

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

DAVID T. LANGILL,
Appellant

v.

G1-06-283

TOWN OF HINGHAM,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Hearing Officer:

John J. Guerin, Jr.¹

DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, David T. Langill (hereinafter "Appellant"), filed this appeal with the Civil Service Commission (hereinafter "Commission") on October 20, 2006, claiming that the Respondent, Town of Hingham (hereinafter "Town") as Appointing Authority, bypassed him for original appointment as a permanent, full-time police officer for the Hingham Police Department (hereinafter "Department"). The Appellant was notified of his bypass for appointment by the Human

¹ John J. Guerin, Jr., a Commissioner at the time of the full hearing, served as the hearing officer. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this decision, including the referenced credibility assessments, which were made by Mr. Guerin.

Resources Division (hereinafter “HRD”) by letter dated August 25, 2006. The appeal was timely filed. A full hearing was held in the Commission’s offices on November 7, 2007. Witnesses offering sworn testimony were not ordered to be sequestered. Two audiotapes were made of the hearing. The parties submitted proposed decisions thereafter, as instructed.

FINDINGS OF FACT

Based upon the documents entered into evidence (Joint Exhibits 1 - 8) and the testimony of the Appellant and Lieutenant John Norkaitis of the Hingham Police Department (hereinafter “Lt. Norkaitis”), I make the following findings of fact:

1. In 2006, the Town sought to hire four (4) police officers. Upon requisition to the HRD, Certification No. 260230 was issued on May 21, 2006. The Appellant’s name was placed eighth on this certification list. (Exhibit 2)
2. In July 2006, the Town bypassed the Appellant for the position of police officer. Thereafter, pursuant to G.L. c. 31, § 27, the Town submitted a July 27, 2006 correspondence to the HRD containing a detailed June 7, 2006 investigative summary of the Appellant’s background which detailed the elements of his non-selection. The investigative summary was prepared by Lt. Norkaitis and submitted to then-Hingham Police Chief Steven D. Carlson (hereafter “Chief Carlson”). (Exhibit 1)
3. At the time of his bypass, the Appellant had earned an Associate Degree in Criminal Justice from Massasoit Community College and had completed the course of instruction at the Basic Reserve Intermittent Police Academy, Plymouth, MA. The Appellant had also completed yearly, in-service police training by the Massachusetts Criminal Justice Training Council. This program included State and Local Anti-

Terrorism Training (SLATT). He was also certified as having completed the course of instruction in the National Incident Management System (NIMS). (Id.)

4. Since January of 2006 to the present, the Appellant has served as a full-time police officer for the Town of Rockland, MA Public Schools with full police powers. From July 2002 to the present, the Appellant has also served as an auxiliary (volunteer) police officer in the Rockland Police Department. (Testimony of Appellant and Exhibit 2)
5. The Appellant has also served as an Emergency 9-1-1 Operator for the Rockland Police Department from September 2004 through the present. (Testimony of Appellant and Exhibit 1)
6. Prior to becoming a School Police Officer for the Rockland Public Schools, the Appellant was a Security Officer for Aramark Facilities Services for three months, between November 2005 and January 2006. (Id.)
7. Prior to working for Aramark, the Appellant served as an Institution Security Officer II for the Bureau of State Office Buildings in Boston, from March 2004 until November 2005. (Id.)
8. From December 2000 through March 2003, the Appellant was a security officer at the Hanover Mall. In August 2001, he became its Security Site Supervisor. In October 2001, he became its Assistant Director of Public Safety. In May 2002, the Appellant became its Director of Public Safety. He served in that capacity until he was terminated in March 2003 following an incident when he struck a subordinate in the head with a snowball while they were both working. (Testimony of Appellant, Lt. Norkaitis and Exhibits 1 and 4)

9. From March 2004 to November 2005, the Appellant served as an Institutional Security Officer II for the Bureau of State Office Buildings and was stationed at the State House in Boston with responsibilities for security and personnel identification verification duties within four state office buildings. (Testimony of Appellant and Exhibit 1)
10. The Appellant provided letters of recommendation from two past and present employers, as well as two local political figures to support his candidacy to the Hingham Police Department. (Exhibit 1)
11. Deputy Chief John R. Llewellyn of the Town of Rockland Police Department (now Chief of Department) (hereafter “Chief Llewellyn”) stated in a written correspondence to Chief Carlson, by letter dated April 11, 2006, that the Appellant always presented himself in a professional and respectful manner, both as an auxiliary police officer and as a school security officer. Chief Llewellyn stated that “In short, my only hesitation in recommending Mr. Langill for a position with your Police Department is the loss that will be felt at the Rockland Police Department” (Id.)
12. Massachusetts State Senator Robert Hedlund stated to Chief Carlson, in a letter dated April 10, 2006, that the Appellant possessed a “strong work ethic” and a “commitment to the community.” Senator Hedlund also stated in his letter that the Appellant is “a hard worker who handles himself professionally and honorably.” (Id.)
13. Neil R. Kilpeck, Superintendent of the Commonwealth of Massachusetts Bureau of State Office Buildings, in a letter dated April 10, 2006, related to Chief Carlson that “in his various roles with the Bureau, Mr. Langill was immediately responsible for supervising a private security force for the McCormack and Hurley State Office

Buildings. He was instrumental in honing the policies and procedures directly related to security patrols and screening stations. He was particularly adept at regularly testing the integrity of security systems and surveillance and making improvements when necessary.” (Id.)

