

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 09-4978

Notice sent  
9/10/2010  
S. A.  
N. I. T.  
H. L. L.  
L. & S.-R.  
A. J. A.  
J. P. K.  
F. & E.  
R. D.  
N. I. T.

BOSTON POLICE DEPARTMENT  
Plaintiff

vs.

JILL KAVALESKI & another<sup>1</sup>

Defendants/Third-Party Plaintiff

OFFICE OF THE ATTORNEY GENERAL  
JULIA READE M.D. & another<sup>2</sup>

(sc)

vs.

JULIA READE M.D. & another<sup>2</sup>

Third-Party Defendants

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF BOSTON  
POLICE DEPARTMENT'S MOTION FOR JUDGMENT ON THE PLEADINGS  
AND DEFENDANT JILL KAVALESKI'S CROSS-MOTION FOR JUDGMENT  
ON THE PLEADINGS**

**INTRODUCTION**

Plaintiff Boston Police Department ("Department") seeks G. L. c. 30A, § 14(7) review of the Massachusetts Civil Service Commission's ("Commission") decision to allow Jill Kavaleski's ("Kavaleski") appeal of the Department's decision to withdraw her conditional offer of employment as a police officer. Kavaleski's offer of employment was withdrawn because she failed the Department's psychological screening. Thereafter, the Commission ruled that the Department was not justified in bypassing Kavaleski and ordered the Department to place Kavaleski's name at the top of the eligibility list for the next appointment. Should the Department decide to conduct additional psychological

<sup>1</sup> Massachusetts Civil Service Commission

<sup>2</sup> City of Boston



screenings of Kavaleski, the Commission also ordered that it must use different examiners. After reviewing the administrative record, the relevant law, and the parties' submissions, the Department's Motion for Judgment on the Pleadings is ALLOWED and Kavaleski's Cross-Motion for Judgment on the Pleadings is DENIED.

### BACKGROUND

The Department's Student Officer Application ("Application") requires the applicant to disclose information regarding her: personal history; residences since her sixteenth birthday; relationships; educational history; employment history for the past ten years, including use of sick days for the previous three years; licenses; military record; driver's license, including driving history; financial background, including real estate ownership/interest, civil actions involved in gaming and gambling activities; alcohol use; drug use/experimentation; and other personal declarations. A.R. Ex. 2. The Application requires each applicant to submit three Personal Letters of Reference and two Employer-Supervisor References. A.R. Ex. 2. Each applicant is also required to sign a Release of Information Form. A.R. Ex. 2. Upon submission of the Application an investigator from the Department's Recruit Investigation Unit interviews each applicant. This investigator also conducts a background investigation of the applicant.<sup>3</sup>

Once an applicant has submitted the Application and taken the Civil Service Examination, his or her name is placed on the certified eligibility list. If the applicant is selected for a position with the Department he or she receives a conditional offer of employment, subject to the applicant passing the psychological and medical screenings.

The Department's Proposed Psychological Screening Plan requires candidates to take the Minnesota Multiphasic Personality Inventory-2 ("MMPI-2") and the Personality

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<sup>3</sup> Boston Police Screening and Hiring Process, <http://www.cityofboston.gov/police/recruitment/process.asp>.



Assessment Inventory ("PAI") written examinations. A.R. pgs. 181-183. Phase II of the psychological screening process requires each candidate to undergo a Clinical Interview with a Department psychiatrist. During the Clinical Interview the psychiatrist reviews the candidate's background information, medical history, MMPI-2 and PAI results and examines the candidate's mental status. If the psychiatrist conducting the Clinical Interview determines there are areas of specific concern, the candidate is referred for a Second Opinion Psychiatric Interview, which constitutes Phase III of the psychological screening process. Prior to the Second Interview, a Board Certified Psychiatrist reviews all test results and the second phase clinical interview. The psychiatrist then conducts an in-depth clinical interview with the candidate focusing on the previously identified concerns. The psychiatrist next makes a final recommendation to the Department regarding the candidate's suitability for employment as a police officer.<sup>4</sup>

