, victim, or perpetrator), whether a candidate has been listed as part of a noise complaint, or mentioned in a medical call, etc. (*Testimony of Holland; Resp. Ex. 3*)

*Appellant's November 2020 Interview with SPD Lieutenant Michael Holland*

12. On or about November 23, 2020, Lieutenant Holland met with the Appellant at the Somerville Police Department to discuss the Appellant's October 2019 application in detail. At his request, the Appellant brought additional paperwork that was required for her background investigation, as well. (*Testimony of Holland; Resp. Ex. 3*)

13. During their interview, Lieutenant Holland and Ms. Hussey discussed her previous Civil Service position applications. She explained that she had been bypassed twice by the Somerville Police Department due to residency issues, that she had applied to the Chelsea Police Department but had withdrawn her application, and that she was bypassed by the Massachusetts State Police. At the request of Lieutenant Holland, Ms. Hussey produced the

bypass/non-selection letters she received from her previous applications prior to her interview with the Lieutenant. (*Resp. Ex. 3; Testimony of Holland*)

14. In two separate bypass letters from the Mayor of Somerville, dated September 16, 2016 and November 14, 2016, Ms. Hussey was informed that she was being bypassed for appointment to a position as a police officer as a result of failing to meet the claimed residency preference for the position. Ms. Hussey lived in Stoneham, MA during the relevant time frame.<sup>7</sup> Ms. Hussey also withdrew herself from another SPD hiring round, as well. (*Resp. Ex. 3*)
15. During the November 2020 interview with Lieutenant Holland, the two discussed a gap in Ms. Hussey's recent work history. She indicated that she had not worked much in the past year as a result of the pandemic and childcare obligations and that the last time she had worked was in September 2019. She explained that she worked for a construction union and stopped working due to a pending complaint that she had filed. (*Testimony of Holland*)
16. The Appellant's November 2020 verbal explanation to Lieutenant Holland as to why she was dismissed by this construction union (*i.e.*, for filing a complaint) was different than what she had written in two spots on her signed application in October 2019 regarding why she was dismissed by her previous employer (her failure to obtain a 4B drill rig license). (*Testimony of Holland*)
17. Lieutenant Holland spoke to a supervisor listed on the application, who worked at two former employers. He said the Appellant was a good worker and that he did not know why she left.

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<sup>7</sup> At the appeal hearing of the present case (firefighter case), Ms. Hussey inaccurately testified that she has been a lifelong resident of Somerville, MA. As evidenced by the two bypass letters from the Mayor of Somerville indicating that she had been a resident of Stoneham, MA from November 2013 to November 2014, she, therefore, did not meet the residency requirement (spanning April 25, 2014 through April 25, 2015) to become a police officer in the City. There is no issue of residency, however, in this current appeal. (*Resp. Ex. 3*)

He did not mention anything about a 4B drill rig license or a complaint filed by the Appellant. (*Testimony of Holland*)

Appellant's Interview with Three Person Panel – February 2021

18. In January/February 2021, the Somerville Fire Department undertook interviews of all eligible candidates for the position of reserve firefighter. All interviews were held before Chief Charles Breen, Assistant Fire Chief Christopher Major, and former Chief of Staff to the Mayor, Janice Delory. All interviews were audio recorded. Prior to each interview, all panel members reviewed each candidate's history, to include their background investigation, their application, credit history, driver history, etc. (*Testimony of Breen; Major; Resp. Ex. 5*)

19. Each candidate is asked questions relative to their specific application and background investigation during their panel interview. Following this discussion, each candidate is asked a set of predetermined, uniform questions. The three panel members took notes on every candidate's answer to the set questions. Following each interview, the panel members also jotted down notes about what their thoughts were about each candidate, most especially about their impression of them and any concerns. (*Testimony of Breen; Major; Resp. Ex. 4*)

