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**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

MATTHEW JONES,
Appellant

v.

CASE NO: G1-07-392

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Stephen J. Delamere, Esq.
Law Offices of Stephen J. Delamere, P.C.
893 Washington Street
Stoughton, MA 02072

Boston Police Department's Attorney:

Tara. L. Chisholm, Esq.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Paul M. Stein

DECISION

The Appellant, Matthew Jones, seeks review, pursuant to G.L.c.31, §2(b), of action of the Personnel Administrator of the Massachusetts Human Resources Division (HRD) in approving the reasons proffered by the Respondent, Boston Police Department (BPD), as Appointing Authority, to bypass the Appellant as unfit for original appointment as a Boston police officer on the grounds of a poor driving and employment history. A full hearing by the Civil Service Commission (Commission) was held on July 15, 2008. BPD called two witnesses and the Appellant testified on his own behalf. Twenty-four (24) exhibits were received in evidence. The hearing was recorded on two audiocassettes.¹

¹ While the Appellant's case has been fully recorded, portions of the Appointing Authority's case, including testimony of Detective Pomodoro and part of Ms. Robin Hunt's testimony appear inaudible.

FINDINGS OF FACT

Giving appropriate weight to the Exhibits, the testimony of BPD Detective Frank Pomodoro, BPD Director of Human Resources Robin Hunt, and the Appellant, and inferences reasonably drawn from the evidence as I find credible, I make the findings of fact set forth below.

Appellant's Background

1. The Appellant, Matthew Jones, is a 32-year-old male who resides in Brighton, MA.

(Exhibit 23; Testimony of Jones)

2. Mr. Jones grew up in Medford, graduated from Pope John High School in Everett, and attended Framingham State College and Westfield State College where he studied toward a degree in Criminal Justice, which he has not completed. *(Exhibits 23 & 24; Testimony of Jones)*

3. Mr. Jones has aspired to becoming a police officer for many years. His father was a police officer with the City of Cambridge and his brother is a police officer. *(Testimony of Jones)*

4. In addition to the BPD, as of the time of the bypass, Mr. Jones unsuccessfully had sought employment as a police officer with the Medford Police Department and the MBTA. He was previously by-passed by both those departments. (Subsequent to his BPD by-pass, Mr. Jones has received a conditional offer of employment with the Medford Police Department.) *(Exhibit 23; Testimony of Jones)*

5. Mr. Jones also explored the New York City Police Department (NYPD), taking the exam for appointment but I find that he did not ever make a formal application for employment with NYPD. *(Exhibit 23; Testimony of Jones, Hunt)*

6. Mr. Jones joined the Massachusetts National Guard in 1997 and served as a military police officer in the 972nd Military Police Company, attaining the rank of Sergeant prior to honorable discharge in November 2008. His military service included combat tours of duty in Pakistan and Iraq, and earned him numerous commendations and awards. (*Exhibits 1, 2, 13 through 19; Testimony of Roberts, Hunt*)

Appellant's Driving History

7. Mr. Jones driving history includes motor vehicle accidents and citations and law infractions "all over the state" and also indicates a "pattern" of defaults, .i.e. non-payment of tickets on time. (*Exhibits 4, 21, 23; Testimony of Hunt, Pomodoro, Jones*)

8. At the time of the by-pass, Mr. Jones driving record showed the following:

a. Accidents

- 09/24/1993 - Fell asleep at the wheel driving home from New Hampshire, and "flipped" vehicle over. (More than 50% at fault)
- 02/05/1996 - Struck a vehicle on the highway while both cars were turning into the same lane. (More than 50% at fault)
- 12/08/2005 - Struck a vehicle when turning into the left hand lane that was in his blind spot and he did not see it (More than 50% at fault)
- 05/24/2006 - Struck by vehicle while he was making a left hand turn whose view was obstructed by an SUV (Found not more than 50% at fault, after bypass decision but prior to Commission hearing)

b. Citations/Infractions

- 07/28/1994 - Speeding (Responsible); Operating Recklessly (Dismissed)
- 05/20/1995 - Speeding (Responsible)
- 08/14/1995 - Speeding (Not Responsible)
- 09/23/1997 - Speeding (Not Responsible); Seat Belt Violation (Responsible); No Inspection Sticker (Not Responsible)
- 09/08/1998 - Speeding (Responsible)
- 02/23/1999 - No Inspection Sticker (Responsible)
- 09/23/1999 - Seat Belt Violation (Responsible)
- 04/26/2001 - No Inspection Sticker (Responsible); No Registration/License (Not prosecuted)
- 06/22/2004 - Speeding (Responsible)
- 01/31/2005 - Speeding (Not Responsible)

