

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

100 Cambridge St., Suite 200
Boston, MA 02114
(617) 979-1900

NATALIE LIMA,
Appellant

v.

CITY OF SOMERVILLE,
Respondent

Case No.: G1-22-003

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA) was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission and the parties had thirty days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate, thus making this the Final Decision of the Commission. The Commission concurs with the Magistrate that the result here constitutes no future bar to employment as a police officer and the Appellant should not hesitate to reapply, but the Commission cautions that honesty and forthrightness are essential to any candidacy for appointment as a police officer.

The decision of the City of Somerville to bypass the Appellant is affirmed and the Appellant's appeal under Docket No. G1-22-003 is hereby *denied*.

By a 4-1 vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, and Tivnan, Commissioners – Aye; Stein, Commissioner – Nay) on May 4, 2023.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

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)(1), 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

James W. Gilden, Esq. (for Appellant)

Jason Piques, Esq. (for Respondent)

James Rooney, Esq. (Acting Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

Middlesex, ss.

Natalie Lima,
Petitioner

v.

Docket No. G1-22-003
DALA No. CS-22-0050
Date: March 8, 2023

City of Somerville,
Respondent

Appearance for Petitioner:

James W. Gilden, Esq.
173 North Main Street
Sharon, MA 02067

Appearance for Respondent:

Jason Piques, Esq.
Assistant City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Administrative Magistrate:

James P. Rooney

Summary

Appointing authority has shown sufficient justification for its decision to bypass an applicant for a position as a Somerville police officer for repeated failures on the part of the candidate to acknowledge that she was the registered owner of a car her family had given to her brother in an effort to help him get to job interviews required as a condition of his parole. Although I do not find that she was lying on these occasions, her failure to answer relevant inquiries accurately was sufficient to justify the bypass.

TENTATIVE DECISION

Natalie Lima timely appealed a decision of the City of Somerville to bypass her for a position as a police officer. I held a hearing on behalf of the Civil Service Commission on April 21, 2022 at the Commission's offices at One Ashburton Place, Boston, Massachusetts.

I accepted seven documents into evidence, six from the City and one from Ms. Lima. The parties also stipulated to some basic facts. I made a digital recording of the hearing. The City presented the testimony of two officials who were on the panel that interviewed Ms. Lima: Christopher Ward, a Deputy Chief of the Somerville Police Department, and Denise Molina-Capers, the City's Director of Racial and Social Justice. Ms. Lima testified on her own behalf. The administrative record closed on June 23, 2022 when the parties filed post-hearing briefs.

Findings of Fact

Based on the exhibits, testimony, stipulated facts, and reasonable inferences drawn from them, I make the following findings of fact:

1. Natalie Lima was born in Boston in 1993 and lives in Somerville. She has worked at an area hospital since 2019 and worked for a provider of cellular phones from 2013 to 2019. She has taken course work in medicine at an out-of-state university and in criminal justice at a local community college. She has two brothers and one sister. A single mother, she has two children, ages five and eleven. She became interested in applying to become a police officer because she has relatives in law enforcement. She looked up to police officers from a very young age and wants to become one now to make a difference. (Lima testimony; City Exs. 2 - 4.)

2. Ms. Lima drives a Toyota Rav4. She made a down payment on the car, and took out a car loan. The father of one of her children agreed to make payments on that car, which is registered in his name. At one point she discovered that the car payments of \$468/month that she had expected would be paid timely by her child's father had for three months been in arrears. She has since taken over payments for the car. Her credit reports show two periods of late payments on this loan from January through March 2019 and November 2020 through January 2021. Only one of the missed payments was more than 30 days late. That account is now current. Ms. Lima was also late making payments on a small student loan in 2016 and on another small student loan in late 2017 and early 2018. (Lima testimony; City Ex. 3.)

3. Ms. Lima's younger brother O. has been in trouble with the law. He was released from prison in early 2021 and placed on parole with a condition that he look for a job. The family met and decided to buy O. a car to assist him in his required job hunt. Ms. Lima's older brother put up \$3,500 to buy O. a 2007 BMW sedan with 85,000 miles on it. Ms. Lima's father, older brother, and sister already had a number of cars registered in their names, and hence they asked her to allow the car to be registered in her name. She agreed to have the car registered in her name and for the car insurance to be in her name as well. The car was purchased on April 19, 2021. After the purchase, Ms. Lima went to the registry with O., signed the registration paperwork, and gave the title and registration to O. The insurance for the car is automatically deducted from Ms. Lima's bank account. Her father reimburses her for these payments. Ms. Lima has never been in the BMW, nor does she know exactly where O. lives. (Lima testimony.)