Discussion about Dismissal from Prior Job

20. In her interview with the panel, Ms. Hussey was asked about why she was dismissed from her previous employers. On her application, Ms. Hussey listed her reason for leaving as "not having 4B drill rig license." During the panel interview, however, she provided the panel with a different reason—because of an incident which resulted in her filing a complaint. When asked why she listed the 4B license as the reason for leaving on the application, Ms. Hussey stated:

"That's what they're saying. That's why I put that down ... It was going on for 8 months and they were trying to say because I didn't have my 4B drill license they

were going to let me go in retaliation to what was going on. So it was kind of, I don't want to say necessarily a mutual thing. So that's why I listed it that way because they are saying they let me go. Like if you called them and asked them they would say she didn't get the 4B drill in school in time. But that wasn't necessarily the case." (*Resp. Ex. 2 & 5*)

21. The discrepancy between her paper application and what Ms. Hussey told the panel in her interview about why she no longer worked for two prior employers concerned Chief Breen because he believed Ms. Hussey should have included all the relevant information about leaving the job in her application, instead of waiting to be questioned about it.<sup>8</sup> (*Testimony of Breen*)
22. Chief Breen was also concerned that Ms. Hussey had not obtained the 4B drill license if it was required for her position with the Union. There are many certifications required of a firefighter. The Fire Academy requires completion of Firefighter I and Firefighter II and a Hazmat Responder Certification. Furthermore, as a condition of employment following graduation from the Fire Academy, firefighters have just eighteen (18) months to obtain an emergency medical technician license. (*Testimony of Breen*)

#### *Discussion about Reprimand at Work*

23. Another work-related issue was discussed at the panel interview with Ms. Hussey. On page 5 of the written application, each candidate is asked whether they had ever been counseled verbally or in writing for a poor job performance, inappropriate behavior, or any other work-related issue. In her written response on the application, Ms. Hussey wrote, "I messed up paperwork I didn't know about and was spoken to about it (status sheets)." (*Resp. Ex. 2 & 5*)

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<sup>8</sup> At the hearing of this appeal, the Appellant stated that a 4B drill license was not required by the employer construction companies, it was required by the Union. The companies had to let her go because the Union was letting her go. (*Testimony of Appellant*)



24. During the panel interview, Ms. Hussey was asked to be more specific about what job she was in fact spoken to about “messaging up paperwork.” Initially, Ms. Hussey said: “The military probably.” The panel pressed her a little more and, after some more thought, she changed her response and said: “May have been [construction union] actually.” She then indicated that she did not do status sheets and was not sure she had to fill them out and she was spoken to about it. (*Resp. Ex. 2 & 5*)
25. Chief Breen was concerned about Ms. Hussey’s inability to not remember which job she was reprimanded at during the interview, since she listed a reprimand on the application. The Mayor’s bypass letter to the Appellant noted that this showed a lack of attention to detail and a lack of seriousness about the process. Chief Breen noted that firefighters are called upon to create detailed reports and records daily, so accuracy and attention to detail are so crucial to the job.<sup>9</sup> (*Testimony of Breen; Resp. Ex. 5 & 6*)

Discussion regarding Uninsured Motor Vehicle

26. During her panel interview, the Appellant was also asked about her driver history, specifically about driving an uninsured motor vehicle on October 22, 2017. Ms. Hussey stated, “I don’t remember that. What vehicle?” The panel reminded her of the year, and she then went on to explain the circumstances, which involved her lending her vehicle to her boyfriend’s 16-year-old daughter, who got into an accident. She then said that the vehicle was uninsured for just one day – which happened to be the day the young girl got into the accident. Following the accident, Ms. Hussey stated that she had to go to court roughly a

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<sup>9</sup> Chief Breen testified that all candidates for employment were required to attend an orientation. Personnel from Human Resources for the City, along with the Chief, were present and emphasized that every candidate must be thorough when filling out the application, to be specific, and to answer every question. (*Testimony of Breen*)

dozen times in Lynn, MA for two and a half years to try to straighten the insurance issue out—but in the end, she just paid the \$2,000 fine because she could not continue to keep going back to court and miss work. (*Resp. Ex. 5*)

