

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

KWAME KONAMAH,
Appellant

v.

CITY OF LOWELL,
Respondent

Case No.: G1-10-131


DECISION

The Civil Service Commission voted at an executive session on March 8, 2012 to acknowledge receipt of the report of the Administrative Law Magistrate dated January 12, 2012. No written objections were received by either party.

After careful review and consideration, the Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Marquis, McDowell and Stein, Commissioners) on March 8, 2012.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:

Kwame Konamah (Appellant)

Maria Sheehy, Esq. (for Respondent)

John Marra, Esq. (HRD)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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January 12, 2012


Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Kwame Konamah v. City of Lowell
DALA Docket No. CS-11-34
CSC Docket No. G1-10-131

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Kwame Konamah
Maria Sheehy, Esq.

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Kwame O. Konamah,
Appellant

v.

Docket No. G1-10-131
DALA No. CS-11-34

City of Lowell,
Appointing Authority

Appearance for Petitioner:

Kwame O. Konamah
[REDACTED]
[REDACTED]
Lowell, MA 01851

Appearance for Respondent:

Maria Sheehy, Esq.
City of Lowell Law Department
375 Merrimack Street
Lowell, MA 01852

Administrative Magistrate:

Kenneth J. Forton, Esq.

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SUMMARY OF RECOMMENDED DECISION

The appeal is dismissed because the appointing authority has proven by a preponderance of the evidence that the appellant was untruthful on his employment application. He failed to disclose that he was investigated by the Department of Correction, failed to disclose his involvement with a business, failed to list his ex-wife and her pertinent details, and failed to notify the appointing authority that he had become more than 180 days delinquent on a financial obligation.

RECOMMENDED DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Kwame O. Konamah, appeals the decision of the Appointing Authority, City of Lowell, to bypass him for an original appointment to the position of permanent police officer. The appeal was timely filed. A

hearing was held on September 24, 2010 at the Division of Administrative Law Appeals, 98 North Washington Street, Boston. There are three (3) cassette tapes of the hearing.

I admitted twelve (12) documents into evidence (Exs. 1-12.) I also marked two documents for identification. (A, B.) The Appellant testified on his own behalf and called no other witnesses. The Respondent called two witnesses, Sergeant Thomas Fleming and Sergeant Jonathan Noone, both of the Lowell Police Department.

At the conclusion of the hearing, I agreed to keep the record open until November 12, 2010 to accept post-hearing briefs from the parties. The filing deadline was extended until February 11, 2011. Upon receipt of the City of Lowell's brief on February 11, 2011, the record was closed. The Appellant did not file a brief.

FINDINGS OF FACT

Based upon the documents entered into evidence and the testimony of the witnesses, I make the following findings of fact:

1. The Petitioner, giving his full name as Kwame Osei Boateng Konamah, submitted an Application for Employment form, dated January 15, 2008, to the Lowell Police Department. (Ex. 4.)

2. The application contained various provisions and mechanisms to ensure that the applicant had provided complete and accurate information: (1) a statement, in capitalized, bold, and underlined letters, "**NO STATEMENT SHOULD BE LEFT BLANK**" (Ex. 4, p. 1); (2) a "Continuation Space," which an applicant could use "to continue an answer or add . . . information"; Mr. Konamah left this part blank (Ex. 4, p. 16); (3) a statement that "[a]fter completing this form you should review your answers to all questions to make sure the form is complete and accurate . . ." (Ex. 4, p. 16); and (4) a "Certification That My Answers Are True," stating, "I have read . . . and understand each

question. My statements . . . are true, and correct and are made in good faith"; Mr.

Konamah signed the certification. (Ex. 4, p. 16.)