4. In the early morning of May 10, 2021, O. was shot and seriously wounded. He was driven to the emergency room of the Boston Medical Center in a dark gray BMW. When interviewed by Cambridge Detective Asif Ali, O. admitted that a confrontation had happened but

was vague about where it occurred. Residents of Harvard Street in Cambridge had reported a shooting. Witnesses recounted a dispute between men in a red sedan and a dark gray sedan with multiple shooters involved. Based on partial plate information, Detective Ali was able to determine that the BMW was the one registered to Ms. Lima. (City Ex. 2.)

5. Detective Ali spoke to Ms Lima twice. He had given O. his card in case O. had any other information. O. contacted his sister and gave her the detective's number. She called Detective Ali during the afternoon of May 10, 2021. According to the detective's report, she declined to give her exact address and said that she lived near a Target in Somerville. She told him that she owns a Toyota and that O. "has his own car." (City Ex. 2.)¹ The detective spoke to Ms. Lima again on May 14, 2021 about the BMW that had by then been impounded. This time, she told the detective that the BMW was registered to her. (City Ex. 2; Lima testimony.) When later asked his impression of Ms. Lima by the Somerville Police Department, he replied that he thought that Ms. Lima was "being untruthful and not helpful with the investigation" when she did not initially acknowledge that she owned the BMW. He thought she might have "behaved in this manner to conceal the involvement of [O.] Lima in this incident and/or distance herself from her role as the registered owner of the vehicle." (City Ex. 2.)

6. On June 15, 2021, Ms. Lima took a civil service exam for prospective police officers. She received a grade of 98. On September 1, 2021, the state's Human Resources Division issued certification 08159 at the request of the City of Somerville. Ms. Lima was tied for 11th position on the certification. (Stipulated Facts; City Ex. 1.)

¹ Ms. Lima testified that she told the detective that she drives a Toyota and O. drives the BMW. As for her address, she remembers telling the detective that the BMW was not at her address. (Lima testimony.)

7. On October 5, 2021, Ms. Lima filled out an employment application for the Somerville Police Department. In response to a question asking her to “list all vehicles that you . . . currently own or operate,” she listed the Rav4, but not the BMW. She listed a firearms license that she obtained in September 2020. (City Ex. 2.)

8. Detective Robert Pasqualino investigated Ms. Lima’s background. The background check revealed her firearms license and a 2007 BMW registered in her name. It did not reveal the Rav4. Credit reports from three credit reporting agencies showed a poor credit history. Although at the time the report was run, she was current on her credit card debt, the reports showed number of late payments, particularly in 2016. In 2020 and 2021, the reports showed she was 30 days late on a \$35 payment due in September 2021 and 30 days late on a \$468 payment due in November and December 2020 and January 2021. (City Exs. 2 and 3.)

9. Detective Pasqualino interviewed Ms. Lima on October 26, 2021. When he first asked her about the BMW, she denied owning a BMW. According to the detective’s report, when he presented her information showing that a BMW was registered to her, she replied “Oh yeah, I forgot, I don’t drive it often.” Detective Pasqualino found Ms. Lima to be “polite and confident,” but thought she was “misleading in her answers regarding the use and or whereabouts of her vehicle.” He worried that should she become a police officer, “her loyalty to her brother may overshadow her commitment to the citizens of Somerville.” (City Ex. 2.)

10. Ms. Lima was interviewed for the police officer position on November 16, 2021 by three City employees: Denise Molina-Capers, the Director of Racial and Social Justice, Elaine O’Sullivan, the Human Resources Administrator, and Deputy Police Chief Christopher Ward. (City Exs. 4 and 6.)

11. The panel asked Ms Lima about her failure to list the BMW when filling out the job application. She told the panel that the car was registered in her name just to help out her brother and that she did not think of herself as the owner of the car because he drove it, while she has since 2016 driven a Rav4, which she considered her car. When asked about her interaction with Detective Ali, she acknowledged that she did not at first say that she owned the BMW because she did not think of it as her car. When he pointed out to her that the car was registered in her name, she agreed that it was. Detective Ali asked her questions about where he could find the car. She told him it was not at her residence, but she gave him her brother's address as the most likely location of the BMW. When asked about her poor credit history, Ms. Lima mentioned the payments her child's father had failed to make on the Toyota a few years earlier. She did not mention any more recent late payments and was not asked about them. When the panelists conferred about this interview, they unanimously expressed concern about whether Ms. Lima had been truthful about the BMW and about her credit history. Deputy Chief Ward was not terribly concerned that Ms. Lima had allowed the car her brother drove to be registered in her name, but he thought it deceptive that she had repeatedly declined to acknowledge that the car was registered to her. (Molina-Capers and Ward testimony; City Ex. 4 and 6.)