27. Assistant Chief Major considered the Appellant’s answers vague and inconsistent, which he found problematic. He concluded that the “facts were not believable.” Chief Breen considered her response to be evasive at first, and once they pressed her, he felt that she seemed to suddenly remember an incident which resulted in a dozen trips to court. Chief Breen found it “highly suspect that she couldn’t remember something that took up so much of your time for two years.” (*Testimony of Major; Breen; Resp. Ex. 5*)

*Discussion about License Suspension*

28. On page 4 of her written application, Ms. Hussey indicated that her license had been suspended in the past due to a ticket that she was unaware of and that once she became aware of it, she took care to pay it. She recalled finding out about the suspension during the background investigation for her candidacy to become a Somerville Police Officer.<sup>10</sup> (*Resp. Ex. 2*)

29. When asked about specifics of this license suspension during the panel interview, Ms. Hussey stated, “I don’t remember it that well to be honest with you.” She then went on to say that she got a ticket in New Hampshire but that she does not think she was stopped by the police and given a ticket. She said that she never received anything in the mail either. She then reiterated, “I don’t remember that situation that well.” She thought it may have happened in Ossipee, NH. When asked about the nature of the violation, she said that she

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<sup>10</sup> This driver suspension did not appear as an entry on the driver history, however. The Appellant self-reported it on her application. (*Resp. Ex. 2; Testimony of Breen*)

“crossed the double lines and didn’t get back over or vice versa.” (*Testimony of Breen; Major; Resp. Ex. 5*)

30. The consensus of the panel was that the Appellant’s explanation was not credible or reasonable that the Appellant could have been issued a driving/moving violation without being physically stopped by the police or receiving any notification in the mail. (*Testimony of Breen; Major; Resp. Ex. 5*)

31. At the appeal hearing, Ms. Hussey testified that she drove 4.5 hours up to Ossipee, NH on numerous occasions to handle the situation with the ticket/ license suspension. (*Testimony of Appellant; Resp. Ex. 5*)

Discussion about Dismissal from College

32. Within the Appellant’s written application, the interview panel took issue with important questions that were left blank, to include a question on page 3 that asks whether she had ever been suspended or dismissed from school or if any disciplinary action, such as scholastic probation, ever taken against her. Ms. Hussey left that question blank. (*Testimony of Breen; Major; Resp. Ex. 2 & 5*)

33. During the panel interview, when asked about her failure to answer the question, Ms. Hussey admitted that she had been put on academic probation during college. (*Resp. Ex. 2 & 5*)

34. A review of her sealed transcript and application reveals that she attended community college from September 2015 to December 2015.<sup>11</sup> She told the interview panel that she was using the GI Bill to attend college but that she started working and could not go to class, resulting in failing her courses. (*Resp. Ex. 2 & 5*)

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<sup>11</sup> The Appellant provided Lieutenant Holland with a sealed college transcript. (*Testimony of Appellant*) Lieutenant Holland requested this transcript. (*Testimony of Holland*)

35. When asked at the panel interview where she was working at that time, she indicated it was at a gym as a personal trainer. Her resume and written application, however, states that she did not begin working at the gym until May 2016, five months after leaving college<sup>12</sup> (*Resp. Ex. 2 & 5*)

Discussion about Prior “Public Safety” Position

36. Another instance on the application where the interview panel felt Ms. Hussey failed to follow instructions, thereby demonstrating carelessness and/or lack of attention to detail, is when she answered a series of questions on page 11 that only pertained to candidates that were currently or previously employed in a public safety position. (*Resp. Ex. 2*)

37. Although she had never had a job in public safety, and her job at the time that she filled out the application was as a crane operator, Ms. Hussey answered all the questions. For example, one question asked if she had ever been investigated for use of excessive force; another asked if she had ever been the subject of an internal affairs investigation; while another asked if she had ever been in a traffic accident while operating a government vehicle.<sup>13</sup> (*Resp. Ex. 2 & 5*)

