

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

SHAWN JENKINS,
Appellant

v.

G1-14-39

CITY OF BROCKTON,
Respondent

Appearance for Appellant:

Pro Se
Shawn Jenkins

Appearance for Respondent:

Karen A. Fisher, Esq.
City of Brockton
45 School Street
Brockton, MA 02301

Commissioner:

Christopher C. Bowman

DECISION

On February 11, 2014, the Appellant, Shawn Jenkins (Mr. Jenkins), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the City of Brockton (City) to bypass him for original appointment as a permanent, full-time firefighter. A pre-hearing conference was held on March 11, 2014 at the offices of the Commission. A full hearing was held at the same location on March 31, 2014.¹ The hearing was digitally recorded and both parties were provided with a CD of the hearing.² In lieu of post-hearing briefs, the parties made closing arguments at the close of the hearing.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

FINDINGS OF FACT:

Eight (8) exhibits were entered into evidence at the hearing and marked as Exhibits A through G. Based on those exhibits, the stipulated facts, the testimony of:

Called by the City:

- Brian Nardelli; Deputy Fire Chief, City of Brockton;
- Rebecca O'Keefe, Head Administrative Clerk, Brockton Fire Department;

Called by the Appellant:

- Shawn Jenkins, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Mr. Jenkins is twenty-four (24) years old. He graduated from Brockton High School in 2007 and is currently enrolled at Massasoit Community College. (Testimony of Mr. Jenkins)
2. Mr. Jenkins is a member of the Army National Guard. He joined the Guard in 2008 and served a tour of duty in Afghanistan. (Testimony of Mr. Jenkins) Mr. Jenkins's tour of duty was from February 2010 to March 2011. (Exhibit G)
3. On April 28, 2012, Mr. Jenkins took the civil service examination for firefighter and received a score of 93.
4. On December 1, 2012, the state's Human Resources Division (HRD) placed Mr. Jenkins's name on an "eligible list" of candidates for Brockton firefighter. (Stipulated Facts) His rank

² 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 substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

on the eligible list was based on his score, his status as a veteran and his representation that he qualified for residency preference in Brockton.

5. In order to qualify for a residency preference, and thus be ranked above all non-residents, Mr. Jenkins was required to have been a resident of Brockton for the one year preceding the date of the April 28, 2012 civil service examination (April 28, 2011 to April 28, 2012). G.L. c. 31, § 58.
6. On August 5, 2013, HRD sent the City a “Certification” (Certification No. 01080) from which it could appoint twelve (12) permanent full-time firefighters. Mr. Jenkins was ranked 13th (tied) on Certification No. 01080. (Exhibit A)
7. Ultimately, five (5) candidates ranked below Mr. Jenkins on the Certification were appointed, thus resulting in a “bypass” of Mr. Jenkins.
8. The City provided Mr. Jenkins with three (3) reasons for bypassing him: 1) Failing to complete Section 11 of the Application for Employment; 2) Failing to provide sufficient proof of residency at the time of his interview; and 3) Five (5) moving traffic violations in the past five (5) years. (Exhibit F)

Failing to Complete Section 11 of the Application for Employment

9. On August 29, 2013, Mr. Jenkins completed an Application for Employment. (Exhibit B)
10. Section 11 of the Application for Employment has three (3) parts: A, B and C. Section A states: “Give three (3) references, who are responsible adults of reputable standing who have known you for at least the past five (5) years. (Excluding relatives, former employers, fellow employees, and school teachers.)” Section B states: “Provide names and address of three present or past neighbors who would be able to provide general information regarding your

character. Do not repeat names previously offered as references. Section C states: If you rent, give landlord's name and address and Telephone #." (Exhibit B)

11. Rebecca O'Keefe is the Head Administrative Clerk for the Fire Chief in Brockton. She assists with many of the administrative duties associated with the hiring of firefighters. She maintains the Certification that must be signed by the candidates; provides candidates with an application for employment as well as the residency documentation handout; and answers any administrative questions the candidates may have. (Testimony of Ms. O'Keefe)
12. At some point prior to receiving Mr. Jenkins's completed application, Ms. O'Keefe received a phone call from Mr. Jenkins at which time he inquired about whether he could list businesses as neighbors, to which she replied with words to the effect: "if that's all you have, use that." (Testimony of Ms. O'Keefe)
13. Brian Nardelli is the City's Deputy Fire Chief. He has served in the Fire Department for seventeen and a half (17 ½) years and has served in his current position for approximately four (4) years. (Testimony of Deputy Chief Nardelli)
14. Deputy Chief Nardelli oversaw the background investigation process for all firefighter candidates in this particular hiring cycle. (Testimony of Deputy Chief Nardelli)
15. In reviewing Mr. Jenkins's application, Deputy Chief Nardelli noticed that under the "neighbors" section, Mr. Jenkins had not listed the names of any *persons* who were "present or past neighbors." Rather, Mr. Jenkins listed the names of three (3) businesses with no contact person noted. (Testimony of Deputy Chief Nardelli)
16. When investigators went to the three (3) businesses listed on Mr. Jenkins's application, nobody at these businesses knew who Mr. Jenkins was, nor did they recognize him when