14. Massachusetts State Representative Garrett J. Bradley, in an April 10, 2006 letter to the Hingham Board of Selectmen, communicated his “strongest expression of support and recommendation for David Langill to become a permanent full time police officer in the Town of Hingham. (Id.)

15. I find that the impressive letters of recommendation gathered by the Appellant in the second week of April 2006 were, inarguably, flattering to his candidacy to become a police officer in the Town. Nevertheless, these entreaties failed to persuade the Hingham Board of Selectmen to hire him.

16. Lt. Norkaitis credibly testified at hearing that he had served 28 years with the Department. He is responsible for conducting background investigations of applicants to the Department and has performed approximately 40 – 50 such investigations. Lt. Norkaitis stated that applicants submit background information via their employment application and he then conducts an “intake meeting” with each applicant to discuss the information provided and to give the applicant an opportunity to explain or clarify any information for which there may be questions from the Department. (Testimony of Lt. Norkaitis)

17. Having reviewed the Appellant’s driving record, Lt. Norkaitis found that the Appellant had received four (4) written motor vehicle infraction citations (3 resulting in fines and one resulting in a warning) between 1998 and 2001: three (3) for

speeding (43 mph in a 30 mph zone, 43 mph in a 30 mph zone, and 57 mph in a 45mph zone) and one for “Failure to Keep Right.” Regarding the Failure to Keep Right citation, Lt. Norkaitis indicated that the Appellant was involved in a one-car accident at 3:17 a.m. on March 15, 2001 on Route 228 in Hingham. The Appellant said he fell asleep, causing his car to cross this numbered Route, hit a utility pole and snow bank, roll over and then come to a stop back on his side of the numbered Route. While the civil infraction was later dropped, the Appellant acknowledged that he exercised poor judgment when he got behind the wheel of his automobile when he was too tired to drive. (Testimony of Appellant, Lt. Norkaitis and Exhibits 5 & 8)

18. In his testimony, Lt. Norkaitis noted that driving police vehicles is a significant part of the duties of a police officer and that he was concerned with the Appellant’s driving record. (Testimony of Lt. Norkaitis)
19. Having reviewed the Appellant’s credit records, Lt. Norkaitis indicated during his testimony at hearing that he became aware that the Appellant had poor credit. In addition to his poor credit issues, and having been delinquent on one or more credit cards, the Appellant had also failed to make his contractual car payment. Additionally, Lt. Norkaitis learned that the Appellant was in the process of repaying the Internal Revenue Service (hereafter “IRS”) more than \$3300 in taxes that he had failed to pay on earnings that he did not report in his annual tax return. (Testimony of Appellant and Lt. Norkaitis)
20. The Appellant testified that his bad credit issues stemmed from his having totaled his car in the March 2001 vehicle accident. He also revealed that he had “run up” a credit card as a younger person which he “works as much as he can” to pay off now. He

stated that he has made arrangements with the IRS to repay his tax under-payment.

(Testimony of Appellant)

21. When discussing the unpaid taxes with Lt. Norkaitis, the Appellant attributed the mistake to an innocent calculation error by his sister when she prepared his taxes. However, on cross-examination, the Appellant acknowledged that given that taxes only represent a modest percentage of the total money paid to an individual, owing the government over \$3300 in uncollected taxes meant that the amount of unreported income was actually well in excess of \$3300. The Appellant credibly testified that he had made arrangements with the IRS to pay \$100 monthly in order to re-pay the taxes owed and that the account was up to date at the time of the Commission hearing.

(Testimony of Appellant and Lt. Norkaitis.)

22. When asked on cross examination if the unreported income represented earnings for paid “details” he worked, the Appellant, while willing to acknowledge that he worked details, would not acknowledge that the uncollected taxes were tied to details. When pressed for more information regarding how the IRS persuaded him that he did, in fact, owe them several thousand dollars, he again did not discuss what the money owed was tied to. Rather, he simply stated that the IRS notified him that he owed them money, a conclusion by the IRS which he did not challenge. (Testimony of Appellant)

23. I found that the Appellant maintained a calm, steady demeanor in the face of pointed cross examination. That was to his credit. However, his answers could have been more forthcoming on the subject of his tax arrears. It is certainly reasonable to expect an individual to know exactly why he or she owed such a significant amount of back

federal taxes from a single year's filing, regardless of if the subject tax return had been prepared by someone else. The Appellant's testimony that he did not even inquire of the IRS as to why he owed the taxes was puzzling and I found that it detracted from his overall credibility on this particular bypass reason.