- c. Non-Payment/Bad Check
 - 10/27/1997 – Payment Default
 - 08/03/1998 – Bad Check
 - 12/08/1998 – Payment Default
 - 02/04/1999 – Bad Check
 - 06/15/1999 – Payment Default
 - 10/29/1999 – Payment Default
 - 06/01/2001 – Payment Default
 - 09/27/2004 – Payment Default

(Exhibits 3, 5, 21 & 23; Testimony of Hunt, Pomodoro, Jones)

Appellant's Employment History

- 9. At the time of the by-pass involved in this appeal, Mr. Jones had been employed since July 2005 as a Security Officer with Allied Barton at the Prudential Center in Boston. *(Exhibit 23; Testimony of Jones, Hunt)*
- 10. Mr. Jones previously worked as a residential armed security officer for District Crime Prevention, Inc., Shrewsbury, MA, assigned principally to one of its most valued clients at the Prudential Towers in Boston, from June 2003 until May 2005, when he was involuntary terminated. *(Exhibits 22 through 24; Testimony Jones)*
- 11. Save for the incident resulting in his termination from District Crime Prevention, all of Mr. Jones' current and prior employment references were positive. *(Exhibits 5 through 10, 22; Testimony of Pomodoro; Hunt)*
- 12. The circumstances surrounding Mr. Jones's termination from District Crime Prevention emanated for his absence from work to attend a NYPD orientation meeting in New York City over the Memorial Day weekend in May 2005. There was considerable evidence concerning the events leading up to and following his termination from District Crime Prevention. *(Exhibits 11, 22 through 24; Testimony of Pomodoro, Hunt, Jones)*

13. At some time prior to the Memorial Day weekend, Mr. Jones received a notice from the NYPD that the NYPD was going to conduct an informational orientation for individuals who were interested in pursuing employment as a NYPD police officer. According to Mr. Jones, he only received "short notice" of the orientation by letter on May 25, 2005, the Wednesday prior to the Memorial Day weekend. The NYPD notice was not available. (*Testimony of Jones*)

14. The policy at District Crime Prevention permitted security officers to swap shifts or take time off under certain conditions:

The policy regarding time off and vacation is important to remember to keep the department operations running at its fullest potential. It is required to give the supervisors a two week notice, in writing, for any time off needed. Remember, just because you request time off does not always mean it will be approved. In most cases the time off is approved, but on holidays and emergency conditions we are required to share the workload. If the policy and procedures are not followed by the officer; the officer is required to work the scheduled shift. Officers can switch shifts with other officers as long as it is approved by a Supervisor or Chiefs. (The officer may not switch shifts which cause overtime).

Mr. Jones knew the policy, and had requested and been approved for time off under this policy on a number of occasions, including time to attend to his training with the Army National Guard. (*Exhibit 22; Testimony of Jones*)

15. Mr. Jones stated he asked for personal days off for 5/28/05 and 5/29/05 and was told he needed to find someone to cover his shift. He arranged with a co-worker, Jason, to cover the shift, but this swap was disapproved because it would require additional overtime. Mr. Jones says that he was later told by Jason that another employee, Ed, had agreed to cover the shift, so he thought he was "all set" and went to New York City for the weekend. (*Exhibits 22,23; Testimony of Jones*)

16. When Mr. Jones returned from New York and reported for work the next week, he was suspended and later terminated by District Crime Prevention for violation of the company's "no show, no call" rule. (*Exhibits 22, 23; Testimony of Jones*)

17. Except for the incident leading to his termination, Mr. Jones was considered a good and dependable employee by District Crime Prevention and had been given supervisory responsibilities on prior occasions. (*Exhibit 22; Jones Testimony*)