12. On December 22, 2021, the City of Somerville sent Ms. Lima a letter informing her that she had been bypassed. The letter noted her failure at first to tell Detective Ali that she owned the BMW, then her failure to list the BMW on her job application, and her failure initially to acknowledge ownership of the car when interviewed by Detective Pasqualino. About this, the letter stated:

Given that the ownership of the BMW was the subject of a police investigation just a few months ago, in May 2021, your responses on the Somerville Police Department Recruit Candidate Information form, when questioned by the Somerville Detective during your background investigation and during your interview with the panel are disingenuous.

The interview panel did not find it credible that you “forgot” that the BMW was registered to you given the recent history of the vehicle. The panel found that you were evasive and untruthful in your responses about your ownership of the vehicle.

(City Ex. 5.) The letter also expressed concern about the car’s connection to her brother with a criminal history. It stated that:

[d]espite his criminal history, it seems you maintain a relationship with your brother and subsequently were untruthful during the Cambridge Police Department investigation into the May 10th shooting and during your Somerville Police Department recruit application process. While the panel empathizes with your desire to maintain a family connection with your brother, what is concerning is that you misrepresented your knowledge of the BMW operated by your brother.

Id. The letter also noted that Ms. Lima had recent credit problems that she had not mentioned in the interview. The letter recited that “[t]he panel found you to be untruthful in your characterization of your credit concerns. Police officers are required to be honest and forthcoming.” *Id.*

Discussion

The issue in this appeal is whether the City of Somerville was justified in bypassing Natalie Lima based on its impression that during the application process to become a police officer she had been untruthful about a car registered to her and about her credit history. As with all bypass appeals, the City must prove by a preponderance of evidence that its decision was justified. M.G.L. c. 31, § 2(b). That is, the appointing authority must have “established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Service Comm’n*, 31 Mass. App. Ct. 315 (1991); *see* M.G.L. c. 31, § 43. The issue before the Civil Service 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.” *Watertown v. Arria*, 16 Mass. App. Ct. 331, 332 (1983).

No one disputes that police officers are required to be honest and forthcoming or that when evaluating candidates to become police officers an appointing authority may consider whether it believes the applicant has been truthful. Bypasses have been held to be justified when an applicant failed to be truthful on a job application. See *Escobar v. Boston Police Department* (April 10, 2008) (applicant bypassed for position as Boston police officer because in an earlier application to another community he was untruthful about his current residence), and *Aponte v. Boston Police Department* (September 20, 2007) (applicant bypassed because he was evasive about what appeared to be a sham marriage). However, as spelled out in a recent decision:

Providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” *Kerr v. Boston Police Dep’t*, 31 MCSR 35 (2018), citing *Morley v. Boston Police Department*, 29 MCSR 456 (2016). Moreover, a bypass letter is available for public inspection upon request, so the consequences to an applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L. c. 31, § 27, ¶ 2. Thus, the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness require that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. See, e.g., *Boyd v. City of New Bedford*, 29 MCSR 471 (2016); *Morley v. Boston Police Dep’t*, 29 MCSR 456 (2016); *Lucas v. Boston Police Dep’t*, 25 MCSR 420 (2012) (mistake about appellant’s characterization of past medical history).

Denis v. City of Somerville (May 5, 2022).

The City of Somerville bypassed Ms. Lima because of concern about her truthfulness regarding the BMW registered to her and about her credit history, with the credit history being decidedly of secondary importance. The City has not demonstrated that she was untruthful about her credit history. It is not clear that she had seen her credit reports before she was interviewed

about them. She knew of an instance in which the father of one of her children who had been making payments on the Rav4 made those payments late for three consecutive months. She was not asked about more recent late payments on that car loan, and it is not clear that she was even aware of them. These payments were late by only 30 days, which means that she paid them, but missed the 30 day deadline, which could have happened if the checks she sent to the lender that she thought would be on time arrived late. Thus, it is simply not clear that she knew some of her more recent payments were late, let alone that she was choosing to conceal these late payments.

As for the issue with the BMW that was registered to her, she consistently responded to questions about ownership in a colloquial fashion. Like most people, her car is the one she drives. She drives a RAV4, so that is her car, even though it is not registered to her. Her name may be on the BMW's registration, but she does not drive that car. Her brother does, and he is the one who possesses the car. Moreover, she did not pay the purchase price for the car, her father is reimbursing her for the cost to insure the car, and she has given her brother the registration and the title documents for the car. So, in her mind, that was not her car.

