

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place
Boston, MA 02108
(617) 727-2293

JILL KAVALESKI
Appellant

v.

DOCKET NO.: G1-07-299

BOSTON POLICE DEPARTMENT
Respondent

Appellant:

Ms. Jill Kavaleski,
pro se

Appointing Authority:

Sheila B. Gallagher, Atty.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120
(617) 343-4550

Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, s. 2(b), the Appellant, Jill Kavaleski (hereafter "Kavaleski" or "Appellant"), seeks review of the Human Resources Division's, (HRD) decision in accepting reasons proffered by the, Boston Police Department (hereafter, "Department", "BPD" or "Appointing Authority"), for the bypass of the Appellant for original appointment to the position of Boston police officer. The reasons

proffered for the bypass and accepted by the Human Resources Division(HRD) was that the Appellant was deemed psychologically unfit for appointment as a Boston police officer. A full hearing was held on April 3, 2008 at the offices of the Civil Service Commission. Two audio tapes were made of the hearing.

FINDINGS OF FACT

Twenty-four (24) exhibits, (Appellant's submissions: Exs. 23 & 24 taken *de bene after objection by the BPD*). The BPD, subsequently as directed did file A Motion to Deny Admissibility of (Exhibit 24), a learned treatise¹. That motion is allowed and Exhibit 24 is excluded from the evidence. A stipulation of facts was also entered into evidence with the exhibits. Based upon the documents entered into evidence and the testimony of the following witnesses:

For the Appointing Authority:

- Dr. Julia M. Reade

For the Appellant:

- Jill Kavaleski

I make the following findings of facts:

1. On December 28, 2005, the Appellant completed and signed her Student Officer Application and submitted her application to the BPD. (Ex. 2)
2. The Appellant, Jill Kavaleski is a single woman who was born in 1977 and has lived in the West Roxbury section of Boston her entire life. She has worked as a switchboard operator/ front desk supervisor for the City of Boston Veteran's Affairs office since January, 2001. She graduated Boston Latin School in 1996.

¹ The BPD's basis for said motion is nonconformity with the mandatory prior notice requirement of G.L. c. 233 §79C.

She completed her BA. Degree in criminal justice and then completed her MPA in criminal justice in 2005 at Suffolk University. She has no criminal record and no traffic offenses or license suspensions on her record. She does not use drugs, uses alcohol only occasionally and does not gamble. She applied to be a police officer in New York City, successfully passed the pre-employment screening including psychological and was offered a job but declined the offer in 2002. She included as required on her BPD Student Officer Application, the fact that she had been offered but declined a position as a New York Police Officer. She also listed, as required on her Student Officer Application a total of 30 sick days taken over a three year period, (2003-2005). She explained these 30 sick days to BPD Recruit Investigator Detective Ayala in a letter dated January 4, 2006. The letter explained that she had dental braces put on with many appointments for fittings and adjustments. She also outlined her abdominal problems which resulted in minor surgery at the end of 2005. Prior to the surgery she underwent numerous diagnostic testing and office appointments. (Ex. 2, 21 and testimony of Appellant and Dr. Reade)

3. The BPD Student Officer Application contained a form questions section to be completed as "Personal Letter of Reference" by three (3) personal references for the Appellant. The three personal references were: Marie Matava, Clinical Assistant Professor and Director of the Center for Public Management at Suffolk University; Donna-Lee G. Selland, M. D. Radiologist and Kelly Ann Tynan, Executive Director of West Roxbury Main Streets program. All three of these personal references are of the highest order. They answered the form

questions in detail and with examples as called for. They describe the Appellant as a dedicated and passionate person committed to public or community service, who exercises responsibility, good judgment and common sense in the completion of her tasks.(Ex. 2, testimony of Appellant)

4. The BPD Student Officer Application contained a form questions section to be completed as "Supervisor Form" by the Appellant's present employment supervisor. That person, Thomas B. Materazzo, Commissioner Emeritus of Veterans' Services also described the Appellant's work performance in glowing terms such as: "One of outstanding performance-punctual, reliable, loyal-efficient", "treats all equally, with courtesy and respect" that she resolves conflict "with a sense of calm and equilibrium", that she handles stressful situations "with an even handed approach to all subjects that tend to lower the anxiety level in almost all cases". Specifically, he believed that she possessed "indigenous attributes" or qualities that were required to be a Boston Police Officer. He felt that the Appellant is a special caliber of person with the character to be trusted with the use of deadly force and other accompanying powers of a police officer.(Ex. 2)
5. The questionnaire form questions for the personal references and employer-supervisor and others contained in the voluminous BPD Student Officer Application are designed to secure detailed written information from familiar people regarding the Appellant's qualifications to be a Boston Police Officer. Additionally, the areas of inquiry directed at the applicant include the following: personal history, residences, relationships, protective court orders; c.

208, c. 209 & c. 209A , educational history, employment history, employee discipline, sick days taken for 3 yr. period, licenses, military record, driver's license information including suspensions, written citations, auto crashes, operation while under influence of alcohol or drugs, financial background including property ownership and civil court actions, gaming and gambling, use of alcohol, drug use or experimentation, detailed personal declarations regarding sex and other matters and lastly regarding a police record. The responses must be detailed and supported by explanations or documentation. The Applicant is required to sign a release of all information and waiver of confidentiality and an affirmation of the information provided with his/her signature being notarized. (Ex. 2)

6. The BPD also required each applicant to complete a detailed voluminous Health History form or medical questionnaire. This questionnaire is a preliminary step in the Department's medical-psychological screening process and requires the disclosure of any and all medical or psychological treatment, medication and hospitalization. The volume and detail of these questions have been outlined in a prior Commission appeal decision. *See Ida Candreva v Boston Police Department G1-06-185, allowed, dated January 15, 2009.*
(administrative notice)
7. After taking and passing a civil service exam, the Appellant's name was placed on a certified eligibility list. On June 25, 2007, the Appellant's name appeared on Certification 270048 for the position of Boston Police Officer. (Ex. 1, 22).

8. On June 25, 2007 Robin Hunt the BPD's Director of Human Resources sent HRD a bypass-letter regarding the Appellant. The letter's stated reason for bypass was based on the conclusion and opinion of psychiatrist Dr. Julia Reade, that the Appellant was unqualified for appointment due to psychological unfitness for the position of Boston police officer. (Ex.1)
9. On September 17, 2007 the Appellant was notified by a letter of bypass from HRD that BPD's stated reasons for bypass were acceptable to HRD and therefore lower ranking names on the Certification would be appointed as Boston police officers.(Ex. 22)
10. That bypass-letter stated specifically that Dr. Reade's opinion was that: "In summary, despite her continued effort to be more open and flexible, Ms. Kavaleski continues to present as a psychologically inflexible, interpersonally stiff woman whose extreme defensiveness limits her capacity to reflect on her own decision-making, responses, actions or impact on others. Her concrete cognitive style is equally limiting and is likely related to what appears to be a characterologic rigidity. These limitations would interfere with Ms. Kavaleski's ability to manage the duties of a Boston police officer." And also states: Given the highly stressful nature of urban police work, the Boston Police Department is unable to provide Ms. Kaveleski with a reasonable accommodation."(emphasis added)(Ex. 22)
11. The Boston Police Department did not produce any evidence regarding its exploration of or offer of or attempt to provide any "reasonable accommodations" to the Appellant, due to her alleged "disability" or mental

limitation, so that she could perform the duties of a Boston Police Officer. This could be considered an act of employment discrimination or the denial of an employment opportunity to a job applicant who is an otherwise qualified individual with an alleged disability. This appears to possibly be a violation of the so called "Americans with Disabilities Act of 1990". (Administrative notice Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq., Exhibit 22, exhibits and testimony).

12. Under the ADA, a disability is: (A) a physical or mental impairment that substantially limits one or more of the major life activities . . . (B) a record of such an impairment; or (C) being regarded as having such an impairment., 42 U.S.C. §§ 12102(2)(A) and Krocka v. City of Chicago, 203 F.3d 507 (7th Cir., 2000) (Administrative notice)
13. A conditional offer of employment is a legal term of art developed under the Massachusetts anti-discrimination laws, M.G.L. c. 151B, as well as the federal Americans with Disabilities Act (ADA). Specifically, under these statutes, an employer may not require that an applicant undergo a medical examination prior to making that individual a conditional offer of employment. Most relevantly, G.L. c. 151B provides: "An employer may not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or severity of the handicap, except that **an employer may condition an offer of employment on the results of a medical examination conducted solely for the purpose of determining whether the employee, with reasonable accommodation, is capable of**

performing the essential functions of the job...” G.L. c. 151B §4(16)

(emphasis added, administrative notice)

14. HRD has developed in conformance with its policies and published a “Model

Plan For Psychological Screening of Entry-Level Public Safety Positions”

HRD’s stated goal of this Plan is: “The goal of this psychological screening program is to detect any serious psychological disorders or characteristics that would render a candidate unable to perform with reasonable accommodation the essential functions of the public safety position for which the candidate is being considered.” It is also noteworthy that HRD’s Model Plan, at Section II Stage One, (A.) calls for the group administration of the MMPI test and several other named tests, of which the PAI test is not one. The HRD Model Plan requires that the Psychological Screener, at Section II Stage Two -Clinical Interview, (BPD’s 1st level screener) “...will examine the results of the psychological tests, review background information provided by the hiring department (concerning criminal convictions, relevant medical information, if any, and information from interviews with employers, teachers and associates) and conduct a clinical interview of the candidate.” The HRD Model Plan also lists one to three additional tests at Stage Two that the Psychological Screener may administer to further evaluate the candidate. The PAI test is not one of the three named discretionary tests. HRD’s Model Plan, at Section II Stage Three, (BPD’s 2nd level screener), requires that a board-eligible or board-certified psychiatrist perform certain duties and evaluate the candidate. The screening psychiatrist, at Stage Three is required to file a written, signed report. “*The*

report must describe why the candidate is unqualified for appointment as a public safety employee. Evidence substantiating this opinion must be supplied, and the report must explain specifically why the disorder prevents the candidate from successfully performing with reasonable accommodation the essential functions of the public safety position for which s/he was considered.”

Section III Responsibilities of the Appointing Authority at (6.) also requires the appointing authority to notify HRD with a written statement that the candidate has “... *been found unqualified... and that no reasonable accommodation is possible.*”(administrative notice: HRD “Model Plan For Psychological Screening of Entry-Level Public Safety Positions”)

15. The Personnel Administrator Rule that applies to the appointing authority’s statement of reasons for bypass : “Upon determining that any candidate on a certification is to be bypassed, as defined in Personnel Administration Rule, PAR.02, an appointing authority shall, immediately upon making such determination, send to the Personnel Administrator, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reason or reasons for selecting another person or persons, lower in score or preference category. Such statement shall indicate all reasons for selection or bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any

proceeding before the Personnel Administrator or the Civil Service Commission. The certification process will not proceed, and no appointments or promotions will be approved, unless and until the Personnel Administrator approves reasons for selection or bypass. PAR.08(3) (Administrative notice)

16. The Appellant was moved forward through the recruit process including being put through the BPD's psychological screening process a total of three (3) times, beginning on or about January 30, 2006 through approximately June 30, 2007. The psychological screening process was implemented for the BPD by psychiatrists: Dr. Andrew Brown once and Dr. Marcia Scott twice as 1st level screeners and Dr. Julia Reade as the 2nd level screener each time. If the 1st level screener finds sufficient concerns and requests a 2nd level opinion, then the candidate is interviewed and evaluated by a 2nd level screener. This process was done in conformance with the "Boston Police Department-Proposed Psychological Screening Plan"(PPSP) (Testimony of Dr. Reade, Exhibits 5, 6, 9, 10, 13, 14 &17).