Appellant's Application for Appointment as a Boston Police Officer

18. Mr. Jones's name appeared on Certification # 270048 for the position of Boston police officer. (*Exhibit 20*)

19. Mr. Jones completed a Student Officer Application for the position and submitted it to the BPD on February 9, 2007. (*Exhibit 23*)

20. In accordance with its regular procedure, the BPD Recruit Investigations Unit (RIU) assigned Detective Frank Pomodoro, a 26-year veteran of the force and five-year veteran of the RIU, to undertake a thorough investigation of Mr. Jones's background. Detective Pomodoro's extensive experience in various roles with the BDP, both as detective and a patrolman, and his professional demeanor and candor as a witness leads me to conclude that his testimony rings true and to give it considerable weight. (*Testimony of Pomodoro*)

21. Detective Pomodoro investigated Mr. Jones's criminal history, his driving history, his military history, his employment history and his financial history. The detective spoke with neighbors and received written neighbor assessments from three of them. Additionally, Mr. Jones supplied letters of personal reference, all generally favorable to Mr. Jones. (*Exhibits 5 through 11, 21 through 24; Testimony of Pomodoro, Hunt*)

22. The fact that Mr. Jones had been terminated by District Crime Prevention and Mr. Jones's Registry of Motor Vehicles (RMV) driving record were "red flags" for Detective Pomodoro. The BPD heavily considers termination from prior employment, especially prior employment in security or law enforcement. In addition, police officers spend considerable time in a motor vehicle and, as part of their sworn duties, must make motor vehicle stops for traffic violations. The BPD, as are most police forces, is committed to hiring only those persons who have shown a record of safe driving and a record of respect for the laws. (*Testimony of Pomodoro, Hunt*)
23. Detective Pomodoro spoke to Sergeant Wendy Barton, who served as Mr. Jones's first line supervisor at District Crime Prevention, and received certain documentation from her concerning the termination. (*Exhibit 22; Testimony of Pomodoro, Jones*)
24. Sergeant Barton explained that Mr. Jones was a good employee up until the incident for which he was terminated. The documentation stated that Mr. Jones had broken company rules when he failed to show up for his two shifts over the 2005 Memorial Day weekend without approval, which required his termination according to company policy. In the Human Resource Data Form provided to BPD by Sergeant Barton, she answered "No" to the question "Would you rehire?" (*Exhibit 22*)
25. Robin Hunt, BPD Director of Human Resources, testified that the results of Mr. Jones's background investigation were presented to the BPD hiring committee during a "roundtable" discussion which included the RIU Commander, the Director of Human Resources, a Deputy Superintendent from Internal Affairs and an attorney from the Legal Advisor's Office. (*Testimony of Hunt*)

26. The BPD considers an applicant's entire background and reviews each candidate on his or her own merit, on a case by case basis. Ms. Hunt testified that the "roundtable" committee knew of Mr. Jones's honorable service as a member of the military and his relevant experience as a military police officer, knew that all of the personal letters of reference and neighbor references on him were positive, and that, but for District Crime Prevention, all his employment references were positive. However, the committee looks at a candidate's entire profile "as a whole" and, in the case of Mr. Jones, all members of the "roundtable" discussion agreed that despite the positive elements in his record, the totality of the circumstances surrounding Mr. Jones's RMV driving record and his termination from a security job at District Crime Prevention rendered him unsuitable to be a BPD police officer. (*Testimony of Hunt*)

27. The BPD "roundtable" was troubled by Mr. Jones's driver history because Mr. Jones had been stopped so many times by the police over a course of 13 years, which suggested an unacceptable level of disrespect for the motor vehicle laws of the Commonwealth. For example, Mr. Jones had been stopped seven times for speeding and found "responsible" for the infraction four times, the last two incidents occurring in 2004 and 2005. Additionally, at the time of the by-pass decision, Mr. Jones had been responsible for causing three motor vehicle accidents, most recently in 2005, and was involved in another accident in 2006. (*Exhibit 21; Testimony of Hunt*)

28. Ms. Hunt explained that while "responsibility" for accidents and violations was significant, the BPD also considers the total amount of times that an applicant has been "pulled over" as an important part of the "whole picture" (*Testimony of Hunt*)