Kavaleski has applied to be a Boston Police Officer on two previous occasions. In both instances, the Boston Police Department bypassed Kavaleski for employment as a result of the psychological screening process. After her first application to the Department, Kavaleski took the MMPI-2 and the PAI in January 2006. The MMPI-2 profile was invalidated because her responses were too defensive to allow for an adequate

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<sup>4</sup> A police officer may be disqualified if the psychological screening process shows either of the following 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 program not covered in Category A. Such history shall be evaluated 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.'" A.R. pgs. 440-441.



assessment. A.R. pg. 69. During Phase II of the screening process, Kavaleski was interviewed by Dr. Brown, who concluded that Kavaleski's "ability to make the judgments required of an armed police officer may be compromised." A.R. pg. 79. Kavaleski was then referred to Julia M. Reade, M.D. ("Dr. Reade"), who determined that Kavaleski would have:

significant difficulties [functioning as a police officer] because she is interpersonally stiff and unable to consider the impression she makes on others . . . [furthermore she is] extremely guarded and concrete to a degree that would . . . interfere with her ability to communicate effectively with coworkers or to discuss her rationale for a particular course of action. A.R. pg. 81.

In August 2006, Kavaleski took the MMPI-2 and PAI tests for a second time. The MMPI-2 profile was invalidated again because of her defensive responses. A.R. pg. 101. During Phase II of the screening process, Kavaleski was interviewed by Marcia Scott, M.D. ("Dr. Scott"), who concluded that Kavaleski's "thinking is concrete and her coping rigid and avoidant [furthermore she] appears to have little understanding of her reasoning and decisions. These mental and personality traits would prevent her from managing the stresses or making the judgments required in the job of an armed police officer." A.R. pg. 125. Kavaleski was then referred to Dr. Reade for the Third Phase of her psychological screening. Dr. Reade concluded that Kavaleski:

had a superficial awareness of her extremely problematic presentation, but little insight into its severity or her impact on others. 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. A.R. pg. 128.

After taking and passing the civil service examination for a third time, Kavaleski's name was placed on a certified eligibility list for the position of Boston Police Officer. On March 3, 2007, Kavaleski took the MMPI-2 and PAI tests.



Kavaleski's MMPI-2 profile, though valid, indicated that she answered in a "somewhat defensive manner." A.R. pg. 136. Her profile also suggests that she would have "very few" employment problems and that "no work dysfunction items were endorsed." A.R. pgs. 137, 142. On both the MMPI-2 and the PAI examinations, however, Kavaleski endorsed critical items in a deviant manner, which may indicate the presence of psychological problems and/or job related concerns.<sup>5</sup> A.R. pgs. 155, 164.

On March 20, 2007, Kavaleski met with Dr. Scott for the second phase of the psychological screening process. A.R. pg. 109. Dr. Scott met with Kavaleski for approximately five minutes. Dr. Scott reported that Kavaleski was "somewhat less guarded" during this interview than her previous interview. A.R. pg. 111. Dr. Scott further opined that Kavaleski has "very limited self-awareness, little understanding of her motivations or emotional limitations and inflexible approaches to both internal and external stresses." A.R. pg. 111. Given these traits, Dr. Scott concluded that Kavaleski's ability to evaluate situations and make effective judgments, as well as her ability to cope with the stress of being a police officer would be affected. A.R. pg. 111.

On April 10, 2007, Dr. Reade evaluated Kavaleski. Dr. Reade issued her report on June 30, 2007. A.R. pg. 168. Dr. Reade noted that Kavaleski was neatly dressed for the interview, but that her hair was messy. Dr. Reade further described Kavaleski as "thin, but not unhealthy looking." A.R., pg. 169. Dr. Reade still found Kavaleski to be "stiff and guarded," although she appeared more engaging and spontaneous. A.R. pg. 169. With respect to Kavaleski's thought process, Dr. Reade noted that she was "extremely concrete and [] responded to questions by focusing on literal details and seemed to ignore

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<sup>5</sup> On the MMPI-2, Kavaleski endorsed the following critical items: Acute Anxiety State; Somatic Symptoms; Anxiety and Tension; and Deviant Beliefs. A.R. pg. 155. On the PAI, Kavaleski endorsed the following critical items: Drug Problems; Affective; Persecution; and Aggressive Attitude. A.R. pg. 164.



or have difficulty grasping the larger significance.” A.R. pg. 169. Dr. Reade concluded that Kavaleski was 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 characterologic rigidity.” A.R. pg. 170. Given these limitations, Dr. Reade concluded that Kavaleski was not psychologically suited to be a police officer. A.R. pg. 170.