17. The Commonwealth's personnel administrator (HRD) has established Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel HRD regulations, for police officers, establish two disqualifying categories of psychiatric medical conditions:

- "Category A Medical Condition" is a "condition that would preclude an individual from performing the essential functions of a municipal police officer or present a significant risk to the safety and health of that individual or others." Category A "psychiatric" medical conditions include "disorders of behavior,

anxiety disorders, disorders of thought, disorders of mood, disorders of personality”.

- “Category B Medical Condition” is a “condition that, based on its severity or degree, may or may not preclude an individual from performing the essential functions of a municipal police officer or present a significant risk to the safety and health of that individual or others.” Category B “psychiatric” medical conditions include “a history of any psychiatric condition, behavior disorder, or substance abuse problem not covered in Category A. Such history shall be evaluated based on that individual’s history, current status, prognosis, and ability to respond to the stressors of the job” and “any other psychiatric condition that results in an individual not being able to perform as a police officer.” (administrative notice:(HRD) Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel).

18. The personnel administrator’s (HRD) Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel, effective until September 7, 2007, mandated a per se disqualification of any candidate with a Category A medical condition. However, those standards only called for a disqualification for a Category B medical condition “that is of sufficient severity to prevent the candidate from performing the essential functions of a police officer without posing a significant risk to the safety and health of him/herself or others.” (administrative notice)

19. Dr. Reade did not testify that she found that the Appellant suffered from either a “Category A Medical Condition” or a “Category B Medical Condition”. Dr.

Reade also did not state such findings or conclusions in any of her three (3) unfavorable psychiatric second opinion reports dated: 2/12/ 2006, 11/5/ 2006 and 6/30/ 2007. (Exhibits 6, 10, 13 and testimony of Dr. Reade)

20. The term “Rules” as defined and used in the civil service law is “the rules promulgated by the personnel administrator pursuant to civil service law,” G.L. c. 31§ 1. Any new rule of the administrator and any amendment to an existing rule shall not be effective until after a public hearing... and until such change has been reviewed by the Civil Service Commission pursuant to G.L. c. 31§ 4. This statutory process obviously requires rules and proposed rule changes to be written. The personnel administrator regularly publishes in writing; his or her rules under the title “Personnel Administration Rules” (PAR) with periodic amended versions. (administrative notice)

21. The personnel administrator as a matter of practice, publishes in written form any important relevant information or regulations or changes thereto and provides written notice to the public or relevant parties. The personnel administrator’s (HRD) Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel which are the applicable standards here, were revised in 2007. Paul Dietl, the personnel administrator, sent a written and signed memo to all the Chiefs of all Municipal Police and Fire Departments, on November 9, 2007 that the revised standards would be effective September 7, 2007. That memo, with the revised standards, effective September 7, 2007 was entered as an exhibit (Ex. 15) in another appeal hearing, Shawn Roberts v Boston Police Dept. G1-06-321 decision, appeal allowed,

September 25, 2008. The previous standards, effective from June 3, 2005 until September 7, 2007 were also entered as an exhibit in that appeal. (Ex.14).

(administrative notice)

22. The BPD, in this matter, followed its "Boston Police Department-Proposed Psychological Screening Plan", which it claims was properly approved by the personnel administrator, (HRD). The "Boston Police Department-Proposed Psychological Screening Plan" requires that every potential Boston police officer recruit that is given a conditional offer of employment, including the Appellant, must take the MMPI-2 and PAI written exams, then meet with the BPD 1st Level Psychiatrist-screener, (Dr. Marcia Scott or Dr. Andrew Brown). If the 1st Level screener determines that there are "areas of specific concern", in need of further review and exploration, the candidate is referred to Dr. Julia M. Reade, who is under contract with the BPD, for a 2nd Level Screening interview and opinion. In this case, Dr. Brown and Dr. Scott, the 1st Level screeners, had given the Appellant an unfavorable assessment after their interview in January, 2006 (Dr. Brown), and Dr. Scott in September, 2006 and March, 2007.

(Exhibits 5, 13, Testimony of Dr. Reade)

23. Dr. Reade testified that her 2nd level opinion compared to Dr. Scott's is "really variable" and that she has a different opinion or conclusion on psychological fitness, than Dr. Scott from 5% on up to 20% of the candidates interviewed, by police academy class. However, she only sees candidates unfavorably assessed by (1st level Interviewer) usually Dr. Scott, but here also Dr. Brown. Neither Dr. Scott nor Dr. Reade audio/video record their candidate interviews and no

evidence was presented that Dr. Brown recorded his interviews. Neither Dr. Brown nor Dr. Scott testified at this hearing. (Exhibits 5, 6, 9, 10, 13, 14, Testimony of Dr. Reade)

24. Dr. Scott has referred approximately 200-300 applicants to Dr. Reade for a second level screening. Of those applicants, Dr. Reade found approximately 5% to 20% (i.e., about 10 to 60 of them) fit to be a Boston police officer and had found 80% to 95% unfit (i.e., from 160 to 285 of them). For the past three years, the statistics show:

	<u>Referred for Second Interview</u>	<u>Recruits Qualified</u>	<u>Recruits Disqualified</u>
Fall 2005	16	0	16
Spring 2006	38	5	33
Fall 2006	44	12	32
Summer 2007	50	6	44

(Administrative notice of Testimony of Dr. Reade and Exhibit 21 in Roberts v Boston Police Dept. No. G1-06-321, decision on September 25, 2008, hearing and testimony on June 23, 2008)

25. The BPD followed its "Boston Police Department-Proposed Psychological Screening Plan", which it claims was properly approved by the personnel administrator, (HRD), prior to its implementation in this case. However, the plan is still entitled "proposed" instead of approved. Dr. Reade was asked on direct examination at this hearing and answered as she did in her testimony on January 28, 2008 in Coutts v Boston Police Department, No. G1-07-277- Q. If this plan had been approved by HRD? To, which she answered –A. "That's my understanding?" The BPD also offered as support of its claim, an affidavit by Sally McNeely, Director of the Organizational Development Group of HRD, dated October 13, 2006. However, this affidavit states the following: 3.

“Appointing authorities must obtain written approval from HRD for their screening plan before they can utilize it. HRD cannot accept as a reason to find a candidate unqualified for appointment the results of psychological screening conducted utilizing a proposed plan prior to its approval.” The affidavit further states: 6. “In or around late July 2004, in a telephone conversation with Edward Callahan, I gave verbal approval for the Boston Police Department to proceed with the psychological screening of current police officer candidates pursuant with the submitted psychological screening plan”. A problem raised by this affidavit is that it clearly states that written approval [by the personnel administrator, HRD] is necessitated prior to utilization of the plan and only verbal approval was given here. Another problem is that the “submitted psychological screening plan” is not sufficiently identified by date, signature, attachment or title. The affidavit could be referencing another psychological screening plan. The Affiant, Sally McNeely did not appear and testify in this matter. It appears that the “Boston Police Department-Proposed Psychological Screening Plan” was not properly submitted and approved in writing by HRD prior to its use in this matter. (Administrative notice, Exhibit 17, testimony of Dr. Reade)

26. The “Boston Police Department-Proposed Psychological Screening Plan” requires that each candidate for the position of police officer take the PAI and MMPI-2 tests. Both tests are written and intend to gauge the test takers comparative psychological profile. (Exhibit 17, testimony of Dr. Reade)

27. “The MMPI-2 is a second-generation, proprietary written psychological test and widely-used research instrument. The MMPI-2 consists of 567 “items” or statements (e.g., “I am easily awakened by noise”, “I don’t blame people for trying to grab everything they can get in this world”, “I have very few fears compared to my friends”, “I like making decisions and assigning jobs to others”) which the test subject is required to ascribe as being either “True” or “False” as applied to him/her. A subject’s answers are recorded and tabulated according to approximately 50 scales and sub-scales in three categories (“validity”, “clinical” and “content”), which produce a “profile” that can be compared statistically to the profiles of a sample population of job applicants and a more limited sample of law enforcement job applicants.” The forgoing is finding of fact 28, page 10 of the decision allowing the Appeal: See Roberts v Boston Police Department, No. G1-07-282, (*Testimony of Dr. Reade, Dr. Schaeffer Phd., Dr. Beck: Exhibit 6* Roberts v Boston Police Department, No. G1-07-282, dated September 25, 2008.)

28. “The PAI is a proprietary written psychological test published, scored and interpreted by Psychological Assessment Resources, Inc. The PAI consists of 344 “items” as to which the test subject chooses: “True” “Mostly True” “Mostly False” or “False”. Similarly to the MMPI-2, PAI test answers are compiled into approximately 30 scale profiles that can be compared statistically to the responses of a sample population of law enforcement applicants, as well as the sub-set of those applicants who go on to be hired and work in law enforcement.” The forgoing is finding of fact 29, page 11 of the decision

allowing the Appeal: Roberts v Boston Police Department, No. G1-07-282, dated September 25, 2008. (*Testimony of Dr. Reade, Dr. Scheffer: Exhibit 7, Roberts v Boston Police Department*, No. G1-07-282, dated September 25, 2008.)

29. In the Roberts appeal it was found: “The design, administration, scoring and interpretation of psychological tests such as the MMPI-2 and the PAI fall within the professional discipline of psychology, as opposed to medicine and psychiatry. While psychiatrists make use of such tests in their practices, all the expert witnesses who testified in this case agree that a *qualified psychologist* is the recommended professional with the necessary expertise to which a psychiatrist generally defers when it comes to the subject of psychological testing. The evidence also established that no conclusions about psychological fitness should be based solely on the scores of a psychological test.” The foregoing is finding of fact 30, page 11 of the decision allowing the Appeal: Roberts v Boston Police Department, No. G1-07-282, dated September 25, 2008. (*Testimony of Reade, Schaffer, Beck; Exhibits 6, 7 & 8 Roberts v Boston Police Department*, No. G1-07-282, dated September 25, 2008.)

30. In the Roberts appeal it was found that: “The only expert psychologist qualified to interpret The Appellant’ MMPI-2 and PAI test results who testified was Dr. Mark S. Schaefer, a licensed clinical and forensic psychologist with approximately 30 years experience, which includes approximately 500 to 750 psychological screenings for police departments in Watertown, Framingham, Lynn and Randolph. Dr. Schaeffer has administered nearly 1,000 MMPI tests.