29. The “roundtable” committee also was concerned about Mr. Jones’s termination from employment as an armed security guard for District Crime Prevention. Police officers must report for duty without equivocation and they also often are required to perform mandatory overtime shifts. The BPD demands that sworn police officers are absolutely dependable. (*Testimony of Hunt*)

30. On July 12, 2008, the BPD notified HRD that it intended to by-pass Mr. Jones for the following reasons, which HRD approved on September 17, 2007:

- Mr. Jones possesses a lengthy registry of motor vehicles driving record which the Department found problematic. Further more he was rejected from employment by the MBTA for his driving history.
- In addition, Mr. Jones was terminated from employment in 2005 by District Crime Prevention in his capacity as a Security Officer. The company states in an employer statement in response to his claim for unemployment, that Mr. Jones was terminated for not calling in or showing up for 2 shifts, a violation of the company’s policy.

This Appeal ensued. (*Exhibit 20; Appeal Complaint*)

Testimony of the Appellant

31. Mr. Jones carried himself in a professional manner and generally acquitted himself well at the hearing before the Commission when describing his training and experience as a military police officer. I found him sincere about his long-standing desire to become a municipal police officer and credit his excellent record as a member of the Army National Guard. (*Testimony of Jones*)

32. Mr. Jones undisputedly possesses the courage, skill and commitment to public service that would serve him well as a municipal police officer, but these requirements were not why the BPD bypassed Mr. Jones. Rather, the BPD’s concern focused on what it perceived as a pattern of evidence that reflected adversely on Mr. Jones’s maturity and judgment, based on employment history and driving record. (*Testimony of Jones*)

33. As to the issue of Mr. Jones's prior employment termination, I find that the documents provided to BPD by Mr. Jones and District Crime Prevention regarding his employment termination, as well as Mr. Jones's testimony at the hearing, fail to impugn BPD's conclusion that this adverse employment action was inexcusable. Indeed, the different slants given to the situation by Mr. Jones at different times tends to confirm BPD's concern about his judgment as well as his credibility. (*Exhibits 22 through 24; Testimony of Jones*)

34. Thus, Mr. Jones's Student Officer Application states that his requests were directed through his supervisor, Sergeant Barton. He told her "getting on the New York Police was an opportunity that I could not let pass by" but she "refused my request" because "she didn't care". This is the same explanation initially written as his reason for "leaving" District Crime Prevention, on his employment application to his current employer, Allied Barton: "Denied time off to process with the New York Police department".¹ On the other hand, the information reported by Mr. Jones when he applied for unemployment benefits states that his contacts were with Sergeant Barton's supervisor, Norm, and lays out a different scenario, as he did in his testimony, in which he claims he relied on a conversation with a co-worker (not a supervisor) who said his shift was covered and he "thought he was all set.". (*Exhibits 22 through 24; Testimony of Jones*)

35. Mr. Jones is also inconsistent in claiming that his interest in employment with the NYPD was a factor in his termination. He reported to the unemployment office that

¹ The Allied Barton employment application (Exhibit 24) was received in evidence without objection and is considered for the limited purpose of assessing the credibility of the evidence concerning Mr. Jones's testimony regarding the District Crime Prevention employment termination. BPD does not rely on Mr. Jones' employment at Allied Barton in support of its justification of the bypass.

he was fired because he “was in the process of getting hired by the New York Police” and “did not get the job” because he could not meet the residency requirements. At the hearing, Mr. Jones stated that he was told at the May 2005 orientation that he had approximately one month to establish New York residency in order to be eligible for consideration by the NYPD, which led him to abandon pursuing the job. Yet, he also reported to unemployment his belief that he was terminated because he was “in the process of getting hired by the New York Police” and “Norm was afraid I would need more days off and mess up the schedule and not have coverage for the clients”, which does not make sense, given the fact that he then had clearly given up any further interest in the NYPD position. (*Exhibits 22, 23; Testimony of Jones*)

36. As far as his driving record is concerned, Mr. Jones agreed that “when you look at it its pretty bad” and that he had no one to blame but himself for his lengthy driving history of traffic citations, motor vehicle accidents and non-payments. He defended his record as primarily in the past, attributable to his youth, which he has overcome as he matured. He justified his record of non-payment and occasional bad check incidents to his frequent moving around, failing to get his mail and a snafu in a deposit that he thought had been made to his account. (*Testimony of Jones*)