24. As part of the criminal background investigation that Lt. Norkaitis conducted, he learned that in 2003 the Appellant had struck a female co-worker in the back of her head with a snow ball while they were working together. As a result of the incident, the woman who was struck filed a police report with the Hanover Police Department. In the Hanover Police log entry it states that the victim reported that the impact of the snow ball left her dizzy and lightheaded for a couple of seconds. The report goes on to detail that she claimed that she had been the recipient of past threats and harassment by her supervisor, the Appellant. She went on to indicate in the report that the Appellant had referred to her by a profane term and that he had even warned her "not to drive through Rockland," where he was a member of the Rockland Police Department. Lt. Norkaitis indicated that he spoke to the victim and she detailed the events to him in the same manner in which they appeared in the Hanover Police records. As a result of the snowball incident, the Appellant was terminated from his security job at the Hanover Mall. (Testimony of Lt. Norkaitis and Appellant and Exhibits 4 and 6)

25. As a further result of the snowball incident, a criminal complaint for assault and battery with a dangerous weapon was filed against the Appellant in Hingham District Court by the Hanover Police. By agreement between the Appellant and the victim, the criminal charges were dropped on the condition that the Appellant would provide a

written apology to the victim. Lt. Norkaitis reported in his background report that the victim told him that she never received “an apology of any sort” from the Appellant. Lt. Norkaitis also reported that, “The victim has avoided driving through Rockland since the event because of this threat. Unofficially, a police officer and civilian reported Mr. Langill may have had a pattern of verbally abusing the female coworker previous to the above incident.” (Testimony of Appellant; Exhibit 4.)

26. At the Commission hearing, the Appellant admitted throwing the snowball at his co-worker. He credibly stated that he never denied throwing the snowball to any inquisitor, at any time. He stated that he was on the roof at the Hanover Mall with the victim and another employee. He credibly testified that he immediately asked the victim about her well-being since the snowball hit her in the head. When asked by this Hearing Officer why he threw the snowball, the Appellant answered that he was “just goofing off.” He admitted that throwing the snowball at his co-worker was an exercise of poor judgment. (Testimony of Appellant)
27. The Appellant further testified at the Commission hearing that the incident occurred on a Saturday, he issued the victim a written reprimand for poor job performance on the following Monday morning for an unrelated issue and the victim filed charges, relative to the snowball incident, with the Hanover Police Department on that Monday evening. The Appellant pointed out that the Hanover Police Department operated a police substation at the Hanover Mall. The appellant also testified that, while he has been compelled to issue verbal reprimands to that particular co-worker and others, he has never engaged in verbal abuse and denies that he has any problem dealing with females. He also denied lacking “people skills.” (Id.)

28. Although he viewed it in a frivolous light, the Appellant's striking of a subordinate co-worker displayed extremely poor judgment. The victim did not appear to testify at the Commission hearing. It is notable that there was a delay of the report of the incident - until after she was reprimanded by the Appellant. The Appellant did not offer any evidence to show that he had indeed written an apology per the Court's instruction. The alleged threat to the co-worker not to drive through Rockland, charges that the Appellant directed profane comments toward her and allegations that the Appellant had a problem dealing with females were not substantiated by the Department. Nevertheless, the Appellant did not distinguish himself in this matter and it is not for the Commission to substitute its own judgment over the Department's regarding the Appellant's deficit of responsibility illustrated by this incident.
29. Finally, with respect to the document "Hingham Police Department Oral Review Board", the Appellant argues that the panel which interviewed the Appellant appeared to have employed conflicting subjective standards. I find that this argument is a valid one. One panel member concluded that the Appellant gave "very short answers on all the questions we asked..." Another member of the panel stated that "Many of Mr. Langills (sic) responses to questions tended to ramble without direction." A third member of the panel stated that "Mr. Langill made a strong presentation to the Board...maintaining proper eye contact and strong posture. He answered the questions in a direct manner." Given the disparity of views by individuals questioning the same individual, it is difficult to form a conclusion as to the performance of the Appellant before the panel. (Appellant's Proposed Decision and Exhibit 7)