According to Dr. Schaeffer, the role of a psychological screener is to discern whether to “rule out” a person already conditionally offered employment if he finds that the person suffers from a psychological or emotional condition (or substance abuse issue) that would interfere with job performance.” The foregoing is finding of fact 33, pages 12-13 of the decision allowing the Appeal: Roberts v Boston Police Department, No. G1-07-282, dated September 25, 2008. (*Testimony of Dr. Schaffer: Exhibit 19*)

31. Dr. Reade testified that she has colleagues, who are psychologists specially trained to interpret the MMPI-2 and PAI test results. She consults with these colleagues from time to time on cases. However, she did not consult with one of these specially trained psychologists on the Appellant’s test results. No evidence was offered to show that either Dr. Scott or Dr. Brown consulted with such a psychologist regarding the Appellant’s test results. (Exhibits and testimony of Dr. Reade)
32. Dr. Reade relied on her own reading and interpreting of the tests and the computer generated law enforcement interpretive reports for these two tests, The MMPI-2 and PAI. (Exhibits: 3, 4, 7, 8, 11 & 12, testimony of Dr. Reade)
33. In this case, Dr. Reade, Dr. Brown and Dr. Scott did not personally consult a psychologist about the results of Ms. Kavaleski’s MMPI-2 and PAI tests. They instead relied on two written interpretive reports of various dates: (1) a “Law Enforcement Interpretive Report” of the MMPI-2 test prepared by NCS Pearson, Inc. (a/k/a Pearson Assessments) and James N. Butcher, PhD (the MMPI-2 Report) and (2) a “PAI Law Enforcement, Corrections, and Public

Safety Selection Report” published by Psychological Assessment Resources, Inc. and Michael D. Roberts, PhD (the PAI Report). (Kavaleski Exhibits: 3, 4, 7, 8, 11 & 12, testimony of Dr. Reade). “Each report identifies the test subject’s age, gender, years of education (and, in the case of PAI, ”ethnicity”) and contains the numerical results, in both tabular and graphical form, which display the test subject’s scores and comparable scores taken from the test baseline sample populations for the various scales (i.e. “VRIN” “TRIN”, etc). In general, scores that fall above the 65% mean are considered “elevated.” The reports also include a computer-generated textual narrative “interpretation” of the numerical scores (e.g., *Exhibit 6, p.5*). The methodology used to prepare the computer-generated narrative is proprietary and was not a subject of inquiry at the hearing by either party.” See Roberts v Boston Police Department, No. G1-06-321, decision allowed September 25, 2008, pages 11-12, f/f 31.(*Testimony of Dr. Reade Dr. Schaeffer Phd.; Exhibits 6, 7 & 13*)

34. No specific instructions are given to the psychiatrists conducting the first and second level clinical interviews pursuant to the BPD’s proposed psychological screening plan (PPSP) with respect to what information and/or documents may be relied upon. Dr. Scott, Dr. Brown and Dr. Reade must abide by the PPSP in conjunction with their training and experience and utilize the standards set forth by the laws of the Commonwealth (G.L.c.31, §61A and regulations promulgated by HRD pursuant thereto) to determine the psychiatric fitness to perform the duties or manage the stresses of an armed police officer. (administrative notice, Exhibit 17, testimony of Dr. Reade)

35. BPD also produced a written report entitled “Public Safety Candidate Screening Report”, Testing Date: August 12, 2006, under the name of Lucinda I. Doran, PhD and The Corporate Advisory Group, which appears to include a generic cover sheet to which is attached a one-page “Evaluation and Impressions” sheet dated September 27, 2006 specific to Ms. Kavaleski’s MMPI-2 and PAI test results. The identity of Dr. Doran or her company was not disclosed. The evidence indicates that Dr. Reade did not see or use the Doran Report or that the BPD relied on the “Evaluations and Impressions” in the Doran Report in the process of disqualifying The Appellant. Accordingly, I give no weight to any conclusions about Ms. Kavaleski’s MMPI-2 or PIA test results contained in the “Evaluations and Impressions” in the Doran Report that are not consistent with other credible evidence. (Testimony of Reade; Exhibit 10)

36. The computer generated Law Enforcement Interpretive Report for the Appellant dated 01/25/06 states under Profile Validity section on page 5, - “It is not possible to interpret her MMPI-2 profile. Her MMPI-2 responses were too defensive to permit an adequate assessment of her psychological adjustment. Other sources of information should be consulted if an opinion is to be formed about her overall adjustment.” That report also stated on page 10 under Work Dysfunction Items – “No work Dysfunction items were endorsed” (Exhibit 3). The computer generated Law Enforcement Interpretive Report for the Appellant dated 08/12/06 also states under Profile Validity section on page 5, - “It is not possible to interpret her MMPI-2 profile. Then it repeats the same caveat as the 01/25/06 report above. That report also stated on page 10 under

the endorsement of a single item, Work Dysfunction Items – “15. I work under a great deal of tension (True)” (*Even this single statement of alleged endorsement is not clear on its face and is in need of further explanation or interpretation*). (Exhibit 7, reasonable inference)

37. However, the computer generated Law Enforcement Interpretive Report regarding the MMPI-2 responses for the Appellant dated 03/03/07 states under “Profile Validity” section on page 5, stated in part that she responded “...in a somewhat defensive manner and presented herself in a very favorable light. This pattern of defensiveness occurs among job applicants who are trying to make a good impression on others.” And also stated that “She attempted to minimize her problems and to deny her faults, even minor ones that are exhibited by most people. She appears to have little psychological insight and is reluctant to engage in self-disclosure or self-evaluation. The resulting MMPI-2 profile may be an underestimate of her present symptoms and psychological adjustment.” The description under the section “Personal Adjustment”, page 5, is generally complimentary and positive regarding the Appellant. The remaining sections in this interpretive report seem unremarkable including the section “possible employment problems”, on page 6 which states in relevant part, “This relatively low-ranging personality pattern suggests very few likely employment problems. This individual would probably have little trouble adapting to a wide range of work environments.” (Exhibit 11)
38. Dr. Reade testified in the Boutin appeal to the following regarding her purpose in psychological screening. She phrases her mission not in terms of identifying

disqualifying conditions but instead: “to make sure candidates who are being sent to the Academy have the requisite psychological skills and resilience and the traits that would make them most likely to be successful and constructive police officers.” She also described her mission and purpose in similar language in the Coutts appeal. (See. Jessica Boutin v Boston Police Department, No. G1-06-139 & G1-07-317, page 25, allowed January 29, 2009, and Kelley Coutts v Boston Police Department, No. G1-07-277, allowed May 7, 2009. (administrative notice)

39. Dr. Reade testified in the O’Loughlin appeal that two prior candidates who were in a similar situation to Mr. O’Loughlin in which she recommended that they not be bypassed. Those two candidates in the 2004-2006 time-frame, did have psychiatric conditions for which they were treated by a psychiatrist with psychotropic medication. She recommended to the BPD then that they not be bypassed and should continue in treatment with the suggestion that those candidates notify the BPD upon any change in diagnosis or type or amount of medications taken. Dr. Reade viewed her recommendation in those two cases to be an “accommodation”. (Testimony of Dr. Reade in O’Loughlin v Boston Police Department , No. G1-07-282, allowed May 29, 2009)

40. The Appellant, Jill Kavaleski has not ever been treated by a psychiatrist nor treated with psychotropic medication. (Exhibits and testimony)

41. In the Roberts appeal *ibid.* the commonly encountered issue of miss answering, misunderstanding or misconstruing the test questions was addresses. Sometimes the explanation is as simple as the fact that the subject simply misread or

misunderstood a question or inadvertently marked the wrong answer. as The Appellant later explained, was the case with an answer he gave to one of the so-called “critical items” (concerning “problems” with drugs.) (administrative notice)

42. In the Roberts appeal *ibid.* it was found: “In other cases, such as the suggestion

The Appellant is suppressing his faults, based on elevated levels of two of the “validity” scales – the K scale and the S scale – a qualified interpreter with personal knowledge of the subject (as opposed to a blind computer-generated interpreter) would know to discount those results because: (a) an elevated K scale is common for educated individuals such as The Appellant [*Kavaleski is also well educated*], (b) the S scale is new; its predictive value and the weight it deserves is relatively unknown, (c) such elevated scores are “par for the course” with public safety applicants, and (d) it is the L(Lie) scale, on which The Appellant scored normally, that is specifically designed to detect someone attempting to show a (false) positive light by rejecting existence of shortcomings and unfavorable characteristics.” See Roberts v Boston Police Department, No. G1-06-321, decision allowed September 25, 2008, page15, f/f 40 (*Testimony of Dr. Schaeffer Phd., Dr. Beck, Roberts; Exhibits 6 & 7*)

43. On March 3, 2007, the Appellant was assessed the Minnesota Multiphasic Personality Inventory – 2 exam (hereinafter “MMPI-2”) and subsequently a Law Enforcement Interpretive Report was generated by computer. (Ex. 11).

44. On March 3, 2007, the Appellant was administered the Personality Assessment Inventory exam (hereinafter “PAI”) and subsequently a PAI Law Enforcement,

Corrections and Public Safety Selection Report was generated by computer.

(Ex. 12 3/3/07 Test).

45. On March 30, 2007, the Appellant met with Dr. Marcia Scott, a Department Psychiatrist, who conducted a first level psychiatric examination. The Appellant testified that Dr. Scott ended that interview after 5 minutes; by stating that she would need to go to a 2nd level interview since she had previously been sent to a 2nd level interview with Dr. Reade. (Testimony of Appellant, Ex. 13, 3/23/07 Report).

46. Prior to the interview, Dr. Scott reviewed the Appellant's background documents, her MMPI-2 and PAI test scores/results from March 3, 2007, August 12, 2006 and January 30, 2006. Dr. Scott also reviewed Dr. Andrew Brown's report from January 3, 2006, Dr. Julia Reade's report from February 16, 2006 and November 5, 2006 and notes from her interview that occurred on September 14, 2006. In her report, Dr. Scott notes that she explained to the Appellant that she "would review any current significant past mental disorders or significant vulnerability to mental or coping patterns that could interfere with the job duties." Dr. Scott also indicated that she would review the file and testing and discuss anything substantive. Since the Appellant was previously bypassed, Dr. Scott explained that she was automatically required to have a second psychiatric interview. The Appellant had previously taken the MMPI-2 and PAI on January 30, 2006 and August 12, 2006. Subsequent to taking the tests in January 2006, the Appellant met with Dr. Andrew Brown and Dr. Julia Reade. After taking the tests in August 2006, the Appellant met with Dr. Scott

first and had a second interview with Dr. Julia Reade. Each doctor generated a report after meeting with the Appellant. Dr. Scott noted that the Appellant had taken the MMPI-2 and PAI (3) three times within the past year and when she met with Dr. Scott in March 2007 the Appellant was on her fifth (5th) interview. (Ex.13, 3/20/07 Report).

47. Dr. Andrew Brown filed a report following his 1st level January 2006 interview, Dr. Brown made note that the Appellant “appears thin” and dressed in a baggy sweater and had a serious demeanor and “appears affectively disconnected”. Dr. Brown observed the Appellant to be “and difficult to assess when he interviewed her in January, 2006. However, Dr. Brown ventured vague possibilities anyway. He stated that “... the applicant’s profile is not inconsistent with the possible presence of obsessive compulsive personality traits and somatization. Body image concerns and eating concerns may be present.” Dr. Brown also ventured that the “applicant’s ability to make judgments required of an armed police officer may be compromised.” Dr. Brown concluded his report with the indefinite and inconclusive statement: “It was not possible to rule out the possibility that other emotional problems may be present in this applicant.” (Ex.5, 1/30/06 Report)
48. Dr. Brown also found the Appellant’s description of her: employment, educational background, family life and use of 30 sick days over three years for dental braces with adjustments and abdominal diagnosis, treatment and surgery, to be some how inadequate. (Ex.5, 1/30/06 Report)

49. In September 2006, the Appellant met with Dr. Marcia Scott who read the Appellant's MMPI-2 results and found they were invalid. Dr. Scott also reviewed the PAI results and noted that the scores were invalid and therefore impossible to interpret (Ex. 9 - 09/14/06 Report).
50. Dr. Scott also described the Appellant as "very thin", "dressed in dark loosely hanging pants suit and her hair was unkempt." Dr. Scott noted that the Appellant was uncomfortable talking about her weight. Dr. Scott also found her answers to inquiries related to her: job, education, abdominal surgery and medical condition to be inadequate. (Ex. 9 - 09/14/06 Report).
51. Dr. Scott concluded that, "The Appellant's thinking is concrete and her coping rigid and avoidant." The Appellant is "unwilling to communicate a coherent report of her life and goals and appears to have little understanding of her reasoning and decisions. For these reasons Dr. Scott concluded that The Appellant's "mental and personality traits would prevent her from managing the stresses of an armed police officer. Subsequent to meeting with Dr. Scott in September 2006, the Appellant was sent for a second psychological interview with Dr. Julia Reade. (Ex. 9, 09/14/06 Report).
52. In 2006, Dr. Brown concluded that the Appellant's suitability to work as an armed police officer may be comprised because she "manifested a compromised capacity to render adequate judgments in the interpersonal realm particularly in the context of a stressful situation." After meeting with Dr. Brown, he recommended that the Appellant have a second opinion interview with Dr. Julia Reade. (Ex.5, 1/30/06 Report)