This response, however, has just as consistently led police officers and then the interview panelists to think she was being untruthful. This happened first with her May 2021 interactions with Cambridge Detective Ali. He reported that she did not at first acknowledge ownership of the BMW or give the detective her address. Exactly what the detective asked her is not in evidence as he did not testify and only his report is in evidence. Thus, I cannot say for sure what his questions to her were or whether her answers about the BMW were accurate. But her failure to acknowledge ownership of the car and her failure to give her address led the detective to believe she was being evasive and possibly trying to cover for her brother or diminish her own

role in connection with the car that had been present at a shooting in Cambridge.² I think the more likely explanation is that she simply told him what on a day-to-day basis she considers regarding the BMW, namely that it is her brother's car and that she knows little about what he does with the car. Although she failed to give the detective *her* address, she gave him what she thought was her brother's address, which I take to mean she was discouraging him from wasting his time looking for the car at her address and instead should focus on her brother's address, where the detective in fact found the car. Nonetheless, while I do not believe Ms. Lima lied to Detective Ali, I can see that he had reason to find her evasive.

The more troubling instance is her failure to list the BMW on the job application that she filled out in October 2021. The application asked specifically for her to "list all vehicles that you . . . currently own or operate." She listed the Rav4, which was accurate because, even though she did not own the car, she operated it. She did not list the BMW, however. I believe her that she continued to view the BMW as her brother's car, and not her own, even though it was registered to her. But the question specifically asked her to identify cars she owned, and as the registered owner, she should have known that she would have to list the BMW as a car she owned. When interviewed by Detective Pasqualino about this, she told him she forgot. While her forgetfulness on this score is consistent, it is understandable that the detective would think it was more than that. She should have known, not simply from the questions itself, and from her

² She testified that she told Detective Ali that the BMW was not at her address. (Lima testimony.) Whether she failed to tell the detective her address or told him the car he was looking for was not there, it was not unreasonable of him to conclude that she was being unhelpful. There is a context to this, however. Detective Ali was not interviewing a potential future police officer candidate, but a sister no doubt in distress because her brother had been shot and seriously wounded.

interaction with Detective Ali a few months earlier, that the police cared that the BMW was registered in her name, and thus that she should remember to disclose that fact.

Ms. Lima's description to the interview panelists of her interactions with Detectives Ali and Pasqualino over the ownership of the BMW left them with essentially the same impression, namely that she had not been forthcoming about her ownership of the car. While Deputy Chief Ward stated that he was not particularly concerned that Ms. Lima had allowed what was to become her brother's car to be registered in her name, I am doubtful. Had her brother been a solid citizen and the family decided to surprise him by buying him a car to celebrate some positive accomplishment of his and Ms. Lima allowed the car to be registered in her name, I suspect any forgetfulness on her part that she was the registered owner of the car would not have been held against her in the same way. Instead of a potentially excusable failure to focus on the fact that she is the registered owner of a car she does not drive, it looks instead like she is covering in some fashion for a brother the police know as a criminal.

What began as an effort by Ms. Lima's family to steer her brother in a positive direction has now interfered with Ms. Lima's wish to become a police officer. While I have concluded she did not willfully lie about the ownership of O.'s car that is registered to her or seek to provide cover for her brother, at the same time she did not pay close enough attention to what was asked and thereby failed on more than one occasion to answer accurately about the ownership of the BMW. The police had legitimate reasons to ask her who owned the car on these occasions, and her failure to answer accurately did not start her off on the right foot with police department she wishes to join. The connection between that car and her brother with a criminal record is significant and will need to be explained so long as she continues to be the registered owner of the BMW. Although I have concluded that the Somerville Police Department reached far more

negative inferences about Ms. Lima's reasons for not initially acknowledging that the BMW was registered to her than are warranted, it is still the case that inaccurate answers to relevant questions about the car's ownership that Ms. Lima should have understood and answered accurately do provide sufficient reason for the Police Department's decision to bypass her on this occasion.

I do not in any way see this as a permanent bar to her becoming a police officer. Paying close attention to the questions asked and being ready for inevitable questions about her relationship to O. should serve Ms. Lima well in any future effort to become a police officer. I wish her well, but for now, I affirm the Somerville Police Department's decision to bypass her.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney
Acting Chief Administrative Magistrate

Dated: March 8, 2023