CONCLUSION

In a bypass appeal, the Commission must consider whether, based on a preponderance of the evidence before it, the Appointing Authority sustained its burden of proving there was “reasonable justification” for the bypass. E.g., City of Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300, 303-305, 682 N.E.2d 923, rev.den., 428 Mass. 1102, 687 N.E.2d 642 (1997) (Commission may not substitute its judgment for a

“valid” exercise of appointing authority discretion, but the Civil Service Law “gives the Commission some scope to evaluate the legal basis of the appointing authority’s action, even if based on a rational ground.”). See Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 461-62 (2001) (“The [Civil Service] commission properly placed the burden on the police department to establish a reasonable justification for the bypasses [citation] and properly weighed those justifications against the fundamental purpose of the civil service system [citation] to insure decision-making in accordance with basic merit principles the commission acted well within its discretion.”); MacHenry v. Civil Service Comm’n 40 Mass.App.Ct. 632, 635, 666 N.E.2d 1029, 1031 (1995), rev.den., 423 Mass. 1106, 670 N.E.2d 996 (1996) (noting that personnel administrator [then, DPA, now HRD] (and Commission oversight thereof) in bypass cases is to “review, and not merely formally to receive bypass reasons” and evaluate them “in accordance with basic merit principles”); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 577 N.E.2d 325 (1991) (“presumptive good faith and honesty that attaches to discretionary acts of public officials . . . must yield to the statutory command that the mayor produce ‘sound and sufficient’ reasons to justify his action”). See also, Bielawski v. Personnel Admin’r, 422 Mass. 459, 466, 663 N.E.2d 821, 827 (1996) (rejecting due process challenge to bypass, stating that the statutory scheme for approval by HRD and appeal to the Commission “sufficient to satisfy due process”)

It is well settled that reasonable justification requires that the Appointing Authority’s actions be based on “sound and sufficient” reasons supported by credible evidence, when weighed by an unprejudiced mind guided by common sense and correct rules of law.

See Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214, 268 N.E.2d 346, 348 (1971), *citing* Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 451 N.E.2d 443, 430 (1928). All candidates must be adequately and fairly considered. The Commission has been clear that it will not uphold the bypass of an Appellant where it finds that “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988).

A “preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321, 577 N.E.2d 325, 329 (1991).

The greater amount of credible evidence must in the mind of the judge be to the effect that such action ‘was justified,’ in order that he may make the necessary finding. If the court is unable to make such affirmative finding, that is, if on all the evidence his mind is in an even balance or inclines to the view that such action was not justified, then the decision under review must be reversed. The review must be conducted with the underlying principle in mind that an executive action, presumably taken in the public interest, is being re-examined. The present statute is different in phrase and in meaning and effect from [other laws] where the court was and is required on review to affirm the decision of the removing officer or board, ‘unless it shall appear that it was made without proper cause or in bad faith.’

Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427, 430 (1928) (*emphasis added*) The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, *supra*, 434 Mass at 264-65, 748 N.E.2d at 462.

Applying these applicable standards in the circumstances of the present case, the Commission concludes that the BPD's bypass of Mr. Jones for appointment to the position of Boston police officer comports with basic merit principles and the BPD has sustained its burden to prove the reasons proffered for the by-pass and approved by HRD are justified.

To be sure, the Commission recognizes that Mr. Jones is a likeable, well-mannered man with a sincere desire to serve his community as a police officer. He may well succeed in that endeavor in the future. However, the BPD has chosen "sound and sufficient" reasons not to offer Mr. Jones employment, and the Commission is obliged to respect that decision.