53. The Appellant was unable to explain to Dr. Scott why she previously failed to pass through the psychological screening process. When Dr. Scott asked the Appellant for a further explanation, she told the Dr. Scott, "I saw two doctors." When the Appellant was asked what the doctors stated in their reports, the Appellant stated, "stiff," and indicated that she did not understand the doctors' reports. Dr. Scott also asked the Appellant whether she thought the doctors were wrong and she stated, "Yes." The Appellant could not explain how she could change the outcome. (Ex.9, 09/14/06 Report)
54. In March 2007, the Appellant met with Dr. Scott who noted that the Appellant had taken the MMPI -2 and PAI tests for a third time within a year, which presented problems regarding "validity and usefulness." (Ex. 13 03/20/07 Report).
55. Dr. Reade testified in this present case, describing her purpose in the psychological pre-screening process, as an "effort to identify through some kind of rational method, individuals who might have psychological problems or substance abuse problems or psychological traits that would interfere with their training in a particular field or performing effectively." She employed in this process of evaluation; a semi-structured interview of the candidate, a review of background data, reports from 1st. level psychological reviews and a summary recruit investigative report and the results of the two "paper and pencil" tests, (MMPI-2 and PAI). (Testimony of Dr. Reade)
56. Dr. Reade testified as to her alarm or concern that the Appellant was so defensive, ("enormously defensive") in responding to the two written tests "to

the point that she suppressed all of the scales that might have been used” by her. Dr. Reade described the Appellant as refusing due to an unwillingness or inability to admit any limitations or flaws. (Testimony of Dr. Reade)

57. Dr. Reade at these interviews, found the Appellant to be very thin, with messy hair, extremely reserved, very removed interpersonally and stiff to the point of immobility, yet later in the same interview observed her to be “bristled and annoyed.” Dr. Reade found the Appellant’s living with or living nearby her family and attending both undergraduate and graduate school nearby at Suffolk University to be concerning. Dr. Reade believed that these circumstances indicated the Appellant’s unwillingness or inability to experience the unfamiliar. Dr. Reade believed this trait made the Appellant unsuited for Boston police work which requires immediate response to stressful and unfamiliar circumstances or conversely long periods of boredom. (Testimony of Dr. Reade)

58. Dr. Reade placed strong emphasis on the Appellant’s alleged earlier clinical presentations as relayed by Dr. Scott and especially Dr. Brown, a 1st. level interviewer in his report, dated 1/30/06. Dr. Reade’s testimonial tenor, tone and content indicated that she entirely adopted and affirmed Dr. Brown’s alleged observations and assessments of the appellant and that Dr. Reade attributed great weight and reliability to them. She admitted to having reviewed and relied on the information from Dr. Brown’s report. Particularly, Dr. Reade noted the Appellant’s gleefulness at not revealing or divulging herself in the testing process. Dr. Reade viewed this non-disclosure as intentional and obstructively

aimed at preventing Dr. Brown from being able to determine a possible psychiatric or psychological disorder. Dr. Reade described Dr. Brown's views and concerns as if they were her own. The Appellant's style was described as "affectively disconnected" and therefore worrisome. Dr. Brown did not testify at this hearing. (Exhibits 5, 6, 9, 10 and testimony of Dr. Reade)

59. Dr. Reade conducted an interview of the Appellant on February 6, 2006, shortly after Dr. Brown's 1st level interview. Dr. Reade's interview lasted approximately one hour. Dr. Reade gave her usual introduction at the beginning; including the routine statement that the content of the interview "...would not be held in confidence, but could be repeated orally or in a written report to the Police Department..." Dr. Reade also relayed in her report that the Appellant was on time (for the interview) and sat quietly in the waiting room. "She was a thin woman, dressed in casual clothing, with messy hair. She was extremely reserved and answered questions in short, unrevealing phrases. She was impassive throughout and gave no information unless specifically asked. She looked subdued and mildly depressed. Her thinking was rigid and concrete." Dr. Reade relayed interview questions asked of the Appellant and the answers given. Dr. Reade generally characterized these answers as inadequate in form, substance or detail. Dr. Reade concluded her report: "With respect to her ability to function as a police officer, Ms. Kavaleski, in my opinion, would have significant difficulties because she is interpersonally stiff and unable to consider the impression she makes on others. She is extremely guarded and concrete to a degree that would, in my opinion, interfere with her ability to

communicate effectively with coworkers or to discuss her rationale for a particular course of action. – For these reasons, Ms Kavaleski is currently found NOT ACCEPTABLE.” This unfavorable psychiatric second opinion report makes reference to compliance with the provisions of the Americans with Disabilities Act of 1990. (Exhibit 6)

60. Dr. Reade testified that any applicant being interviewed for a 2nd opinion is usually very nervous due to the circumstances that the 2nd opinion interview is necessitated and that there is so much (job/career) at stake in the interview. (Testimony of Dr. Reade)

61. Dr. Reade conducted another 2nd level interview of the Appellant on September 28, 2006 and wrote a report concerning it. That report relayed the following information: Dr. Reade stated that the Appellant invalidated the MMPI-2 test results by being “overly defensive”. The PAI indicated moderate risk of ob-related and anger management problems. Dr. Reade again repeated Dr. Brown’s observations and interpretations as contained in Dr. Brown’s 1/30/06 report. The Appellant addressed Dr. Reade’s concerns, admitting that she had been a bit nervous in the past interviews. She denied any problem dealing with unfamiliar members of the public. Regarding Dr. Scott, the Appellant explained that she did not like being asked personal questions and therefore gave very short answers. She saw no need to explain herself further, “If a one word answer will do.” (Exhibit 10)

62. Dr. Reade concluded her 2nd level psychological opinion report after the September 28, 2006 interview as follows: “Although she is clearly a very bright

and hardworking woman, with what appears to be a sincere interest in police work, Ms. Kavaleski is significantly limited by her interpersonal manner, her guardedness and concrete thinking.” (Exhibit 10)

63. Dr. Reade filed her 2nd level psychological opinion report after the April 10, 2007 interview, which included the following: “I concluded that Ms. Kavaleski would have significant difficulties functioning effectively as a police officer “because she is interpersonally stiff and unable to consider the impression she makes on others. She is extremely guarded and concrete to a degree that would, in my opinion interfere with her ability to communicate effectively with co-workers or to discuss her rationale for a particular course of action.” Dr. Reade also reported that the Appellant appeared at this interview neatly dressed in a pants suit and her hair was messy”. She was “thin”, “stiff and guarded” her “thinking was extremely concrete”. Dr. Reade concluded that “these limitations would interfere with the (Appellant’s) ability to manage the duties of a Boston Police officer.” Dr. Reade also made numerous references to both Dr. Brown’s and Dr. Scott’s earlier observations and conclusions. (Exhibit 10)

64. Dr. James C. Beck, MD, PhD is a licensed clinical, forensic and teaching psychiatrist and psychologist with more than 40 years experience, who is Board Certified in Psychiatry and Forensic Psychiatry. Dr. Beck held an academic appointment as professor of Psychiatry at Harvard Medical School at the time he testified in the Roberts appeal. In his testimony in the Roberts appeal, he described the standard reference for diagnosis of psychiatric conditions as the “Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition” of the

American Psychiatric Association (DSM-IV). The DSM-IV catalogues all mental disorders and defines the series of symptoms that psychiatrists have agreed must be present to make a diagnosis of any particular disorder. All the experts who testified in the Roberts appeal, including Dr. Reade agreed that Mr. Roberts does not fit the diagnosis of any mental disorder as defined in the DSM-IV. (administrative notice, Roberts appeal- Testimony of Reade, Schaeffer, Beck)

65. Dr. Reade testified in this present appeal that she usually takes the testing “concerns”, “red flags” and test domains indicating a raised risk level, as areas to explore in her interview with the candidate. The test “spiking and scales” are gauged by comparison of the candidate’s test responses to those of a group comprised of post-probationary public safety personnel. It is important to note that according to Dr. Reade; educational levels of the candidate are not incorporated into the test scales. However, Dr. Reade failed to identify with Kavaleski, an “enduring trait or pattern” that makes a candidate unfit psychologically or emotionally to serve as a police officer. Dr. Reade explored with the Appellant in the various interviews, the areas of: anger management, job related problems, health concerns and obsessive-compulsive symptoms. Dr. Reade also failed to identify or diagnosis in Kavaleski any psychiatric conditions or disorders as catalogued and defined in the “Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition” of the American Psychiatric Association (DSM-IV). (Exhibits, Testimony of Dr. Reade)

66. Dr. Reade described the PAI test requiring answers which are three shades of true and this “adds a few more shades of grey” to the test results. She believed that it is important to understand why someone approaches the test in such a way as to invalidate its results. Dr. Reade believed that it is difficult to invalidate the PAI test results, which the Appellant did by being “so defensive”.
(Testimony of Dr. Reade)

67. Dr. Reade indicated in her testimony that she had “concerns”, that the test results “seemed to indicate” certain possibilities, that the Appellant “endorsed several items” on the test. This language of indefiniteness and inconclusiveness is employed by all three of the psychiatrists to describe their opinions of the Appellant’s psychological fitness. (Exhibits, Testimony of Dr. Reade)

68. Dr. Brown indicated that the Appellant’s MMPI-2 profile was invalid and not possible to interpret because the Appellant’s “responses were too defensive to permit an adequate assessment of her psychological assessment.” Dr. Brown observed that the Appellant appeared “almost gleeful” when she learned she had invalidated the MMPI-2 because she did not “reveal herself in the context of psycho diagnostic testing.” (Ex.. 5 1/30/06 Report)

69. Dr. Scott believed that The Appellant was unable to adequately explain why she had previously failed to pass through the psychological screening process. Dr. Scott felt the Appellant only provided short answers and could not explain how she could have changed the outcome of the psychological screening. (Ex.9, 09/14/06 Report)

70. In March 2007, the Appellant met with Dr. Scott who noted that the Appellant had taken the MMPI -2 and PAI tests for a third time within a year, which presented problems regarding “validity and usefulness.” (Ex. 13 - 03/20/07 Report).

71. On March 20, 2007, Dr. Scott made note of her evaluation of the Appellant. She indicated that the Appellant was dressed in a black full-length suit that hung on her almost “*cachetic body*” [Emphasis added]. Her air was messy and pulled back. During the interview, Dr. Scott noted that the Appellant looked down for most of the interview. I find this extreme description to be a clear misrepresentation of the Appellant’s physical appearance, demeanor and presentation. I find it highly improbable that the Appellant’s appearance, demeanor and presentation could have so dramatically improved for this Commission hearing, without some reference to a dramatic cause. The Appellant claims no such cause of change but claims the same appearance, demeanor and presentation. The reasonable inference from Dr. Reade’s opinion is that the behavior traits that she claims to have observed in the Appellant were possibly enduring traits. I also find this description, by Dr. Scott, taken in conjunction with the other enumerated alleged negative observations by the interviewers, to be an indication of bias or some other improper consideration by the BPD. (Exhibits and testimony, reasonable inferences, Ex.13, 03/20/07 Report).