shown an 8" x 10" photograph of him. As a result, the investigator was unable to ask them questions related to Mr. Jenkins's character. (Testimony of Deputy Chief Nardelli)

17. Mr. Jenkins listed the names of businesses as current neighbors because he had recently moved into an apartment that was located above retail establishments. (Testimony of Mr. Jenkins)

18. Although Mr. Jenkins could have listed the names of past neighbors at a time when he lived at his family's home, he chose not to do so. Those neighbors had been in a dispute with Mr. Jenkins's family and Mr. Jenkins didn't want them to hinder his chances of becoming a Brockton firefighter. (Testimony of Mr. Jenkins)

Driving Record

19. As part of the background investigation, Deputy Chief Nardelli also reviewed the driving record of Mr. Jenkins. He was concerned about the following moving violations listed on his driving record including:

▪ Speeding	Brockton	10/16/07
▪ Speeding	Brockton	5/15/08
▪ Speeding / Lane Violation	Raynham	2/14/10
▪ No Inspection Sticker	Dedham	3/18/12
▪ Failure to Stop	Brockton	2/25/13

(Testimony of Deputy Chief Nardelli and Exhibit C)

20. Mr. Jenkins's driving history indicates that he was found responsible for each of the violations referenced by Deputy Chief Nardelli. (Exhibit C)

21. The City pays particular attention to an individual's driving history when vetting firefighter candidates because firefighters are required to drive very large apparatus, sometimes at high speeds in response to emergencies. The fire apparatus do not stop as quickly as regular passenger vehicles and the City invests large amounts of money to purchase such vehicles. (Testimony of Deputy Chief Nardelli)

22. When reviewing a candidate's history, the City places more emphasis on recent violations, including those that occurred in the past five (5) years. (Testimony of Deputy Chief Nardelli)

Proof of Residency

23. When Mr. Jenkins turned in his application for employment on August 28, 2013, he was handed a form with the heading, "RESIDENCY PREFERENCE FOR ENTRANCE LEVEL CANDIDATES." The form states, in relevant part that: "At the time of your interview, please submit as many of the following documents showing your continual residence for the entire one year period ("4/28/11 – 4/28/12" was hand-written on the form) prior to taking the examination: Utility bills in your name; Real Estate bills in your name; Voter Registration; Income tax records in your name; Bank statements in your name; Credit card statements in your name; drivers license; License to carry firearms; Professional or occupational licenses; Automobile registration in your name; Automobile excise tax records in your name ... Documents not valid during the one year period will not be considered. Affidavits of family members, neighbors and friends are not suitable evidence to prove residency." (emphasis in original) (Testimony of Ms. O'Keefe and Exhibit D)

24. Mr. Jenkins was not interviewed by an interview panel until October 7, 2013, thus giving him approximately five (5) weeks to produce any of these residency-related documents.

(Testimony of Deputy Chief Nardelli)

25. On October 7, 2013, Mr. Jenkins arrived for the interview and provided two (2) residency-related documents. The first document turned out to be the automobile registration that belonged to his mother. The second document was an automobile registration for Mr. Jenkins, but with a North Easton address outside the relevant one-year time period.

(Testimony of Deputy Chief Nardelli)

26. When Mr. Jenkins was told that these documents were not sufficient to prove his Brockton residency, he stated that he would try to obtain additional documentation. Deputy Chief Nardelli told Mr. Jenkins that he could do so, but also reminded him that the written instructions specifically stated that the documents were due on the day of the interview. (Testimony of Deputy Chief Nardelli)

27. Deputy Chief Nardelli had a two-fold concern regarding Mr. Jenkins's failure to produce the relevant documents. First, it made it difficult to verify whether Mr. Jenkins was entitled to receive residency preference. Second, it raised concerns about Mr. Jenkins's ability to follow instructions, something all firefighters must be able to do. (Testimony of Deputy Chief Nardelli)

28. Over the next two (2) weeks, Mr. Jenkins submitted other documents including: excise bill for the relevant time period with a Brockton address; pay stubs for the relevant time period listing a Brockton address; as well as utility bills. (Exhibit E)