3. The application also contained an agreement that stated, among other things: (1) "I swear (or affirm) that the information I have . . . entered [on] this application . . . is true and correct." (Ex. 4, p. 17, item #1); (2) "I understand that false or misleading information given herein or during interview(s) will result in my being disqualified from further consideration and/or termination from employment with the Lowell Police Department" (Ex. 4, p. 17, item #2); (3) ". . . I hereby certify that all statements . . . on this application are true and complete" (Ex. 4, p. 17, item #5); (4) "I certify that the answers to the foregoing questions are true and complete and I authorize the City of Lowell to investigate all statements contained in the application as may be necessary to determine my fitness, skills, and qualifications for employment. I understand that false or misleading information given here or in interview(s) may result in rejection of this application or in my dismissal . . ." (Ex. 4, p. 17, item #6); and (5) "I understand that if I am untruthful I will be automatically disqualified from further consideration and my name will be removed from the Civil Service eligibility list." (Ex. 4, p. 17, item #7.)

4. Mr. Konamah signed the application and this agreement on Jan. 15, 2008. (Ex. 4, p. 17.)

5. The application also contained the following provisions: (1) a second place to explain an answer in the application (Ex. 4, p. 18); a "Warning" that "[i]f you answer untruthfully and we discover this fact, you will automatically be disqualified from further consideration. Furthermore, your name may be removed from the Civil Service eligibility list. A false or incomplete answer to any question in this application may be

grounds for not employing you, or for dismissing you . . ." (Ex. 4, p. 18); (2) an "Authorization for Release of Information," which states, among other things, "I realize that the position of Police Officer is one of the most sensitive government occupations and as such requires the highest levels of public confidence and public trust. For these reasons, I encourage my former employer . . . to make full, complete and accurate disclosure of all information they may have about me"; Mr. Konamah signed this authorization (Ex. 4, p. after p. 18); (3) a "Residency Preference Certification," which stated in part, "I realize that the Lowell Police Officer screening process will validate my residency claim and I certify that it is true and accurate. I also realize that there are both criminal penalties and regulations of the Division of Personnel Administration, which prohibit false or misleading information in support of a residency preference claim"; Mr. Konamah signed this certification (Ex. 4, 2 pp. after p. 18.)

6. The application contained yet another Agreement, whose statements are redundant with each other and with the first Agreement. (Ex. 4, p. 17.) The following statements are in the second Agreement: (1) "I swear or affirm that all the information I have . . . entered into this application form . . . was true and complete"; (2) "I understand that false, incomplete or misleading information that was entered into the application form or provided during interview(s) would result in my being disqualified from further consideration"; (3) "I am aware that willfully withholding information or making false statements on the application form or during interview(s) will be the basis for rejection of my application I hereby certify that all statements made by me on the application and during interview(s) are true and complete"; (4) "I certify that the answers to all questions are true and complete and I authorize the City of Lowell to investigate all statements contained in the application and made during interview(s) as may be necessary

to determine my fitness, skills and qualifications for employment. I understand that any false or misleading information provided during interview(s) may result in rejection of my application or my dismissal . . .”; and (5) “I . . . understand that if there are any changes to my status or to the information I have provided I will immediately notify the Lowell Police Department in writing. Failure to notify the Department in a timely manner may result . . . in my being disqualified from further consideration, rejection of my application or in my dismissal . . .” (Ex. 4, 3 pp. after p. 18.)

7. Mr. Konamah signed this second Agreement on January 15, 2008. (Ex. 4.)

8. Soon after Mr. Konamah applied in 2008, Sergeant Fleming, who was responsible for recruiting police officers and training them at the Lowell Police Academy, met him. The Lowell Police Department hired Konamah as a student officer, and Sergeant Fleming asked Sergeant Noone to investigate his background. (Fleming testimony.)

9. Sergeant Noone, in a report dated February 22, 2008, noted several areas of concern, including: (1) Konamah claimed to have been married in Accra, Ghana, but he did not include the name of his spouse on his application; (2) he listed his residence as [REDACTED], Lowell, MA, but listed [REDACTED] Fitchburg, MA, as his mailing address. (See Ex. 4, p. 2, items #8 and 11, where Mr. Konamah listed himself as the owner of the Fitchburg address and two other Fitchburg properties); (3) Konamah was honorably discharged from the Army Reserve for physical disabilities, including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and (4) at Konamah’s then-current job, as a corrections officer with the

Massachusetts Department of Correction (DOC), an evaluation ranked him below average in five of eight areas. (Ex. 5.)