38. As Assistant Chief Major testified, it is imperative that firefighters pay attention to details. They fill out forms daily relative to the driving apparatus – they need to check equipment, oil, tanks, lights, brakes, etc. They have to be present in extremely dangerous situations, to include medical situations, and to pay attention to the details. It was concerning to him that

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<sup>12</sup> The Appellant’s resume indicates that from 2012-2017 she “shoveled/removed snow” seasonally. This was the only job on the resume that she would have possibly been tied to from September 2015 to December 2015, the months she attended college. (*Resp. Ex. 2*)

<sup>13</sup> Ms. Hussey testified at the appeal hearing that, as a crane operator, “we are all about public safety” and that she believes all the questions on that part of the application pertained to her job, so she answered them. She testified that the excessive force question applied to her as a crane operator because the equipment can use excessive force. She did acknowledge that she does not drive a government vehicle. (*Testimony of Appellant; Resp. Ex. 2*)

she filled out an entire litany of questions relative to public safety positions, as if she were currently a police officer or a firefighter. (*Testimony of Major*)

City's Decision to Bypass the Appellant

39. Once every candidate's interview was complete, the three-member panel met to discuss each candidate, detailing the pros and cons. The panel does not score the interview answers, nor do they rank the candidates following the interviews; rather, the panel comes to a consensus.<sup>14</sup> The next step was for the panel to meet with the Mayor, the Appointing Authority. (*Testimony of Breen; Major*)

40. Present during the discussion with Mayor Joseph Curtatone was the Mayor's Chief of Staff, a representative of the City Law Department, the three panelists, and a representative from the City's Human Resources Department. Following a discussion about each candidate, the Mayor adopted the panelists' recommendation. (*Testimony of Breen; Major; Resp. Ex. 5*)

41. By letter dated March 11, 2021, Mayor Joseph Curtatone, the Appointing Authority, notified the Appellant that the City was bypassing her for appointment. (*Stipulated Fact; Resp. Ex. 6*)

Applicable Law

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and 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);

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<sup>14</sup> Although it does not prove fatal to the City's case here, the Commission has routinely stated that sole reliance upon "consensus scoring" is not a proper method of evaluating candidates. Rather, at least initially, each interview panelist should reach his/her own ratings and opinions about each candidate, prior to any type of discussion to reach a consensus.

MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Original appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear 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 Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for 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 has 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. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’” Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

The governing statute, G.L. c. 31, gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority’s action” and it is not necessary that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). The commission “. . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority” but, when there are “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy,” then the occasion is appropriate for intervention by the commission.” Id. (*emphasis added*). See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., Falmouth v. Civil Service Comm’n, 61 Mass. App. Ct. 796, 801 (2004), citing City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997); Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

An Appointing Authority is well within its rights to bypass an individual for fudging the truth as part of an application for a civil service position. It is reasonable to infer that a person who does so in order to get a job will be inclined to lie on the job. See O’Brien v. Somerville, 25 MCSR 292 (2012). See also Minoie v. Town of Braintree, 27 MCSR 216 (2014); Polin v. Randolph, 23 MCSR 229 (2011).

However, providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review

that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” Kerr v. Boston Police Dep’t, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016). Moreover, a bypass letter is available for public inspection upon request, so the consequences to an applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L. c. 31, § 27, ¶ 2. Thus, the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness require that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. See, e.g., Boyd v. City of New Bedford, 29 MCSR 471 (2016); Morley v. Boston Police Dep’t, 29 MCSR 456 (2016); Lucas v. Boston Police Dep’t, 25 MCSR 420 (2012) (mistake about appellant’s characterization of past medical history).

#### *Analysis*

Ms. Hussey has much to be proud of, including her distinguished military career. As part of this review process, however, either through oversight or deliberate omission, she failed to provide the City with clear, consistent information and responses in regard to straightforward questions. The City’s Fire Chief credibly explained that he found this pattern of inconsistencies and omissions very problematic for someone seeking a public safety position that will be making life and death decisions as a first responder. I agree – and find that the City’s decision to bypass the Appellant was justified.