29. At some point on or around October 21, 2013, Ms. O'Keefe told Mr. Jenkins that he didn't need to bring in any additional documentation. (Testimony of Ms. O'Keefe)

30. Although Deputy Chief Nardelli reviewed the additional documents submitted, and didn't see anything to contradict Mr. Jenkins's residency claim, he remained concerned that the documents were not submitted in a timely manner as part of a process in which approximately thirty (30) candidates were being vetted. (Testimony of Deputy Chief Nardelli)

31. On December 18, 2013, the City notified Mr. Jenkins that he was being bypassed for appointment. This appeal followed. (Stipulated Facts)

Legal Standard

The Commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n, 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. The Commission must determine whether the Appointing Authority conducted a "reasonably thorough review that confirmed that there appeared to be a credible basis for the allegations." City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n, 447 Mass. 824-826 (2006). The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Beverly citing Cambridge at 305, and cases cited.

Analysis

Based on a review of the witness testimony and the documents submitted, the City has shown, by a preponderance of the evidence, that it had reasonable justification to bypass Mr. Jenkins for appointment.

The vetting process was thorough and consistently applied across all candidates. All candidates were asked to submit a complete application for employment, including the names of present or past neighbors that could answer questions related to the candidate's character. Mr. Jenkins, who had recently moved into an apartment above retail stores, listed the names of those retail businesses, but did not include the names of any individuals who owned or worked at those businesses that could answer questions about his character. When a background investigator visited those businesses, nobody recognized Mr. Jenkins, even after being shown a photograph of him. The instructions on the application clearly stated that the City was seeking the names of neighbors that could answer questions regarding the candidate's character and Mr. Jenkins should have known that simply providing the names of businesses would make it difficult for the City to do so.

Further, Mr. Jenkins candidly acknowledged during his testimony before the Commission that he did not list the names of past neighbors because he was concerned that they would hinder his chances of becoming a firefighter due to a dispute involving his family and these past neighbors. This omission, and the reason behind it, standing alone, is a valid reason for bypassing Mr. Jenkins.

The City was also on firm ground for bypassing Mr. Jenkins based on his driving record, which included multiple moving violations during the past five (5) years, all of which Mr. Jenkins was found responsible. With the exception of one (1) violation, Mr. Jenkins does not dispute that he

incurred the citations in question, including speeding and lane violations. Deputy Chief Nardelli offered credible testimony regarding the need to appoint candidates with a safe driving record, considering that firefighters must drive very large, very expensive apparatus through the congested streets of Brockton in response to emergencies.

Finally, the City was justified in bypassing Mr. Jenkins based on his failure to produce documents verifying his residency in a timely manner. The City did not conclude that Mr. Jenkins was not a resident of Brockton during the relevant one-year time period preceding the civil service examination. Rather, Deputy Chief Nardelli was understandably concerned about Mr. Jenkins's failure to follow instructions. After being given more than one month to produce specific documents to prove his residency, Mr. Jenkins appeared for his interview with two (2) documents, one of which belonged to his mother and another which showed a North Easton address.

While Mr. Jenkins subsequently produced various documents, most of which appear to verify his claim of residency, he did not provide any reasonable explanation for not producing them in a timely manner. At some point, Mr. Jenkins suggested that he was being penalized for his overseas duty in Afghanistan. However, as his DD 214 Form clearly shows, Mr. Jenkins was not overseas on active military duty during the period in question.

More generally, there was no evidence presented to show that the process here was marked by political influences or any factors unrelated to basic merit principles. In fact, while it did not factor into my decision here, it is noteworthy that the City offered Mr. Jenkins the opportunity to be reconsidered during the next hiring cycle, an offer he inexplicably declined.

While the City has provided reasonable justification for bypassing Mr. Jenkins, I feel compelled to offer some personal observations about Mr. Jenkins. Notwithstanding his ill-

advised decision to withhold information regarding his past neighbors, I found Mr. Jenkins to be an honest, serious and motivated person with a clear focus on his desire to be a firefighter. Further, he has received multiple ribbons and citations for his (ongoing) military service, including during his deployment to Afghanistan where he performed dangerous “route clearing” duties. If and when Mr. Jenkins becomes eligible for consideration in the future, the City, in my opinion, would be well-advised to give him a second look.

Conclusion

For all of the above reasons, the decision to bypass Mr. Jenkins is affirmed and his bypass appeal under Docket No. G1-14-39 is hereby *denied*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on June 26, 2014.

A true record. Attest:

Commissioner

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.

Notice:

Shawn Jenkins (Appellant)
Karen A. Fisher, Esq. (for Respondent)