10. Sergeant Noone's memorandum states that the Department of Correction evaluation was attached, but it was not attached to the February 22, 2008 memorandum. Sergeant Noone quoted three comments from the evaluation: "Has difficulty working in a team environment"; "Allows difficult situation[s] to escalate into significant problems"; and "Communication skills are inadequate or confrontational." Sergeant Noone also reported compliments from Konamah's then supervisor that he was "pretty sharp" and that he "wished he had 10 more of him." (Ex. 5, p. 2.)

11. Sergeant Noone further stated in his memorandum that "several issues need to be explored further in the interview" to determine if the hiring process should continue: (1) his DOC evaluation "was less than stellar" and revealed that Konamah lacked many of the job skills that are of the utmost importance for a successful police officer; (2) Konamah's documented disabilities should be addressed at his medical exam; (3) his actual residence was unclear; and (4) a credit history check "reveals that he . . . has over \$800,000 in open real estate loans," one of which was 60 days overdue and another 180 days overdue. (Ex. 5).

12. Despite the mention of a follow-up interview, no such interview was apparently scheduled or held as a direct result of Sergeant Noone's February 22, 2008 memorandum. The record contains no further mention of a medical examination and his disabilities were not a factor in his bypass. His DOC work evaluation and his residence were also not factors cited as reasons for his bypass. (Ex. 1.)

13. Mr. Konamah started at the police academy on May 12, 2008. (Ex. 7.)

14. On June 9, 2008, while Mr. Konamah was a student officer attending the Lowell police academy, he failed an examination. Student officers who fail three examinations are dismissed from the academy. When Konamah re-took the examination, on June 18, 2008, he passed it. (Ex. 7, Counseling Sheet; Fleming testimony.)

15. The appointing authority did not cite Konamah's 2008 police academy performance as a reason for his 2010 bypass. (Ex. 1; Fleming testimony.)

16. Following up after Konamah failed his first test, Sergeant Fleming called Konamah into his office, where he asked Konamah if he was having problems, such as with the instructors, the course, or studying. Konamah answered that he was busy at night working at an auto school. Sergeant Fleming was surprised and told Konamah that he could not work while attending the academy unless he received permission. (Ex. 7; Fleming testimony.)

17. Sergeant Fleming, recognizing that Mr. Konamah's application for employment did not list an auto school, handed Mr. Konamah a red pen and asked him to correct errors and fill in omissions on his application. Mr. Konamah complied. (Ex. 4; Fleming testimony.)

18. Mr. Konamah made the following corrections to his application. He circled the blank where he was supposed to have provided his Social Security Number; it is unclear why Sergeant Fleming did not insist that he fill it in. He updated his marital status by checking a box indicating that he was divorced, not simply married, and writing that he had been divorced in Lawrence in 2005. He listed the names, addresses, dates of birth, and places of birth of both his current wife and former wife. In response to the question, "Do you own or have access to an automobile?," he added "2007 Toyota Corolla M50502" to his previous answer of "2006 BE2 ML350." He added three jobs to

his employment history: Life Links, with incomplete and ambiguous starting and ending dates, the first name only of his supervisor, and salary left blank; the Department of Mental Health, with starting and ending dates, salary and supervisor left blank; and Shop and Save, with the same information left blank. It is unclear why Sergeant Fleming did not insist that he fill this information in. He added "yes" to his previous "no" answer, in response to the question, "Are you now over 180 days delinquent on any loan or financial obligation?" He added two home loans from American Servicing, leaving both account numbers blank, and specifying the year for one loan and leaving the month blank, and for the second loan, leaving both the month and year blank. (Ex. 4.)