On June 25, 2007, the Department notified the Massachusetts Human Resources Division (“Human Resources”) that it intended to bypass Kavaleski for employment as a police officer because she failed to meet the psychological criteria necessary for appointment. A.R. pg. 11. On September 17, 2007, Human Resources accepted the Department’s reasons for bypassing Kavaleski. A.R. pg. 200. Kavaleski was then formally notified of the Department’s decision. On August 31, 2007, Kavaleski filed an appeal with the Commission pursuant to G. L. c. 31, §2(b). A.R. pg. 2.

On April 3, 2008, the Commission held a hearing on this matter, which included live testimony from Kavaleski and Dr. Reade. A.R. pg. 432. The Commission issued its decision on October 22, 2009. In its decision, the Commission relied on testimony Dr. Schaeffer gave in *Roberts v. Boston Police Dept.* (“*Roberts*”), a prior unrelated hearing. In that hearing, Dr. Schaeffer testified that 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.” The Commission further referred to *Roberts* by stating that “[w]hile psychiatrist make use of such tests in their practices, all the expert witnesses who testified in this case [*Roberts*] 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 professional testing.” A.R. pg. 447.<sup>6</sup> The Commission’s decision also relied on Dr. Beck’s definition of a psychiatric disorder, despite the fact that Dr. Beck did not testify in this matter and never evaluated Kavaleski.<sup>7</sup> A.R. pg. 481.

In its decision, the Commission also criticized Dr. Reade for interpreting the MMPI-2 and API test results without the assistance of a specially trained psychologist. A.R. pgs. 473, 484, 487. The Commission discredited the physical observations Dr. Reade made during the interview.<sup>8</sup> Most significantly, the Commission found Dr. Reade’s determination that Kavaleski was unsuited for employment as a police officer unsubstantiated and subjective because Dr. Reade failed to identify “any enduring trait(s) or patterns that would render Kavaleski unfit psychologically or emotionally to serve as a police officer.” A.R. pg. 472, 481. The Commission, therefore, concluded that the Department was not justified in bypassing Kavaleski and ordered the Department to place Kavaleski’s name at the top of the eligibility list for the next appointment.

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<sup>6</sup> Dr. Reade was board certified in general psychiatry in 1989 and in forensic psychiatry in 1998. Transcript pgs. 17-18. Dr. Reade has served as the Department’s second level screener for approximately twelve years. Trans. pg. 22. Dr. Reade testified that if she has questions about an applicant’s MMPI-2 or PAI results, she consults “psychologists who have special training in the administration and interpretation” of the test results.” Trans. pg. 31

<sup>7</sup> “Dr. Beck testifying in *Roberts* 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” and/or the “historical present.” A.R. pg. 481.

<sup>8</sup> The Commission described Kavaleski’s appearance and demeanor at the hearing as follows:

[Kavaleski] displayed a very pleasant and polite personality. She is . . . not unpleasingly thin. She has an engaging smile and is personable . . . [Kavaleski] 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 never appeared flustered, irritated, or aggressive. Instead, she presented herself as cool, calm and collected. A.R. pg. 469-470.



## DISCUSSION

Pursuant to G. L. c. 30A, a court may reverse, remand, or modify an agency decision if the substantial rights of any party have been prejudiced because the agency's decision was based upon an error of law. G. L. c. 30A, § 14(7)(c). An agency's failure to follow its own procedures constitutes reversible error if a party is prejudiced as a result of the agency's actions. *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 133 (2002); *Martorano v. Department of Public Utilities*, 401 Mass. 257, 262 (1987).

The Commission's role is to determine whether "on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." *Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 303 (1997). A party aggrieved by a final decision of the Commission may seek judicial review under G. L. c. 31, § 44. Pursuant to G. L. c. 31, § 44, this court reviews the "commission's decision to determine if it violated any of the standards set forth in G. L. c. 30A, § 14(7), and cases construing those standards." *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 242 (2006).