30. The individual selected from the lower position on the certification list than the Appellant was John J. Walden (hereafter “Mr. Walden”). Lt. Norkaitis credibly testified at hearing that Mr. Walden had received a Bachelor of Science Degree in Criminal Justice from Endicott College. Lt. Norkaitis also testified that Mr. Walden had no criminal history, whatsoever, in the United States or Canada and that he had a clean credit history. (Testimony of Lt. Norkaitis and Exhibit 1)
31. In its communication of July 27, 2006 to HRD Compliance Officer Richard Currier, regarding the selection of Mr. Walden – and bypass of the Appellant - for original appointment to the position of Police Officer, the Hingham Board of Selectmen reported, in pertinent part, that:

“The Board based its judgment on personal observation of the applicants, particularly the candor, intelligence and concern for others displayed, as well as a review of written applications, references and background checks. Additionally, the Board has heard and considered the opinion of the Chief of Police on the applicants’ performance before the oral review board . . . The summarized position is based upon an extensive and exhaustive background check of all applicants and interviews with all candidates

John J. Walden presented himself as a good candidate and an intelligent person. His responses to questions were clear, concise and confident. He presents himself well and has clearly prepared himself for this position. He has since completed his college courses at Endicott College and received a Bachelor Degree in Criminal Justice in 2005. He appears to be honest and forthcoming. His composure, posture and eye contact were above average.”

(Exhibit 1)

32. I find that there was no evidence presented at the Commission hearing to indicate that the Appellant was bypassed for selection based on any reason or reasons unrelated to basic merit principles or due to overtones of political influence.

CONCLUSION

The Civil Service Commission grants wide latitude for the discretion of the Appointing Authority in selecting candidates of skill and integrity for hire or promotion. Callanan v. Personnel Administrator for the Commonwealth, 400 Mass. 597, 601 (1987). In a bypass appeal, the CSC must consider whether, based on a preponderance of the evidence before it, the Appointing Authority sustained its burden of proving there was “reasonable justification” for the bypass. City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 303 (1997). It is well settled that reasonable justification requires that the Appointing Authority’s actions be based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind guided by common sense and 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).

In determining whether the Appointing Authority had reasonable justification to take the action of bypassing the Appellant, the Commission must consider the fundamental purpose of the Civil Service System which is “to protect against overtones of political control, objectives unrelated to merit standards and assure neutrally applied public policy.” If the Commission finds that there are “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy”, then it should intervene. Otherwise, the Commission cannot substitute its judgment for the judgment of the Appointing Authority. City of Cambridge at 304.

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). All candidates must be adequately and fairly considered. The Commission will not uphold the bypass of an Appellant where it finds that “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988).

Based upon a preponderance of the credible evidence presented at hearing, the Commission finds that the Town has sustained its burden of proving reasonable justification for bypassing the Appellant.

Here, the Town had more than adequate reasonable justification to choose to bypass the Appellant. First, he struck a subordinate co-worker in the back of the head with a snowball in 2003. This incident resulted in his dismissal from his employment at the time. The Appellant admitted the snowball throwing was an exercise of poor judgment. In contrast, the individual for whom the Appellant was bypassed had a clear criminal background with no such incidents reported.

Second, the Appellant has had a poor credit history. He had been delinquent on timely paying of credit card bills and reneged on his contractual obligation regarding an auto loan. He was also cited by the IRS for failing to report all of his income on his annual tax return, causing him to owe in excess of \$3300 in taxes. The Appellant was not entirely forthcoming about this episode at the Commission hearing. Again, in contrast, the selected candidate had a clean credit history.

The Appellant admitted at the Commission hearing that he exercised poor judgment when he got behind the wheel of his car when he was too tired to drive. He rolled his car over after crossing into the lane of oncoming traffic and hit a utility pole after fell asleep while driving. Additionally, the Appellant had been cited for three (3) other motor vehicle infractions between 1998 and 2001; two resulting in fines and one resulting in a written warning. The Department credibly asserted that a significant part of police work involves the operation of motor vehicles. There existed no evidence that the selected candidate had an adverse driving history.

Although the Appellant demonstrated education and training in law enforcement, the selected candidate possessed a higher educational degree in Criminal Justice than the Appellant, a legitimate consideration for an Appointing Authority. The Appointing Authority also made credibility and integrity assessments through personal observations of the candidates for which this Commission, absent of overtones of political control, cannot substitute its own judgment. See City of Cambridge at 304.

Each of these factors individually supports a finding of reasonable justification for bypass, and collectively gives the Town of Hingham more than reasonable justification to bypass the Appellant for the successful candidate it chose. For all of the reasons stated herein, the appeal on Docket No. G1-06-283 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Hearing Officer

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Stein, Taylor and Marquis, Commissioners [Henderson, Commissioner – No]) on July 3, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(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:

Frank J. McGee, Esq. (for Appellant)

Joseph T. Bartulis, Jr., Esq. (for Appointing Authority)

John Marra, Esq. (HRD)