19. Most importantly, because it led to further questions about Konamah's application and suitability as a police officer, he answered the question "Do you . . . own more than 10% of the following [kind of business?]" "Yes" for both "A Partnership (General or Limited)" and "Joint Venture." He further provided the name of the business, "Canto Auto School," and its address, and in the box marked "% Owned," filled in "NA." (Ex. 4.)

20. On June 10, 2008, Konamah submitted a "To/From" memorandum to Sergeant Fleming. In it he asked Sergeant Fleming for permission to work at the auto school "after school," referring to the police academy, and weekends. He also explained his financial interest in the auto school as follows: In June 2007, he transferred "\$20,000 to enable them to purchased it." He continued: "My intent wasn't to be part owner; but to get my money back as soon as possible. Due to difficulties, they couldn't pay me. Therefore they talk with me to be part owner, in which I agree with, in May 14 2008, but still pending for the documentation." (Ex. 7.)

21. That same day, in response to Sergeant Fleming's request, Konamah provided his 2007 state and federal income tax returns and committed himself to provide his 2006 state and federal returns. (Ex. 7.)

22. On June 21, 2008, Sergeant Noone wrote a confidential memorandum to Sergeant Fleming analyzing Mr. Konamah's handwritten amendments to his application. The memorandum highlighted the changes that Konamah made to his marital status, his delinquent mortgage payments, the several part-time jobs he had omitted, the background investigation that the Department of Correction did on him before it hired him, and his interest in the Canto Auto School. Sergeant Noone also noted several issues that came to light after reviewing Konamah's 2006 and 2007 federal tax returns, including discrepancies in real property ownership, dependents, and exemptions. (Ex. 8.)

23. On June 26, 2008, Konamah received three Notices of Disciplinary Action, all based on events from two days before: he was late in setting up a gym class; he failed to notify staff that he was feeling sick and dizzy during physical training; and he had failed to report an auto accident that he had been in on June 24, 2008. (Ex. 7.)

24. On June 27, 2008, Konamah resigned from the Lowell Police Academy, effective the next day. Sergeant Fleming had told him at one point that he would be dismissed if he did not resign. (Exs. 6, 7; Fleming, Konamah testimony.)

25. In June and July 2008, the Lowell Police Department obtained from the Secretary of the Commonwealth the articles of incorporation for Canto Auto School, Inc. (Exs. 8, 9.) The articles list Konamah as a director (Ex. 9), but do not indicate his ownership interest, if any. (Ex. 9.) In addition, I note that the articles introduced into evidence appear incomplete. Exhibit 7 consists of, in order, a faxed p. 2, a faxed p. 4, and an unnumbered fax page. I assume that p. 1 was a cover sheet.

26. Mr. Konamah married [REDACTED] in February 2001 and divorced her in 2005. On October 1, 2005, he married [REDACTED], she lives in Accra, Ghana and visits occasionally. (Konamah testimony.)

27. Mr. Konamah has no biological children, but he listed two of [REDACTED]s four children, [REDACTED] and [REDACTED] as dependents on his 2006 and 2007 tax returns. No court order or agreement required him to pay child support for [REDACTED] and [REDACTED] (Konamah testimony; Ex. 4, p. 13, item #51.)

28. On April 1, 2010, almost two years after Konamah resigned, the Civil Service Commission issued Certification List # 206713 to the City of Lowell. It contained the names of 20 applicants for four permanent full-time police officer positions. (Exs. 1, 2.) On the basis of his Civil Service examination score, Konamah was listed fifth. (Ex. 2.)

29. On April 9, 2010, Konamah again applied to the Lowell Police Department. (Ex. 11, pp. 16-18 and two pp. following p. 18.)

30. Although the substance of Mr. Konamah's 2010 application is not at issue in this appeal, he did state that he left the Canto Auto School in May 2008 "to take another position." (Ex. 11, p. 5.) He presumably meant the Lowell Police Academy, which he started on May 12, 2008. (Ex. 7.) However, it is not clear that he did leave Canto in May 2008.