#### *Inconsistencies and Omissions in Appellant’s Application and Interview*

The City presented ample evidence of the Appellant’s inability to complete her application fully in far too many areas to overlook. The cumulative effect of her repeated instances of carelessness, omission, forgetfulness, and/or evasiveness, taken as a whole,



caused the City to question her ability to recall events and/or retell events in an accurate, fulsome manner. Applicants to the fire department are put on notice in their application that they must complete the application fully and accurately, and their ability or inability to do so will be considered as part of the evaluation as to their suitability for the position. Applicants are further warned that “honestly and candor in answering these questions in this application is valued above all else.” The Appellant signed the application instructions to this effect.

Chief Breen and Assistant Chief Major testified to the importance of their firefighters paying close attention to detail not only in emergency situations, as it can mean life or death, but also during the most mundane of daily tasks, such as checking all aspects of the firetruck before each use. In one section, the Appellant completed a lengthy multi-part question on the application that was wholly inapplicable to her. On her application, there appears a series of questions pertaining only to those applicants who were previously in a public safety position, including questions about whether she had been investigated for excessive force, had ever been the subject of an internal affairs investigation, or been involved in a traffic accident while driving a government vehicle. Even at the appeal hearing, rather than admitting to a mistake, the Appellant claimed that operating a crane at a construction site is a public safety position and that failure to properly handle the crane could result in excessive force if it hit something. She refused to concede that the question did not pertain to her either during her panel interview or in her testimony. The Appellant has applied to become a police officer in several jurisdictions on at least five occasions, to include Somerville (3 times), the MSP, and Chelsea, and should be familiar with the term “public safety position” as a result. Her explanation as to why she filled out this section strains her credibility.

More troubling than mistakenly filling out a section that did not apply to her, the Appellant failed to answer several questions on the application, to include (1) whether she had ever been dismissed/disciplined by a school and (2) a required explanation about her past use of marijuana. In her application, the Appellant completely left the question blank about whether she had ever been disciplined or dismissed by a school (and if so, a required explanation), even though her sealed transcript, which she was required to produce, revealed that she had been put on academic probation in college. She explained to the interview panel that she flunked out of school because she was working at a job as a personal trainer and she felt it important to go to work rather than classes; however, a review of her resume and application reveals that this to be inaccurate. The Appellant did not begin working as a personal training until after being put on academic probation. The City was concerned, again, with her ability to answer the application fully and completely, with honesty and candor. When asked about the missing information in her interview, her response was not supported by the documents she submitted. As testified to by the Chief, the panel felt they continuously had to pry information out of the Appellant.

In additional to failing to provide certain information on her application, much of the information the Appellant did provide, both in her application and in her panel interview, was inconsistent and/or was confusing. This pattern of inconsistency left the panel with the impression that the Appellant was either being evasive or had a poor ability to remember details and accurately account for events in her life. The Appellant was asked, as were all candidates, about her past driving history, which included a 2017 uninsured motor vehicle violation and a license suspension. To the Appellant's credit, there were not many entries of concern on her driving history as it relates to her ability to drive safely; however, the panel's

concerns were, again, with her ability to relay accurate information. I listened to the audio recording of her panel interview. Witnesses for the City were accurate in their recall of the interview and were reasonable in their impressions of the Appellant's performance at the interview.

For the 2017 uninsured motor vehicle entry, the Appellant initially appeared to not recall the incident at the panel interview, stating "I don't remember" and asking the interviewers "which car" they were talking about. After initially not seeming to recall anything about an uninsured vehicle charge, the Appellant suddenly remembered a two-year ordeal of going back and forth to court in Lynn, MA a dozen times to try to rectify the situation. Her inability to initially recall the incident appeared evasive to the panel and she was never able to provide a clear account of the facts underlying the charge against her even though this was the only entry on her driver history since 2014.