For the appointing authority's action to be reasonably justified, it must be based "upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." *Cambridge*, 43 Mass. App. Ct. at 304, quoting *Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928). When political considerations or objectives unrelated to merit govern the appointing authority's personnel decision, the Commission may intervene. *Id.* The Commission, however, does not have the authority to "substitute its judgment about a valid exercise of discretion based on merit or policy considerations



by an appointing authority.” *Id.* When selecting public employees based on skill and integrity, appointing authorities are afforded broad discretion. *Id.* at 304-305.

The Commission’s decision, in part, relies on *Roberts*, a previous, unrelated case where the Commission found psychologists solely qualified to interpret psychological tests results, such as the MMPI-2 and the PAI. A.R. pg. 447. In its decision, the Commission stated that the expert witnesses—Dr. Schaffer, Dr. Beck and Dr. Reade—who testified in *Roberts* “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.” A.R. pg. 447. The Commission further noted that in *Roberts* “it was found that: ‘[t]he only expert psychologist qualified to interpret [Roberts’s] MMPI-2 and PAI test results who testified was Dr. Mark Schaefer,” who was a psychologist. A.R. pgs. 447-448.

Here, Dr. Reade, a psychiatrist testified that if a question arises regarding an applicant’s MMPI-2 or PAI results, she consults with a psychologist, who is trained in interpreting these test results. Trans. pg. 31. The Commission discredited Dr. Reade’s interpretation of Kavaleski’s MMPI-2 and PAI test results because of Dr. Schaefer’s prior testimony that psychologists rather than psychiatrists should interpret psychological test results. Dr. Schaefer, however, did not examine Kavaleski and had nothing to do with this case. He did not review the results of her psychological examinations, nor did he testify before the Commission in this matter. The Department, therefore, had no opportunity to cross-examine him or otherwise challenge his opinion.

Dr. Reade testified before the Commission. She explained the significance of Kavaleski’s test results, as well as the observations she made during Kavaleski’s clinical



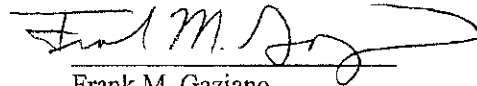
interview. Dr. Reade also testified that that she does consult with psychologists when questions arise concerning an applicant's MMPI-2 or PAI test results. Given that Dr. Reade did not seek consultation when interpreting Kavaleski's MMPI-2 and PAI test results, the Commission erred in relying on its finding in *Roberts*, that only psychologists as opposed to psychiatrists are qualified to interpret psychological test results. The Department was prejudiced by the Commission's reliance upon *Roberts* because this extraneous information factored into the Commission determination to discredit Dr. Reade's interpretation of Kavaleski's psychological examination results.

In response to the Department's complaint regarding the Commission's reliance upon facts not in evidence, Kavaleski cites to *Doherty v. Retirement Board of Medford*, 425 Mass. 130, 140 (1997) and points out that "Administrative agencies are entitled to consider such external evidence as transcripts from other proceedings." Defendant's Opposition to Plaintiff's Motion for Judgment on the Pleadings and Cross-Motion for Judgment on the Pleadings. This case does not support Kavaleski's argument. The Supreme Judicial Court, in *Doherty*, held that an administrative agency may rely on transcripts from prior trials "so long as those transcripts bear sufficient indicia of reliability." *Id.* (internal quotation omitted). Here, the Commission did not submit transcripts from the *Roberts* hearing into evidence and the Department was not provided with a fair opportunity to raise an objection or challenge this testimony. See *Board of Assessors of Boston v. Ogden Suffolk Downs, Inc.*, 398 Mass. 604, 606 (1986) (a prior agency opinion or decision is not normally admissible to prove factual issues in dispute).



**ORDER**

For the above-mentioned reasons, it is hereby **ORDERED** that the Boston Police Department's Motion for Judgment on the Pleadings is **ALLOWED** and Jill Kavaleski's Cross-Motion for Judgment on the Pleadings is **DENIED**.



Frank M. Gaziano  
Justice of the Superior Court

DATED: September 9, 2010