31. Additionally, he listed the Lowell Police Academy under Employment and listed "Resign" as the reason for leaving (Ex. 11, p. 5), but he also answered "no" to the following questions: "Have you ever been dismissed, terminated, or asked to resign from any position or employment you have held?," "Have you ever been counseled either verbally or in writing for poor job performance, inappropriate behavior or any other work

related issue?," "Have you ever been reprimanded or received a written warning from an employer or supervisor for poor job performance, inappropriate behavior, attendance or other work related issue?," and "Have you ever . . . received disciplinary action of any kind for poor job performance, inappropriate behavior, attendance or any other work related issue?" (Ex. 11, p. 6.) And while he answered that he *had* applied for "any other police position," he answered "no" to the following questions: "Have you ever been rejected for any other police position . . . ?" and "Have you ever applied for and then withdrawn from consideration from any other police position . . . ?" (Ex. 11, p. 8.)

32. He also answered "no" to these questions: "Have you ever provided false information on any application for employment?" and "Have you ever withheld information on any application for employment?" (Ex. 11, p. 15.)

33. On June 2, 2010, the Lowell Police Department selected Chanaroth Suong and did not select Konamah. (*See ex. 3.*)

34. On June 4, 2010, the Lowell Police Department issued a bypass letter and recommended that Konamah be removed from the certification list for two reasons: his 2008 application had been "untruthful" and his inability "to successfully complete the recruit training program" in 2008. The letter amplified the first reason: "Mr. Konamah had been untruthful on at least four questions on the applications," namely those asking about his marital status; his delinquent financial obligations; other agencies that had investigated his background; and his business involvement. The letter also referred to his 2006 and 2007 federal tax returns, without specifying the concern about them. The letter concluded that Konamah's "pattern of conduct" indicates that he is "unsuitable for a job as a police officer" and that he has not demonstrated the "responsibility and character" required for the job. (Ex. 1.)

CONCLUSION AND RECOMMENDATION

After reviewing the testimony and documents presented in this matter, I conclude that the Appointing Authority has proven by a preponderance of the evidence that there was a reasonable justification to bypass the Appellant.

The authority to bypass a candidate for permanent promotion or original appointment to a civil service position is governed by G.L. c. 31, § 27, which provides:

If an appointing authority makes an original or promotional appointment from a certification of any qualified person other than the qualified person whose name appears highest, and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator a written statement of his reasons for appointing the person whose name was not highest.

PAR.08(3) of the Personnel Administration Rules promulgated by the Human Resources Division provides further that, when a candidate is to be bypassed, the appointing authority must make a full and complete statement of all the reasons to justify the bypass. “No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed . . . shall later be admissible as reasons for selection or bypass in any proceeding before . . . the Civil Service Commission.” PAR.08(3).

Upon an appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for bypass are justified. *Brackett v. Civil Service Comm’n*, 447 Mass. 233, 241 (2006). The Commission should apply *de novo* review and determine “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.” *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003).

Reasonable justification is established when such action is “done upon adequate reasons sufficiently established by credible evidence, when weighed by an unprejudiced

mind, guided by common sense and by correct rules of law.” See *Commissioners of Civil Service v. Municipal Ct.*, 359 Mass. 211, 214 (1971), citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). An appointing authority may use as a basis for bypass any information it has obtained through an impartial and reasonably thorough independent review, including allegations of misconduct, as long as there is a credible basis for its consideration. *City of Beverly v. Civil Service Comm’n*, 78 Mass. App. Ct. 182, 189 (2010). When considering allegations of misconduct, there must be a “credible basis for the allegations” that presents a “legitimate doubt” about a candidate’s suitability, but the appointing authority is not required “to prove to the commission’s satisfaction that the applicant in fact engaged in the serious alleged misconduct” *Id.* at 189-90.