72. **Cachexia**, is defined as, *n. Pathol.* general ill health, with emaciation, due to a chronic disease, as cancer. **Cachetic**, *adj.* pertaining to or characterized by

cachexia. (administrative notice; The American College Dictionary, Random House Inc., New York, 1963 Edition)

73. Dr. Scott concluded that while the Appellant was less guarded in the 3/20/07 interview, she is “a steady controlled person but has very limited self-awareness, little understanding of her motivations or emotional limitations and inflexible approaches to both internal and external stresses.” For these reasons Dr. Scott writes that the Appellant’s traits would affect her capacity to evaluate situations and make effective judgments in less tightly controlled situations than she now faces.” After meeting with Dr. Scott in September 2007, the Appellant was sent for an interview with Dr. Julia Reade. (Ex. 13, 03/20/07 Report).
74. On June 30, 2007, the Appellant was interviewed for a third time, by Dr. Julia M. Reade for a Second Opinion Psychiatric Review. (Ex. 14).
75. Prior to the interview, Dr. Reade reviewed the Appellant’s background documents, including the recruit investigation file and personal data questionnaire, and her MMPI-2 and PAI test scores/results from March 3, 2007, August 12, 2006 and January 25, 2006. Additionally, Dr. Reade reviewed Dr. Brown’s narrative report from January 30, 2006, Dr. Scott’s narrative reports from September 14, 2006 and March 20, 2007. Dr. Reade testified that she reviewed all these documents before delving into the Appellant’s third interview. (Dr. Reade testimony, Ex. 5, Ex. 6. Ex. 9, Ex. 10 and Ex. 13)
76. Dr. Reade used the MMPI-2 and the PAI from March 3, 2007 to help focus her inquiry during her third interview with the Appellant. (Dr. Reade testimony, Ex.

11 03/03/07, Ex.7 08/12/06, Ex. 3 01/25/06 MMPI-2 tests and Ex. 12 03/03/07, Ex.8 08/12/06 and Ex. 5 01/25/06 PAI tests)

77. Dr. Reade also testified about meeting the Appellant for a second interview in November 5, 2006. Dr. Reade indicated that the Appellant produced invalid results again on the MMPI-2 because she was overly defensive. Dr. Reade indicated that the Appellant was punctual, had messy hair and had a contained affect. Although the Appellant became more forthcoming as the interview progressed, the Appellant explained that “it takes her awhile to build up a rapport with people” and she revealed that she gave short answers because she did not like the personal questions the interviewers asked. The Appellant denied any problems with depression, anxiety or substance abuse. Dr. Reade concluded after her November 5, 2006, interview that the Appellant was more engaging and more responsive. However, Dr. Reade reported that the Appellant is a “very bright and hardworking woman with a sincere interest in police work, but is limited by her interpersonal manner, her guardedness and concrete thinking.” (Ex. 10 and Dr. Reade’s testimony)

78. Dr. Reade testified by describing the Appellant’s alleged presentation at her final (unrecorded) interview: “Her presentation was so bizarre and so concerning”, “...so far out of anything close to average” “...her hair was a mess”, “she didn’t look healthy”, “she kept denying she was anxious or depressed or had any other problems, almost bordering on bizarre”, “she was thin, pale and listless, ... giving monosyllabic answers.” I find this extreme description to be inaccurate and unsupported by the credible evidence in the

record. I find this description to be contradicted by the weight of the credible and reliable evidence in the record and the reasonable inferences there from.

(Exhibits and testimony, demeanor of witnesses, testimony of Dr. Reade)

79. Dr. Reade also recounted her third and last interview with the Appellant on June 30, 2007 and subsequently recorded her observations in a summary report, which in part, stated, “The Appellant was neatly dress in a pants suit and her hair was messy.” According to Dr. Reade, the Appellant was “stiff and guarded,” and “painfully thin” but appeared to be more engaging and social in this interview. Dr. Reade also testified that she had difficulty obtaining from the Appellant, an explanation why she thought she had been previously bypassed. However, Dr. Reade believed the Appellant still “focused on very literal detail and had difficulty grasping the larger significance” Dr. Reade testified that the Appellant was a very bright woman who responded to questions in a very concrete manner. Dr. Reade equated the Appellant’s communication as “robotic”. She found that the Appellant’s test results were “extremely defensive” and indicated that she was “unusually sensitive to criticism”. Dr. Reade testified that Dr. Scott and Dr. Brown both raised similar concerns, made similar observations and determinations to her own. The most repeated common reference of the three was to the Appellant’s thinness and messy hair. Dr. Reade testified to these common observations repeatedly. (Ex. 14 and Dr. Reade testimony)
80. Dr. Reade also reviewed for her final report, the Appellant’s responses on her most recent MMPI-2 and PAI tests. Dr. Reade noted that the Appellant did not

invalidate the MMPI-2 test this time even though her answers produced defensive results. (Ex. 14 and Dr. Reade Testimony)

81. Dr. Reade concluded in her report stating that, “despite her continued effort to be more open and flexible, the Appellant appears to present as psychologically inflexible, interpersonally stiff woman whose extreme defensiveness limits her capacity to reflect on her own decision-making, responses, actions or impact on others.” Dr. Reade opined that the Appellant’s limitations would interfere with her functioning effectively in the role of a police officer and is currently found unacceptable.” (Ex. 14 and Dr. Reade Testimony)
82. Dr. Reade based her decision to not recommend the Appellant for appointment as a Boston police officer due to psychological fitness on the totality of the information that she had prior to making that recommendation, including, but not limited to, the Appellant’s background information; recruit investigation file; the Appellant’s Personal Data Questionnaire; the MMPI-2 test results from March 3, 2007 and analysis; the PAI test results from March 3, 2007 and analysis; Dr. Scott’s report of unfavorable opinion from March 20, 2007 and the Appellant’s third interview with Dr. Reade. Additionally, Dr. Reade reviewed the psychological reports and test results that were generated from the Appellant’s prior applications with the Boston Police Department. (Ex. 14 and Dr. Reade testimony)
83. Dr. Reade tended to mimic or repeat the assessments and observations of the 1st level interviewers, Dr. Brown and Dr. Scott. The repeated reference by the three interviewers to the Appellant’s alleged traits or behavior such as: thinness,

messy hair, stiff, rigid or robotic responses, psychologically inflexible, concrete thinking, extreme defensiveness or guardedness and inability to reflect on her own decision making or actions and its effect or impact on others. (Exhibits and testimony of Dr. Reade)

84. Dr. Reade's minimalization or complete omission of Kavaleski's established considerable educational, employment and personal history as a foundation for her own opinion is inexplicable. Dr. Reade is obligated to substantiate a Category B Medical (psychiatric) condition by the showing of a "history of any psychiatric condition, behavior disorder or substance abuse problem." HRD regulations and its Model Plan, require that "such history shall be evaluated on that individual's history, current status, prognosis, and ability to respond to the stressors of the job..." Dr. Reade failed to even attempt to corroborate her assessment by contacting any of the numerous personal and other references she provided on her application. Dr. Reade's characterization and portrayal of the Appellant's behavior and statements during the interview, in her testimony and her reports appear to be incongruous, indefinite, subjective and/or misleading; certainly contrary to what the Appellant's background information, personal references and her presentation and demeanor at this hearing would support. (Exhibits, demeanor and testimony)

85. The Appellant displayed a very pleasant and polite personality. She is attractive and not unpleasingly thin. She has an engaging smile and is personable. Prior to the hearing, this hearing officer called the case name out and asked if any of the parties were present. The Appellant answered that she was present for the case

and upon gauging her appearance and believing that she was an attorney; this hearing officer asked her if her client was also present. She answered that she was the party. The Appellant appeared neatly dressed in a pants suit and scarf. Her hair was neat and pulled back in a hair clip, just touching her shoulders. She had good healthy color in her face. Her voice was strong and her manner self assured. Her demeanor, body language and facial expressions were pleasant, confident and appropriate. She made consistently good eye contact. She appeared placid during Dr. Reade's sometime critical or negative testimony. She answered questions directly and unhesitantly. She has a good memory for detail but did not try to exaggerate or embellish. Her answers on cross-examination were appropriate yet tended to be longer and more descriptive than the usual witness, in this hearing officer's experience. She never appeared flustered, irritated, or aggressive. Instead, she presented herself as cool, calm and collected. Her answers rang true. I find her to be a very credible witness. (Exhibits, demeanor and testimony of Appellant)

86. The Appellant testified that she found some of the inquiries during her interviews with the three psychiatrists to be personal and unnecessarily intrusive. It is noted that the Appellant had been instructed by Dr. Reade, at the beginning of each interview, that *confidentiality did not apply and that Dr. Reade would be reporting the content of the interview to the BPD*. However, the Appellant provided more detailed answers to other questions. She provided to Dr. Reade sufficiently descriptive answers in areas such as family, employment and education, for the purposes of a screening. She believed she

provided adequate yet short answers to those intrusive or personal inquiries. She explained, for example, the taking of 30 sick days over a three year period due to having dental braces installed and frequently adjusted and having diagnosis, treatment and eventual surgery for an abdominal problem. She explained that Dr. Reade never asked her why she chose Suffolk University for both her undergraduate and graduate school degrees. If Dr. Reade had asked; she would have explained that Suffolk University had offered her the best financial package and living with her family relieved some financial pressure. She felt that each of the interviewing psychiatrists tried to provoke her or pressed her to admit some fault or failing and reacted negatively when she did not. She felt pressed to admit some nonexistent eating disorder. The Appellant believed that her excellent educational and employment credentials combined with her personal and professional references should have substantiated her past performance and qualifications for the position of police officer. (Testimony, demeanor of Appellant)

87. The Appellant, a credible witness, testified to a different set of events, statements and circumstances actually occurring at the interviews. The Appellant wore the same outfit at this hearing that she wore to her last interview with Dr. Reade. Her hair is also the same except that at the interview she held her hair back with a squeegee instead of a barrette. Her weight has been between 115 and 130 lbs. for the past 15 years. She has been the same height (5'6") for the past 15 years. She weighed approximately 120 lbs. at the time of these interviews and her testimony at this hearing. Kavaleski's

presentation and demeanor at this Commission hearing was entirely appropriate, if not impressive in all respects. What Dr. Reade and the other two Interviewers claimed to have observed of Kavaleski during the interviews, was not observed by this hearing officer at the Commission hearing and during her testimony. Dr. Reade concluded each of her three reports on the Appellant with an unfavorable opinion regarding her fitness to be a Boston police officer.

However, she offered no real life or job related examples to support that drastic conclusion. She offered no corroboration from the Appellant's available background history. Dr. Reade's second level opinion is the fundamental issue and it is substantially founded on her 1 hour unrecorded interview of the Appellant for each unfavorable opinion. That reason alone calls for a clear and accurate record of that interview. An audio-video recording of the interview would have been the best, if not the only method of preserving a true and accurate record of it. I find Dr. Reade's report and testimony and the reports of the other two Interviewers to be insufficient and/or unreliable in supporting the foundational facts of her second level opinion. Her opinions are in essence: unsubstantiated and subjective. (Exhibits, testimony, reasonable inferences, testimony and demeanor of Dr. Reade, Exhibits 1, 6, 10, 14)

88. Dr. Reade's demeanor is that of a well practiced and experienced psychiatric professional. However, it is difficult to reconcile her alleged critical observations and her extremely negative characterizations of the Appellant's behavior and presentation during her repetitive interviews; with the Appellant's remarkably poised and appropriate demeanor at this hearing. Dr. Reade chose

to assess and interpret the Appellant's MMPI-2 and the PAI test results on her own, without the recommended assistance of a specially trained psychologist. Dr. Reade was aware that the Appellant is very bright and well educated, with a blemish-free background and employment history. Dr. Reade was also well aware that her interviews cause anxiety in most candidates, as a career was on the line. Yet, Dr. Reade gave three successive opinions of unfitness at the conclusion of three successive psychological screening cycles. Dr. Reade gave these successive opinions of unfitness primarily based on her interview/evaluations of the Appellant. It is inexplicable and unjustified for Dr. Reade to have formed these dire and incongruous opinions of the Appellant, without ever attempting to corroborate them, by contacting background references familiar with the Appellant. Alternatively, Dr. Reade could easily have audio-video taped her interviews with the Appellant, to corroborate her observations and opinions. The lack of an accurate interview record also denied the Appellant evidence to support her version of the interviews. The lack of an accurate record of the interviews also hampers the Commission's ability to determine facts related to it. Dr. Reade had an affirmative duty to specifically substantiate her opinion by reference to the Appellant's background history. This failure to corroborate was Dr. Reade's choice, since the Appellant had provided a volume of background documentation with accompanying releases and waivers, as required by the BPD. I do not find Dr. Reade to be a credible or reliable witness, especially regarding the interviews. I found this finding partly on Dr. Reade's repetitive omissions regarding an actual historical corroboration

and substantiation of her grave and consequential opinion of unfitness. Dr. Reade's opinion and conclusions were substantially subjective determinations of the degree or intensity of the appellant's alleged traits or behavior patterns. I find Dr. Reade's testimony and the opinions and documents she authored to be insufficiently factually supported by reliable and credible evidence in the record. (Exhibits and testimony, reasonable inferences, testimony and demeanor of Dr. Reade)