Meanwhile, the interview panel also discussed the Appellant's dismissal from her prior position with two construction companies (same business under two names). The panel was concerned with inconsistencies surrounding the Appellant's explanation about her dismissal. In her written application, signed in October 2019, the Appellant wrote that she was dismissed because she did not obtain a 4B drill license. When she spoke with Lieutenant Holland in November 2020, however, she claimed that she had been dismissed by the companies in retaliation for a complaint she filed against them. At the panel interview, the Appellant was asked about the discrepancy in her written application and her comments to the Lieutenant. She said that she wrote in her application that she was dismissed because she did not have the 4B drill license—because that is what she thought the employers would say. Lieutenant Holland spoke with her supervisor and the supervisor did not mention anything

about the license or the harassment case, further stating that he did not know why the Appellant left the job. Given the totality of the inconsistent and missing information throughout the application, the City is reasonable in its skepticism regarding whether or not the Appellant provided full and accurate reasons for her termination from these companies.

She was also asked about a prior counseling or reprimand by a former employer that she noted in her application, wherein she wrote that she “messed up paperwork I didn’t know about and was spoken to about it (status sheets).” During her interview, she was asked to be more specific about what job this happened at. The Appellant initially said, “The military probably.” When the panel pressed her for more information, she changed her response and said, “It may have been Local 4, actually.” The City was concerned with her response since it, again, showed a lack of attention to detail and a lack of seriousness about the process, since she listed the reprimand on her application but was unable to clearly speak to the situation from her past.

Lastly, the City believed Ms. Hussey was less than forthcoming in the section of her application where she was required to provide information about any past applications for civil service positions with other municipalities/agencies. I have reviewed her application and the non-selection/bypass letters from the MSP and Somerville Police Department. In her application, the Appellant simply wrote that she was not selected “many different times” by the Somerville PD, rather than providing any type of explanation. In fact, the Appellant had been bypassed for not meeting the claimed residency preference twice and withdrew on another occasion. Additionally, for her non-selection by the State Police, the Appellant simply wrote, “down to the end and wasn’t picked.” This is hardly a full explanation of why she was not selected, as evidenced by the non-selection letter, which details the reasons for

her non-selection. These bypass letters were not initially provided to the City by the Appellant. It was only after Lieutenant Holland requested them that she provided them, after she passed in her application, and then the City came to learn of a more complete explanation behind her non-selection. The panel was reasonable in concluding that the Appellant was likely purposefully presenting herself in a less negative light, as it appeared she had done in other sections of the application, as well.

The City was reasonable in its concern about the Appellant's ability to relay consistent, complete, and accurate information in her application and during her interview. Any one of these omissions or inconsistencies on her application, taken alone, may not be reason by itself to justify bypassing the Appellant; yet all of the aforesaid issues with her application and/or panel interview, taken comprehensively, form a valid basis for considering the Appellant unsuitable for the position of firefighter.

*Allegation of Bias by Appointing Authority*

Both Chief Charles Breen, a 36-year veteran of the Department, and Assistant Chief Christopher Major, a 27-year veteran of the Department, were informed witnesses with a command of the facts and the rigors and intricacies of serving as a solid, reliable firefighter. At times during the pendency of this case, prior counsel for the Appellant suggested that the Department has a bias against veterans, since the Department bypassed certain veterans. There is no evidence of a bias against veterans in this particular case, beyond that mere assertion. In fact, Assistant Chief Major, who is on the hiring panel, is a veteran himself. Chief Breen selected Assistant Chief Major to be the Assistant Chief and to be part of the interview panel for hiring. After listening closely to their testimony, I did not find any evidence of bias that they may have held against the Appellant personally or because she is a veteran. In fact, Assistant Chief Major,

prior to the Appellant's candidacy with the Department, had previously written a commendation letter for the Appellant's mother, an employee of the City.

*Conclusion*

For all the above stated reasons, the bypass appeal of Virginia Hussey under Docket No. G1-21-081 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By vote of the Civil Service Commission (Bowman, Chair; Stein & Tivnan, Commissioners) on December 15, 2022.

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:  
Stephen Pfaff, Esq. (for Appellant)  
Jason Piques, Esq. (for Respondent)