Although the commission makes the findings of fact anew, substantial deference should be given “to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown.” *Id.* at 189. Substantial deference is especially appropriate in cases dealing with the appointment of public safety officers, given the sensitive nature of their position and the high standards to which they are held. *Id.* “It is not within the authority of the commission . . . to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *City of Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 304 (1997).

“In making that analysis, the commission must focus on the fundamental purposes of the civil service system—to guard against political considerations, favoritism, and bias in governmental employment decisions . . . and to protect efficient public employees from political control.” *City of Cambridge*, 43 Mass. App. Ct. at 304, citing *Murray v.*

Second Dist. Court of East. Middlesex, 389 Mass. 508, 514 (1983); *Kelleher v. Personnel Adm'r of the Dept. of Personnel Admin.*, 421 Mass. 382, 387 (1995); *Police Comm'r of Boston v. Civil Serv. Comm'n*, 22 Mass. App. Ct. 364, 370 (1986). "When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission." *City of Cambridge*, 43 Mass. App. Ct. at 304, citing *School Comm. of Salem v. Civil Serv. Comm'n*, 348 Mass. 696, 698-99 (1965); *Debnam v. Belmont*, 388 Mass. 632, 635 (1983); *Commissioner of Health & Hosps. of Boston v. Civil Serv. Comm'n*, 23 Mass. App. Ct. 410, 413 (1987).

In this case, the Appointing Authority bypassed the Appellant after he applied for a police officer position in 2010 because it found him to be untruthful on his prior 2008 employment application and because in 2008 he was unable to complete successfully the recruit training program.¹ After a background investigation, the appointing authority concluded that the Appellant had been untruthful about his marital status, his delinquent financial obligations, his business involvement, his 2006 and 2007 tax returns, and whether or not other agencies had investigated his background. The appointing authority did not consider Mr. Konamah's 2010 employment application because it decided to bypass him based on his untruthfulness on the 2008 application.

Complete Application

This appeal turns on discrepancies in the Appellant's 2008 employment application. Unfortunately, the record does not reveal how complete the Lowell Police Department expects applications to be in practice. Even though the top of the application

¹ The Appointing Authority sent a letter dated June 4, 2010 to the Personnel Administrator, requesting that Konamah's name be removed from the certification list. I have treated this letter as a bypass letter.

in capitalized, bolded, and underlined letters states: "No question should be left blank," the Department nonetheless accepted Mr. Konamah as a student officer in 2008. This is in spite of the following facts. In 2008, Mr. Konamah did not list his Social Security number on the application, which seems like a key piece of information in any application or investigation. He left his naturalization number blank. He left three of the supplied blocks for employment blank, while the Department knew that Konamah had been in the United States since 2001 and that his employment history, which he began in 2006, thus left a five-year gap in his U.S. employment history. He did not report a period of unemployment as the application instructed, even though the Department knew from another part of the application that Konamah had been unemployed. And, he left blank significant information about his wife despite reporting being married earlier in the application.

At the very least, this paints a picture of a quite sloppy application process. It seems inconceivable that the appointing authority would have admitted Mr. Konamah to its recruit training program if he failed to fill in properly his application with data like his Social Security number and his naturalization number. Nonetheless, that is apparently what happened, as Mr. Konamah participated in the program and admits that he did not completely fill in the 2008 application.

Regarding his Social Security number, he testified that he left the application blank because he had forgotten the number. He testified that he did not list his naturalization number because he was in a rush. Regarding his residence, Mr. Konamah testified he lives and has lived at [REDACTED] Lowell, and that he sleeps and eats there. He owned properties in Fitchburg, now foreclosed, but did not live there. Any record showing [REDACTED] Fitchburg as his residence, he claims, was

incorrect. He chalked up inconsistencies regarding the vehicles that he owns to not understanding that part of the application. As for his job history, Mr. Konamah admitted that he did not list all of his jobs and did not know why.