89. There have been a series of appeals heard at the Commission involving the bypass of the Appellants by the Boston Police Department for psychiatric reasons, based primarily on the opinions of Dr. Scott as the first level screener and Dr. Reade as the second level screener. The decisions in the following six appeals were allowed with remedial orders issued precluding Dr. Reade and Dr. Scott from participating in any subsequent psychiatric screening of the Appellants. Those appeals are: Kerri Cawley v Boston Police Department, No. G1-06-95, allowed November 22, 2006. Shawn Roberts v Boston Police Department, No. G1-06-321, allowed September 25, 2008. Jessica Boutin v Boston Police Department, No. G1-06-139 & G1-07-317, allowed January 29, 2009, Daniel Moriarty v Boston Police Department, No. G1-05-442, allowed April 9, 2009, Kelley Coutts v Boston Police Department, No. G1-07-277, allowed May 7, 2009 and Kevin O'Loughlin v Boston Police Department, No. G1-07-282, allowed on May 29, 2009. (administrative notice)

CONCLUSION

The role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

Pursuant to G.L. c. 31, § 2(b) bypass cases are to be determined by a preponderance of the credible evidence in the record. 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 Commission, 31 Mass. App. Ct. 315 (1991) and See G.L. c. 31, § 43.

Appointing Authorities are expected to exercise sound discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The appointing authority may also decline to make any appointment. See Commissioner of the Metropolitan Dist. Commn. v. Director of Civil Serv. 348 Mass. 184, 187-193 (1964). See also Corliss v. Civil Serv. Commrs. 242 Mass. 61, 65; (1922) Seskevich v. City Clerk of Worcester, 353 Mass. 354, 356 (1967); Starr v. Board of Health of Clinton, 356 Mass. 426, 430-431 (1969). Cf. Younie v. Director of Div. of Unemployment Compensation, 306

Mass. 567, 571-572 (1940). A judicial judgment should "not be substituted for that of . . . [a] public officer" who acts in good faith in the performance of a duty. See M. Doyle & Co. Inc. v. Commissioner of Pub. Works of Boston, 328 Mass. 269, 271-272." Goldblatt vs. Corporation Counsel of Boston, 360 Mass 660, 666, (1971)

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." Town of Falmouth v. Civil Service Commission, et al, 447 Mass. 814 (2006), quoting Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

However, 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. City of Cambridge, 43 Mass. App. Ct. at 304. All candidates must be adequately and fairly considered. The Commission has been clear that a bypass is not justified where "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).

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, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001). “Abuse of discretion occurs . . . when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and improper factors are assessed but the [fact-finder] makes a serious mistake in weighing them.” E.g., I.P.Lund Trading ApS v. Kohler Co., 163 F.3d 27, 33 (1st Cir.1998).

When an Appointing Authority relies on scientific evidence provided through expert witnesses to support the justification for a by-pass decision, the Commission is mindful of the responsibility to ensure: (a) the scientific principles and methodology on which an expert’s opinion is based are grounded on an adequate foundation, either by establishing “general acceptance in the scientific community” or by showing that the evidence is “reliable or valid” through an alternative means, e.g., Canavan’s Case, 432 Mass. 304, 311, 733 N.E.2d 1042, 1048 (2000) *citing* Commonwealth v. Lanigan, 419 Mass. 15, 641 N.E.2d 1342 (1994); (b) the witness is qualified by “education, training, experience and familiarity” with special knowledge bearing on the subject matter of the testimony, e.g., Letch v. Daniels, 401 Mass. 65, 69-69, 514 N.E.2d 675, 677 (1987); and (c) the witness has sufficient knowledge of the particular facts from personal observation or other evidence, e.g., Sacco v. Roupenian, 409 Mass. 25, 28-29, 564 N.E.2d 386, 388 (1990).²

Experts’ conclusions are not binding on the trier of fact, who may decline to adopt them in whole or in part. See, e.g., Turners Falls Ltd. Partnership v. Board of Assessors, 54 Mass.App.Ct. 732, 737-38, 767 N.E.2d 629, 634, rev. den., 437 Mass 1109, 747 N.E.2d 1099 (2002). As a corollary, when the fact-finder is presented with conflicting expert

² As to the latter point, the Commission’s notes that it is granted broader discretion in the admission of evidence than permitted in the Massachusetts courts. Compare G.L.c.30A, §11(2) with Department of Youth Services v. A Juvenile, 398 Mass. 516, 531, 499 N.E.2d 812, 821 (1986).

evidence, the fact-finder may accept or reject all or parts of the opinions offered. See, e.g., Ward v. Commonwealth, 407 Mass. 434, 438, 554 N.E.2d 25, 27 (1990); New Boston Garden Corp. v. Board of Assessors, 383 Mass. 456, 467-73, 420 n.E.2d 298, 305-308 (1891); Dewan v. Dewan, 30 Mass.App.Ct. 133, 135, 566 N.E.2d 1132, 1133, rev.den., 409 Mass. 1104, 569 N.E.2d 832 (1991).

No specific degree of certitude is required for expert testimony and it may be accepted if the opinion is “reasonable” and expressed with sufficient firmness and clarity. See, e.g., Commonwealth v. Rodriguez, 437 Mass. 554, 562-63, 773 N.E.2d 946, 954 (2002); Bailey v. Cataldo Ambulance Service, Inc., 64 Mass.App.Ct. 228, 235, 832 N.E.2d 12, 11-18 (2005); Resendes v. Boston Edison Co., 38 Mass.App.Ct. 344, 352, 648, N.E.2d 757, 763, rev.den., 420 Mass. 1106, 651 N.E.2d 410 (1995). So long as the expert’s opinion is sufficiently grounded in the evidence, but certain facts were unknown or mistakes were made in some of the expert’s assumptions that generally goes to the weight of the evidence. Commonwealth v. DelValle, 443 Mass. 782, 792, 824 N.E.2d 830, 839 (2005); Sullivan v. First Mass. Fin. Corp., 409 Mass. 783, 79-92, 569 N.E.2d 814, 819-20 (1991). However, “it is also a familiar principle that testimony may not rest wholly on conjecture, and that is no less the case when the conjecture flows from the mouth of an expert. [Citations] Qualification as an expert does not confer a license to spout nonsense.” Fourth Street Pub, Inc. v. National Union Fire Ins. Co., 28 Mass.App.Ct. 157, 547 N.E.2d 935, 939 (1989) (Kass.J., dissenting), rev.den., 406 Mass. 1104, 550 N.E.2d 396 (1990). See also Board of Assessors v. Odgen Suffolk Downs, 398 Mass. 604, 606-607, 499 N.E.2d 1200, 1202-1203 (1986) (expert testimony stricken which blatantly overlooked critical facts)

Applying these applicable standards to the circumstances of the present case, the Commission concludes that the BPD's bypass of The Appellant for appointment to the position of Boston police officer did not comport with basic merit principles resulting in harm to her employment status through no fault of her own.

The rules under which the BPD may justify a bypass for medical reasons, including psychiatric conditions, are spelled out by HRD's regulations for "Initial Medical and Physical Fitness Standards Tests for Municipal Public Safety Personnel" (the HRD Regulations), which is supposedly incorporated into the BPD's Proposed Psychological Screening Plan (PPSP). The standards for a "Category A" psychiatric medical condition, which is an automatic disqualifying condition, requires proof that a police officer applicant carries a psychiatric diagnosis of certain specific psychiatric "disorders", as defined by the DSM-IV. [HRD Regulations, §10(6)(o)(1)]. A "Category B" psychiatric medical condition includes (a) a "history" of any "psychiatric condition, behavior disorder, or substance abuse problem not covered by Category A. Such history shall be evaluated based on that individual's history, current status, prognosis and ability to respond to the stressors of the job", [HRD Regulations, §10(6)(o)(2)(a)] and (b) "any other psychiatric condition that results in an individual not being able to perform as a police officer." [HRD Regulations, §10(6)(o)(2)(b)].

The Appellant denied having any problems with depression, anxiety or substance abuse and Dr. Reade did not make any determination that she did.

Dr. Reade concluded after her November 5, 2006, interview that the Appellant was more engaging and more responsive. However, Dr. Reade also reported after that interview, that the Appellant is a "very bright and hardworking woman with a sincere

interest in police work, but is limited by her interpersonal manner, her guardedness and concrete thinking.” This conclusion of Dr. Reade is contraindicated by the Appellant’s extensive background history. Indeed, the Appellant’s impressive personal, community volunteer, employment and educational background in conjunction with her impressive testimonial performance, substantially counterweigh that conclusion. Dr. Reade continued to find the Appellant psychologically unfit to perform the duties of a police officer, for substantially the same reasons, after her third and final interview of June 30, 2007

The evidence here establishes that The Appellant does not carry, and has never been diagnosed with any “Category A” or “Category B” psychiatric or behavior disorder contained within the DSM-IV, has no history of any such disorders, and has no history of substance abuse problems within the meaning of the HRD Regulations. cf. Adesso v. City of New Bedford, 20 MCSR 426 (2007) (multiple hospitalizations and treatment for substance abuse and schizophrenia); Melchionno v. Sommerville Police Dep’t, 20 MCSR 443 (2007) (diagnosis of Schizotypal Personality Disorder and repeated, bizarre job-related problems); Hart v. Boston Police Dep’t, 19 MCSR 397 (2006) (history of substance abuse and prior treatment); Lerro v. Boston Police Dep’t, 19 MCSR 402 (history of Obsessive Compulsive Disorder and treatment for Acute Stress Disorder); Mitchell v. Marblehead Fire Dep’t, 19 MCSR 23 (history of bipolar disorder and substance abuse).

Thus, the justification for bypassing The Appellant turns on whether the evidence supports a conclusion that she fits one of the “Category B” definitions of a “psychiatric condition” of sufficient severity and degree to disqualify her to serve as a police officer.

A “psychiatric condition” would seem to be virtually synonymous with a mental or emotional “disorder”. See, e.g., MERRIAM-WEBSTER’S MEDICAL DICTIONARY (2002)

(“psychiatric” means “dealing with cases of mental disorders”); AMERICAN HERITAGE DICTIONARY (2006) (“psychiatry” means “the branch of medicine that deals with the diagnosis, treatment and prevention of mental and emotional disorders”). The experts who testified in the Roberts appeal, however, all seem to use the term more broadly to encompass behavior that does not necessarily qualify as a “disorder”. Dr. Beck testifying in the Roberts appeal defined a Category B disqualifying “psychiatric condition” to mean evidence of “some aspect of a person’s behavior or trait that appears over a range of circumstances or in a variety of situations”, either in the “historical past” [§10(6)(o)(2)(a)] and/or the “historical present” [§10(6)(o)(2)(b)]. This interpretation is substantially similar to Dr. Reade’s distinction between “enduring traits” or “enduring pattern” that she saw to be disqualifying and a “bump in the road” or a diagnosed mental disorder whose symptoms are “in remission” that she would not consider disqualifying. However, Dr. Reade failed to sufficiently identify and substantiate in this present matter, any enduring trait(s) or patterns that would render Kavaleski unfit psychologically or emotionally to serve as a police officer.