First, the BPD is justified in disqualifying a candidate whose driving record is problematic and presents a reasonable concern about the candidate's judgment, respect for the law and prudent operation of a motor vehicle. The Commission is persuaded that, even after taking into account the mitigating circumstances presented by Mr. Jones, the BPD acted in good faith and upon reasonable grounds to conclude that Mr. Jones's driving record presents an unacceptable risk for someone seeking to be appointed as a Boston police officer. While some of the incidents occurred over a decade ago, and Mr. Jones was found "not responsible" in some cases, there are other and more recent incidents in his record that are sufficient to justify a reasonable person viewing them as the persistent continuation of an unchanging pattern. See, e.g., Ovoian v. Town of Watertown, 20 MCSR 507 (2007) (eight driving violations and four suspensions for non-payment); Cassie v. Boston Police Dep't, 13 MCSR 89 (2000) (four speeding and two failure to stop violations from 1987 to 1994); Coombs v. Springfield Police Dep't, 12

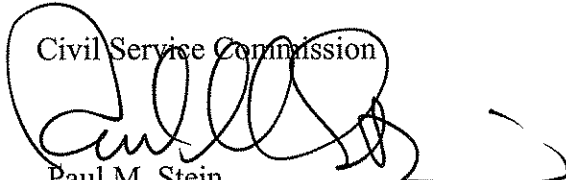
MCSR 249 (1999) (four motor vehicle violations from 1989 through 1995); Berthiaume v. Springfield Police Dep't, 13 MCSR 329 (1998) (ten speeding tickets, mostly during his “teenage years”)²

Second, the BPD is justified in relying upon Mr. Jones’s termination from employment as evidence of a lack of good judgment, integrity and loyalty that the BPD may legitimately demand from anyone whom they chose to appoint as a Boston police officer. In the best of circumstances, Mr. Jones took off on personal business to New York City, knowing he was scheduled to work two shifts as a security officer at one of District Crime Prevention’s most valued clients over the ensuing holiday weekend, solely on the word of a co-worker who told him he had heard that another employee had agreed to cover the shifts. (The evidence did not show Mr. Jones ever checked with the other employee or with his own supervisors who had last informed him otherwise.) On the other hand, based on Mr. Jones’s BPD Student Officer Application (and the Allied Barton application), he simply left knowing his request for time off was “refused” but he went anyway because “getting on the New York Police was an opportunity that I could not let pass by.” In either case, it is entirely reasonable for BPD to have concluded that Mr. Jones acted with reckless disregard for the interests of his employer and that a person who would leave such an employer in the lurch over a holiday weekend lacked the judgment, integrity and loyalty required for employment by the BPD.

² The Commission concludes that the driving record of incidents for which Mr. Jones admitted or was found “responsible” are sufficient, alone, to justify the BPD’s conclusion that Mr. Jones’ driving record is “problematic”. The Commission also agrees, however, that it was reasonable for BPD to consider Mr. Jones’s entire driving record in this case. For example, being found not “responsible” is not inconsistent with a determination of equal fault (i.e. 50-50) in the case of an accident, and the BPD may fairly consider those incidents as they bear on a candidate’s record of prudent “defensive” driving behavior, not just culpability. The hypothetical extreme examples of innocent involvement in an accident posed by the Appellant at the hearing are not apt in the circumstances. (*See Exhibits 3, 4, 21; Testimony of Pomodoro; Hunt*)

This case is distinguishable from Connelly v. Boston Police Dep't, 21 MCSR 111 (2008), cited by the Appellant. In the Connelly case, the BPD bypass was based on information that the appellant had been fired by a former employer, which, as the evidence at the hearing established, turned out to be untrue. Here, the information about Mr. Jones's termination upon which the BPD relies was fully supported by the evidence and the BPD was fully justified in considering the termination a disqualifying event. See, e.g., Modig v. Worcester Police Dep't, 21 MCSR 78 (2008) (applicant had attendance and other issues in prior employment, as well a checkered driving record); Driscoll v. Boston Police Dep't, 20 MCSR 477 (2007) (applicant terminated by prior employer for one-time failure to report for assigned shift); Palmer v. Town of Marblehead, 18 MCSR 257 (2005) (sick leave abuse with prior employer); Basa v. Belmont Police Dep't, 12 MCSR 137 (1999) (tardiness and failure to get along with co-workers).

Therefore, for the reasons stated herein, Mr. Jones's appeal is hereby ***dismissed***.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on October 2, 2008.

A True Record. Attest:



Commissioner

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

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

Notice to:

Stephen J. Delamere, Esq. (Appellant)

Tara. L. Chisholm, Esq. (Appointing Authority)

John Marra, Esq (HRD)