Mr. Konamah admitted understanding why the Lowell Police Department was concerned about his incomplete application but said that he rushed to fill it in under deadline. Konamah testified that he did not intend his 2008 application to deceive but that some of it had “escaped him.” He denied providing false information on it, admitted withholding information on it,² and asserted nonetheless that his application was correct. He said that he filled out two copies of the application, one for the Lowell Police Department and one for himself, and unwittingly submitted the wrong one—the one he had filled out for himself—to the Department. He testified that when he fills in applications, he always does two copies; this testimony came during his cross-examination, toward the end of the hearing. I find Mr. Konamah’s explanations of these more minor inconsistencies not credible and contradictory to his explanation that he filled in the application in a hurry. Although the appointing authority did not make its bypass decision based on these particular inconsistencies, I find the inconsistencies troubling because Mr. Konamah contradicts himself so many times and because, in some instances, he does not appear to understand that he has contradicted himself. This evinces a very slight grasp on the truth, which calls into question Konamah’s credibility as a witness.

Tax Returns

Regarding the tax return discrepancies cited by the appointing authority at the hearing in this matter, when I expressed concern that the 2006 and 2007 tax returns had not been entered as exhibits and stated that I was thus not inclined to give much credence

² His admission of having withheld information on his 2008 application contradicts his 2010 application to the Lowell Police Department (Ex. 11, p. 15, item #66).

to the bypass letter's reference to them, the appointing authority withdrew the tax return discrepancies as a basis for the bypass letter. I will take the remaining reasons in turn.

Marital Status

The application questions regarding marriage status are not the picture of clarity. Page 1 of the application lists several boxes to check, including "Married" and "Divorced," but it does not make clear that more than one box may be checked, indicating that the applicant has more than one marital status such as divorced from one person and married to a second person, as Mr. Konamah is. Later in the application on page 9, however, he left blank a series of fill-in boxes that asked him for information on any "ex-spouse if divorced." He only filled in that part of the application when Sgt. Fleming asked him to.

Konamah's only explanation for omitting any reference to his ex-wife is that those questions "escaped him." This explanation is simply not credible. It is not clear from the evidence that Konamah was attempting to conceal his prior marriage, but the application that he submitted was incomplete and omitted information regarding his ex-wife, which contradicts his certification that all statements on the application are true and complete.

Financial Obligations

Mr. Konamah failed to report accurately his delinquent financial obligations. On page 12 of the application, Konamah failed to report that he was 180 days delinquent on any loan or financial obligation. He testified that he was not more than 180 days delinquent when he signed the application in January 2008, so he left that section blank. When he updated the application for Sgt. Fleming in June 2008, he listed "Home Loan" and "American Servicing" for two different loans but *still* failed to include the account

numbers and the addresses of the creditors. He testified that he had become delinquent more than 180 days after he filled out the application in January. Sgt. Noone's background investigation in February 2008 revealed that Konamah was more than 180 days delinquent on one mortgage and more than 60 days delinquent on another, though there is no evidence in the record reflecting exactly when Konamah became delinquent. In any event, he did not comply with the following statement that he signed on January 15, 2008: "I . . . understand that if there are any changes to my status or to the information I have provided I will immediately notify the Lowell Police Department in writing. Failure to notify the Department in a timely manner may result . . . in my being disqualified from further consideration, rejection of my application or in my dismissal."

Other Agencies Investigating Background

Mr. Konamah failed to answer accurately that his background had been investigated by a government or police agency. In 2007, he had been investigated by the Massachusetts Department of Correction in connection with his applying for a job. Instead of listing the investigation, Konamah left that section of the application blank. He testified that he had initially left that question blank because he had probably been confused. The record does not indicate that the Department tried to learn what the Department of Correction had discovered during its background investigation, and it is unknown whether Mr. Konamah's omission had any substantive or practical effects. Nonetheless, saying for the umpteenth time that he was confused is a suspicious answer when the question was so simple: "Has the Commonwealth of Massachusetts, the United States Government, any State, Municipality, or other Police Agency investigated your background?" Any reasonable applicant would know that being investigated by the Department of Correction for a job fits this category.