The Commission accepts this premise. An applicant may be disqualified for having a Category B “psychiatric condition” so long as the applicant has a “psychiatric condition” which has historically manifested itself by a preponderance of scientifically reliable and credible proof of deficient mental health behavior, but not necessarily proof of a psychiatric “disorder” found within the DSM-IV.

The scientifically appropriate role of clinical interview impressions and standardized testing in the psychological evaluation process must be clearly established and documented by the appointing authority. The psychological evaluation process cannot be so subjective

and/or indefinite that it amounts to an opinion, which is incapable of proof or verification. The BPD's bypass reasons are essentially Dr. Reade's opinion that the Appellant is psychologically unfit to perform the functions of a police officer. Dr. Reade's opinion is founded primarily on the Appellant's alleged presentation at and performance in her interviews with Dr. Reade. Dr. Reade did not audio/video record her interviews so we are left only with the participants' conflicting descriptions, as evidence. The Appellant offers in opposition to Dr. Reade's opinion; her unblemished record, including her very impressive, detailed accomplishments in employment, personal, community volunteer and educational aspects of her life. Neither Dr. Reade nor the BPD attempted to corroborate their opinion of psychological unfitness with any of the Appellant's numerous personal and professional references, familiar with her background.

The repetitive BPD application and psychological screening process was certainly a lengthy and trying ordeal for the Appellant. Dr. Reade admitted that her 2nd level interviews usually caused great nervousness in the interviewees and the Appellant went through 2nd level interviews with her on three occasions. The Appellant also undertook the series of two written tests and the following 1st level interview, a total of three times over a one and one-half year period. The repetition over that period seems to have caused some fatigue, predisposition or ineffectiveness on the part the persons involved which affected the test results or interpretation.

Dr. Reade has been employed by the BPD working with Dr. Scott in the psychological screening process for many years. She has also worked with Dr. Brown on occasion. These psychological professionals are very familiar with the routine aspects of the process. If a 1st level interviewer finds some issues of concern, a 2nd level interview follows. Dr. Reade, as

a 2nd level interviewer is not conducting the interview blindly. She reviews the prior test and interview results and conclusions prior to her interview. She is therefore predisposed. The repetition of descriptive phrases and alleged observations or determinations among these three interviewers indicated this predisposition or influence. Their assessment of the Appellant is in stark contrast to that of the Appellant's personal and employment references. It is also, nearly the opposite of the Appellant's appearance, performance, presentation and demeanor at this hearing. The Appellant persuasively testified that her interview presentation was not what Dr. Reade testified it was. She displayed the opposite traits at this hearing that Dr. Reade claimed had been displayed at the interviews. Dr. Reade testified as to her alarm or concern that the Appellant was so defensive, ("enormously defensive") in responding to the two written tests "to the point that she suppressed all of the scales that might have been used" by her. Dr. Reade described the Appellant as refusing due to an unwillingness or inability to admit any limitations or flaws. She described the Appellant as not revealing or divulging herself in the testing process. The Appellant testified convincingly that she is a private person. Dr. Reade viewed this non-disclosure as intentional and obstructively aimed at preventing Dr. Brown from being able to determine a possible psychiatric or psychological disorder. Instead, the Appellant stated her belief that she viewed some of the questions as unnecessarily personal and intrusive. The appellant's privacy concern is accentuated by the required waiver of confidentiality applied to the screening process. Dr. Reade appeared to have completely adopted the alleged observations and assessments of the 1st level interviewers, Dr. Scott and Dr. Brown. The 1st level Interviewers also exhibited this proclivity of predisposition to adopt the observations of the previous Interviewers during the successive screening cycles.

There also appears to be some professional indignation or ruffled feathers involved here, as all three interviewers assumed that the Appellant had challenged them professionally by her reluctance to disclose certain private information. Dr. Reade also described her as being interpersonally stiff and unwilling to experience the unfamiliar. However, the Appellant presented herself at this hearing as an attractive, pleasant, personable, engaging, poised, accomplished, well-educated and self-confident woman.

Dr. Reade seemed to have held a conflicted or at least a divided view of the Appellant. Dr. Reade concluded her 2nd level psychological opinion report after the September 28, 2006 interview as follows: “Although she is clearly a very bright and hardworking woman, with what appears to be a sincere interest in police work, Ms. Kavaleski is significantly limited by her interpersonal manner, her guardedness and concrete thinking.” Dr. Reade could easily have contacted the Appellant’s personal, employment and other references to confirm her opinion of unfitness. Yet, she failed to even attempt to contact any of the Appellant’s background sources for confirmation.

All three of the psychological assessors involved here, believed that the Appellant’s extreme defensiveness had rendered the results of the earlier MMPI-2 and the PAI tests either invalid or difficult to measure and interpret. Yet, none sought the recommended assistance of a specially trained psychologist to analyze and interpret the test results for any of the three (3) testing cycles. All three psychological assessors felt that the Appellant had failed to give satisfactory answers or explanations to some of their interview inquiries. However, they did not sufficiently identify what those inadequacies were. Both Dr. Scott and Dr. Reade believed that The Appellant had been unable to adequately explain why she had previously failed to pass through the psychological screening process. Dr. Scott felt

that the Appellant only provided short answers and could not explain how she could have changed the outcome of the psychological screening. However, this concern seems to be disingenuous; as it would be difficult for a layperson to adequately explain to a psychiatrist their own prior psychological failings as measured and defined by that same psychiatrist, except of course by agreeing with the psychiatrist's opinion. Obviously, by agreeing with the psychiatrist's prior opinion, the Appellant would be jettisoning her own claim to being improperly bypassed.

Dr. Reade concluded in her 6/30/2007 report stating that, "despite her continued effort to be more open and flexible, the Appellant appears to present as psychologically inflexible, interpersonally stiff woman whose extreme defensiveness limits her capacity to reflect on her own decision-making, responses, actions or impact on others." Dr. Reade opined that the Appellant's limitations would interfere with her functioning effectively in the role of a police officer and is currently found unacceptable." However, Dr. Reade failed to identify any actual "real life examples" to support this dire opinion. Dr. Reade testified that the only "real life examples" she had to support her conclusions and opinion of unfitness were her alleged observations and assessment of the Appellant's performance during her three unrecorded interviews.

The relevant HRD regulations and its Model Psychological Screening Plan called for Dr. Reade, (2nd level screener) to provide specific evidence to substantiate her opinion from the Appellant's history and background. The HRD Model Plan's 2nd level screener's obligation incorporates the obligation of the 1st level screener to examine and review background information "... (concerning criminal convictions, relevant medical information, if any, and information from interviews with employers, teachers and

associates)..." None of these obligatory duties were performed by the BPD's 1st and 2nd level screeners, during any of the three screening cycles. At the very least, the BPD, already having the Appellant's signed release, could have requested her psychological screening and other records from the New York City Police Department.

The three interviewing psychiatrist repeatedly made reference to the Appellant's alleged extreme thinness and messy hair in their respective reports, Dr. Reade also in her testimony. The three psychiatrists all made clear statements of significant concern or of a strong inference that the Appellant might be suffering from an eating disorder. The Appellant denied any eating disorder and the BPD produced no evidence of such a disorder.

Dr. Reade testified by describing the Appellant's alleged presentation at her last interview, in extreme language: "Her presentation was so bizarre and so concerning", "...so far out of anything close to average" "...her hair was a mess", "she didn't look healthy", "she kept denying she was anxious or depressed or had any other problems, almost bordering on bizarre", she was thin, pale and listless, ... giving monosyllabic answers."

On March 20, 2007, Dr. Scott also employed extreme language to note her evaluation of the Appellant. She indicated that the Appellant was dressed in a black full-length suit that hung on her almost "*cachetic body*" [Emphasis added]. Her air was messy and pulled back. During the interview, Dr. Scott noted that the Appellant looked down for most of the interview. (Ex.13, 03/20/07 Report). Cachexia, is defined as, *n. Pathol.* general ill health, with emaciation, due to a chronic disease, as cancer. Cachetic, *adj.* pertaining to or characterized by cachexia. (administrative notice; The American College Dictionary,

Random House Inc., New York, 1963 Edition). I found this description to be a clear misrepresentation of the Appellant's physical appearance, presentation and demeanor and in conjunction with the other enumerated alleged negative observations to be an indication of some bias or some other improper consideration by the BPD.

The legitimate purposes of a psychological screening process are not diminished while promoting requirements of the basis merit principle that eschews public employment decisions when they are arbitrary and capricious or incapable of fair and objective substantiation.

On the evidence presented here, the BPD clearly failed to carry its burden to justify bypassing the Appellant because of a disqualifying Category B "psychiatric condition".

The last cycle, 1st level screening by Dr. Scott was improperly infected by the several prior screening cycle interviews, with a perfunctory, pre-disposition to disqualify The Appellant. Dr. Scott, after a brief five minutes, told her that since she had previously been to a 2nd level interview, she must go again. The three interviewing psychiatrists made successive analysis of the MMPI-2 and PIA test results during 3 cycles of tests/interviews were flawed. Their test results analysis was admitted to be either limited or invalidated but none of them sought the assistance of a specialist psychologist as recommended. All three of the psychological interview/screeners requested the appellant's explanation for having failed the prior screening. As expected all three found her explanation lacking. This disingenuous "catch-22" interview technique demonstrated an unacceptable lack of objectivity. While the ultimate decision to by-pass The Appellant does not rest on Dr. Scott's or Dr. Brown's conclusions, the fact remains that, had The Appellant received a fair and objective first-level screening, more likely than not, she would not have needed to

be passed on to Dr. Reade. The consequences that flow from a flawed first-level screening are exacerbated by the historical record that Dr. Reade very rarely gives a favorable report on BPD candidates who are sent to her for evaluation.

Additionally, at the second-level screening, Dr. Reade failed to establish a credible case for her conclusion and the BPD's stated bypass reasons, that The Appellant: "In summary, despite her continued effort to be more open and flexible, Ms. Kavaleski continues to present as a psychologically inflexible, interpersonally stiff woman whose extreme defensiveness limits her capacity to reflect on her own decision-making, responses, actions or impact on others. Her concrete cognitive style is equally limiting and is likely related to what appears to be a characterologic rigidity. These limitations would interfere with Ms. Kavaleski's ability to manage the duties of a Boston police officer." And also states: Given the highly stressful nature of urban police work, the Boston Police Department is unable to provide Ms. Kaveleski with a *reasonable accommodation*."

Dr. Reade pointed to no convincing situational example that any of The Appellant's behavior – outside the interview itself – supported her conclusions. The circumstances of taking 30 sick days over a three year period was adequately explained by the Appellant as mostly attributed to office visits and treatment related to dental braces and abdominal surgery. Similarly, indications by Dr. Reade, Dr. Reade's "concern" about The Appellant's current level of defensiveness and inflexibility is based heavily upon her subjective observations of her during the interviews as well as the prior interviews of Scott and Brown, and very little in the way of objective real-world context.

Every candidate to be a Boston police officer, who receives a conditional offer of employment, including the Appellant, must take the MMPI-2 and PAI tests, in

conformance with the Boston Police Department proposed psychological screening plan (PPSP). The candidate then meets with a 1st Level Psychiatrist, and if he or she is given an unfavorable 1st Opinion is referred to Dr. Julia M. Reade for a 2nd Level Screening interview/evaluation. However, the Boston Police Dept. PPSP had not been properly approved by HRD prior to its use in this case. The appropriate HRD Model Plan for Psychological screening, (HRD Model Plan) requires the 2nd level interviewer-psychiatrist to substantiate their unfitness opinion, by reference to significant background information on the candidate. Additionally, The HRD Model Plan does not mandate or suggest that the PAI test be administered at any stage of the screening. The personnel administrator for the Commonwealth has established clear standards, by regulation for the determination of a disqualifying medical/psychological condition. That regulation: (HRD) Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel, effective until September 7, 2007, mandated a per se disqualification of any candidate with a Category A medical condition. However, those standards only called for a disqualification for a Category B medical condition “that is of sufficient severity to prevent the candidate from performing the essential functions of a police officer without posing a significant risk to the safety and health of him/herself or others.” Neither a Category A nor a Category B condition has been found to exist in the Appellant, nor has the BPD specifically asserted any such condition.