Business Involvement

Under the Business Involvement section of the application, Konamah first left the entire section blank. When he updated the application, he stated that he owned more than 10% of a partnership and a joint venture; then he listed the Canto Auto School, with locations in Somerville and Lowell. Then under "% Owned" he wrote "N/A." At the hearing, Mr. Konamah testified that he loaned \$20,000 to the auto school but did not have an ownership interest. He further testified that although he was listed as a director in the corporate filings, that position did not indicate an ownership interest and that he made an error when he listed himself as a partner on the application.

Sgt. Fleming testified that Konamah stated that he was a part owner of the driving school and that he was having difficulty keeping up with the academic work of the police academy because he was working evenings at the school. At the hearing, Konamah presented a quite different story. He explained that one day his Police Academy instructors assigned him 14 To/From memoranda to write. Only one of those To/Froms is in the record. According to Konamah, an unspecified person told him that at least some of the To/Froms were due the following morning, which was the day of an examination that he ultimately failed. To complete those memos, he went to the Canto Auto School to use its computer. He reasoned that he would not have told Sergeant Fleming that he had worked at the auto school on the night before the examination because the school does not offer driving lessons at night. Yet, contrary to his own story, on June 10, 2008, Konamah sent a memorandum to Sgt. Fleming requesting permission to work at the auto school on nights and weekends.

It is possible that Konamah's involvement in the business, although financial, did not entail an ownership interest. It is hard to understand, then, why he would have

checked boxes signifying that he owned more than 10% of a partnership or a joint venture called Canto Auto School. A reasonable person understands the difference between owning a business and loaning it money. Sgt. Fleming's account of his conversation with Konamah (that Konamah owns part of the business) is more credible than Konamah's. Even if I found Konamah credible, it would still make no sense for him to have listed an ownership interest in the business.

Conclusion

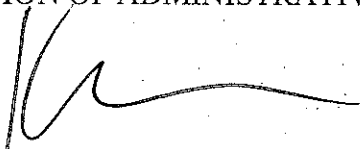
Based on the above analysis, I conclude that Mr. Konamah was untruthful on his 2008 application. Mr. Konamah's intent does not have to be malicious for the appointing authority to conclude that he was not truthful on his application, which was chock full of reminders that the application must be completely filled out. Konamah's explanations that he forgot to fill in some of the application parts or that he turned in the wrong copy of the application are not credible explanations for omitting so much pertinent and important information, in particular the background investigation that the Department of Correction had conducted. The question about background investigations was clear and to the point. Konamah did not leave this section blank; he falsely stated that "No" he had not been investigated. It goes without saying that untruthfulness is a serious concern and that the Department is justly concerned with candidates' ability to tell the truth consistently. *See City of Beverly*, 78 Mass. App. Ct. at 189-90. This is a reasonable justification to bypass Mr. Konamah. *See Modig v. Worcester Police Dep't*, 21 MCSR 78, 82 (2008) (police officer candidate's failure to respond accurately to a question about his prior employment on a personal history questionnaire was grounds for bypass).

It is possible, though not probable that he failed to provide information about his ex-wife. And it is also possible, though not probable (and there is no evidence to support

this conclusion) that Konamah's financial obligations were less than 180 days delinquent when he filled out his 2008 application. As for the business involvement with Canto Auto School, Konamah has related too many versions of his involvement with the business, both to Sgt. Fleming and at the hearing, for me to know which one to believe. It may be that Konamah did not work at the school at night and that the school has no evening hours, though again there is no evidence to support this. The appointing authority has proven by a preponderance of the evidence that Konamah did not answer this question truthfully.

Based upon a preponderance of the credible evidence presented at the hearing, I conclude that the Appointing Authority has proven that it was reasonably justified in bypassing the Appellant. Accordingly, I recommend that the appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton, Esq.
Administrative Magistrate

DATED: **JAN 12 2012**