Dr. Reade testified here and in prior hearings that when she conducts her interviews she focuses on positive traits that she believes makes the candidate most likely to be a successful and constructive Boston Police Officer. Instead of determining the existence of a specific disqualifying psychological condition, according to specified standards and

proscribed process; Dr. Reade looks for her own subjectively determined qualifying traits. Dr. Reade's screening method is arbitrary and capricious, in contradiction of the basic merit principles of Chapter 31. The accuracy and reliability of the psychological screening process, as applied to the Appellant is incapable of substantiation.

After considering all the credible and reliable evidence in the record, I conclude that the Boston Police Department did not have sound and sufficient reasons for bypassing the Appellant, Jill Kavaleski, for selection as a police officer in the City of Boston.

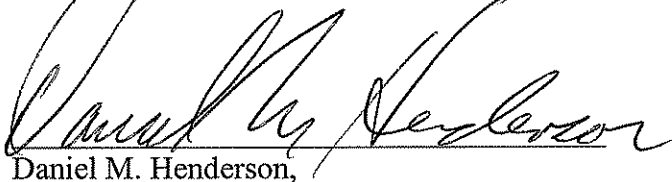
In so finding I have made credibility findings of the witnesses that appeared before me. Those findings are reflected in my findings of fact and as noted above. These credibility findings are based on my observations of the witnesses and their testimony, including their responses under direct and cross-examination.

For all of the above reasons, the appeal under Docket No. G1-07-299 is hereby *allowed*.

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission directs that name of the Appellant, Jill Kavaleski be placed at the top of the eligibility list for original appointment to the position of Police Officer so that her name appears at the top of any current certification and list and/or the next certification and list from which the next original appointment to the position of Police Officer in the Boston Police Department shall be made, so that she shall receive at least one opportunity for consideration from the next certification for appointment as a BPD police officer. The Commission further directs that, if and when Jill Kavaleski is selected for appointment and commences employment as a BPD police officer, her civil service records shall be retroactively adjusted to show, for seniority purposes, as her starting date, the earliest

Employment Date of the other persons employed from Certification #70048, (June 25, 2007). Finally, the Commission directs that the BPD may elect to require Jill Kavaleski to submit to an appropriate psychiatric medical screening in accordance with current HRD regulations (1) in the ordinary course of the medical examination process or (2) immediately upon receipt of a certification in which her name appears, as a condition to further processing of her application for appointment. In either case, such screening shall be performed, de novo, by qualified professional(s) other than Dr. Scott, Dr. Brown or Dr. Reade and all screening interviews shall be audio-video recorded.

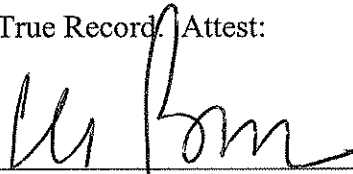
Civil Service Commission,



Daniel M. Henderson,
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman voted No, Henderson voted Yes, Marquis voted No, Stein voted Yes and Taylor voted Yes, Commissioners), on October 22, 2009.

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)(1), 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:

Jill Kavaleski

Sheila Gallagher, Atty.

John Marra, Atty. (HRD)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JILL KAVELESKI,
Appellant

v.

G1-07-299

BOSTON POLICE DEPARTMENT,
Respondent

CONCURRING OPINION OF PAUL STEIN

I write this concurring statement to dispel the suggestion, made in Commissioner Bowman's dissent, that the majority conclusion represents an impermissible "substitution of judgment" that is not supported by the substantial credible evidence presented to the Commission.

While there may be some merit to the dissent's concern for reliance on the findings (made by this Commissioner) in one of the many prior appeals involving the same Appointing Authority and its same psychiatric evaluators, the conclusion reached by the Hearing Commission is fully justified by the evidence that was offered in the case.

It is well established that an Appointing Authority bears the burden of proof to show, by the preponderance of evidence, that it has "sound and sufficient" reasons, weighed by an unprejudiced mind guided by common sense and correct rules of law, that justify bypassing a candidate for civil service appointment. 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). Civil service law and rules also require that the reasons for bypassing a candidate must be presented in writing for approval by HRD and no reasons not set forth in the written statement provided to HRD may be used as a

justification for bypass in any hearing before the Commission. See generally, G.L.c.31, §27; HRD Rules, PAR.08(3).

Here, as the Hearing Commissioner correctly concluded, the Boston Police Department simply failed to meet its burden of proof by substantial and credible evidence of claim that Ms. Kavaleski had a “psychiatric condition” that rendered her unfit to perform as a police officer within the definition of the BPD’s own rules and regulations. In essence, the BPD screeners disqualified Ms. Kavaleski mainly because of her personal appearance (a “cachetic body”, “neatly dressed” but “her hair was messy” and she was “stiff and painfully thin”) and “interpersonal manner” (“listless”, “monosyllabic”, “robotic”, “inflexible approaches to both internal and external stresses”). The evidence also established that the screeners had “concern” for Ms. Kavaleski’s lifestyle that involved living with or nearby her family and attending a nearby institution, i.e., Suffolk University, for both undergraduate and graduate school. These findings form the basis for the purported “opinions” that the Appellant had an unwillingness or inability to experience the unfamiliar which would somehow interfere with her ability to respond to stressful situations as a police officer or, alternative, handle long periods of boredom required on the job.

I am astonished that a medical professional would claim that such facts as a candidate’s hair style or choice of institution of higher learning are relevant to bear on, much less form substantial evidence of, a “psychiatric condition” required to disqualify a candidate who (1) studied for and scored highly on the rigorous entry-level police officer civil service exam, (2) passed a rigorous background check by the BPD internal affairs division, and (3) in this case, had also been accepted by the New York Police Department after a psychological screening. Moreover, virtually none of these so-called “opinions” are beyond the grasp of an ordinary person’s normal powers of observation and common sense and do not call for any specialized

training as a psychiatrist. They certainly fall within the purview of a Hearing Commissioner to assay the credibility and weight to be given to such opinions and the alleged facts that support those opinions.

I must concur, therefore, based on the evidence in the record, and the reasonable inferences that may be drawn from them, that Ms. Kavaleski's bypass was not justified with "sound and sufficient reasons" consistent with the standards of substantial evidence and the BPD's own rules and regulations as well as the requirement of fair and unbiased assessment of a candidate for appointment to a civil service position.

The Commission Majority does not mean necessarily to impugn the overall integrity of the BPD screening process or its screeners, but it seems inescapable to conclude from the evidence in this particular case, that Ms. Kavaleski ought not be forced repeatedly to run the same gauntlet that has tripped her up through no fault of her own. That is all that the Commission Majority has required in this case.

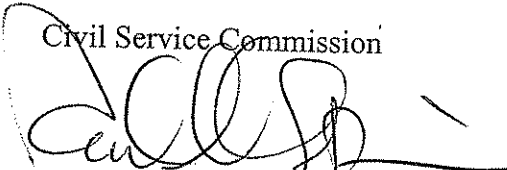
The Commission Majority does not require BPD to hire Ms. Kavaleski or, even to preclude her from future consideration for "sound and sufficient" reasons, including a properly documented psychiatric condition. In fairness to both the screeners and Ms. Kavaleski, however, should further psychiatric medical evaluations of her be deemed necessary, it must be performed afresh by new screener(s). Good reason exists to doubt that an applicant, such as Ms. Kavaleski, once by-passed for having a disqualifying "psychiatric condition", faces a level playing field when sent for a subsequent evaluation by the same screeners who found her unfit previously.

This case is not the first time the Commission found such a process troubling under the merit principle of the Civil Service Law. See, e.g., *Cawley v. Boston Police Dep't*, 19 MCSR 389 (2006), *aff'd sub nom, Boston Police Dep't v. Cawley*, Suffolk Superior Ct., Docket No. SUCV2006-5331 (2008); *Massiello v. Town of Framingham*, 15 MCSR 6 (2002); *Gerakines v.*

Town of North Reading, 12 MCSR 30 (1999) The Commission has previously suggested that the BPD might benefit from considering the feasibility of establishing a panel of screeners to mitigate the type of problem that arose in this, and other, similar appeals. *Roberts v. Boston Police Dep't*, CSC Case No. G1-06-321 (Decision, 9/25/2008)

The Commission also notes that pursuant to Chapter 31, Section 61 of the General Laws, a person appointed to a permanent police officer position must "actually perform the duties of such position on a full-time basis for a probationary period of twelve months before he shall be considered a full-time tenured employee in such position." This extended period of probation provides a statutorily-mandated built-in safety valve for weeding out unfit candidates based on actual performance, as opposed to the subjective (and, here, undocumented) views of non-police personnel.

Civil Service Commission



Paul M. Stein
Commissioner

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JILL KAVELESKI,
Appellant

v.

G1-07-299

BOSTON POLICE DEPARTMENT,
Respondent

DISSENT OF CHRISTOPHER BOWMAN

I respectfully dissent.

The instant appeal involves an original appointment to the position of police officer in the Boston Police Department. The Appellant was bypassed for appointment because she was deemed psychologically unfit for appointment as a Boston police officer.

As noted in the majority's 64-page decision, the Appellant has been interviewed by three mental health professionals contracted by the Boston Police Department. After interviewing the Appellant and reviewing the results of the written psychological tests that were administered to her, none of these professionals, including Dr. Julia Reade, have found the Appellant to be an acceptable candidate for appointment.

Dr. Reade testified before the Commission. She is a Board Certified psychiatrist who has worked for the Department for 8-9 years conducting Second Level Psychiatric Interviews for police officer recruits. She is Board Certified in General Psychiatry and Forensic Psychiatry and has extensive experience in Law and Psychiatry as well as Occupational Psychiatry.

The majority disregards the findings and conclusions of these three mental health professionals, including Dr. Reade, in large part because the hearing officer's observations of the

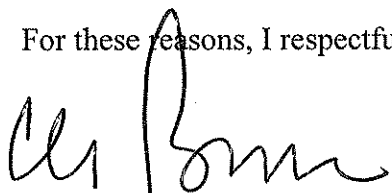
Appellant at the Commission hearing were not consistent with those of the mental health professionals that interviewed the Appellant. Respectfully, this can not be the standard by which the Commission determines whether the Boston Police Department was justified in bypassing the Appellant.

In fact, there is no assessment in the record by any mental health professional that contradicts the findings and conclusions of Dr. Reade. Rather, the majority inappropriately inserts numerous findings and conclusions of two mental health professionals who: a) did not testify regarding the instant appeal; b) have no knowledge of the Appellant; and c) were obviously not subject to cross examination by the Boston Police Department regarding this appeal.

Finally, the majority's conclusions that: 1) Dr. Reade is not a "credible or reliable witness" and; 2) that her screening methods are "arbitrary and capricious, in contradiction of the basic merit principles of Chapter 31" are not supported by substantial evidence. Rather, they are driven by unfounded conclusions and inappropriate inferences of the majority, including their determination that the interviews were somehow compromised because they were not recorded via audiotape or video recorder. The majority has no basis upon which to make such a conclusion and it hardly meets the threshold required to deem the interview techniques "arbitrary and capricious".

The Boston Police Department bypassed the Appellant for sound and sufficient reasons based on valid policy considerations and the Commission has inappropriately substituted its judgment for that of the Appointing Authority.

For these reasons, I respectfully dissent.

A handwritten signature in black ink, appearing to read 'Chris Bowman', written over a horizontal line.

Christopher C. Bowman
Chairman
October 22, 2009