

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**STEPHENS P. LIMA,**  
*Appellant*

**CASE NO. G1-17-093**

v.  
**CITY OF NEW BEDFORD,**  
*Respondent*

Appearance for Appellant:

Matthew A. Viana, Esq.  
Beauregard, Burke & Franco  
32 William Street  
New Bedford, MA 02740

Appearance for Respondent:

Elizabeth Treadup Pio, Esq.  
Associate City Solicitor  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740

Solicitor

Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Stephens P. Lima, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b)<sup>1</sup>, to contest his bypass by the City of New Bedford (New Bedford) for appointment as a Police Officer with the New Bedford Police Department (NBPD) and to remove his name from the eligible list pursuant to Personnel Administration Rule PAR.09. A pre-hearing conference was held on June 9, 2017 and a full hearing, which was digitally recorded<sup>2</sup>, was held on August 18, 2017, both at the UMass School of Law in Dartmouth. Twenty-one exhibits (Exh.1 through Exh.21) were received in evidence. The Commission received Proposed Decisions from the parties on October 6, 2017.

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

## **FINDINGS OF FACT**

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

*Called by the Appointing Authority:*

- NBPD Lieutenant Ricard Rezendes
- NBPD Police Officer Nelson Goncalves
- NBPD Police Detective Dominique Sherburne

*Called by the Appellant:*

- Stephens P. Lima, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Stephens P. Lima, is a long-time New Bedford resident who was born and raised in New Bedford. He is a 2010 graduate of New Bedford High School and holds an Associate's Degree in Criminal Justice from Bristol Community College. He got married in October 2014. (*Exhs. 2, 3 & 19; Testimony of Appellant*)

2. In September 2013, Mr. Lima became a New Bedford Police Cadet, where he was assigned to answering 911 calls and assisting civilian dispatchers. He resigned his position in July 2016 for reasons that are explained below. (*Exhs. 2, 3 & 19; Testimony of Appellant*)

3. Mr. Lima holds the rank of Sergeant in U.S. Army Reserves in a unit that operates heavy military construction equipment. He was deployed overseas on active duty from January 2015 through December 2015. (*Exhs 2 & 19; Testimony of Appellant*)

4. In February 2016, Mr. Lima and his wife filed a joint petition for a "1A" no-fault decree which became final in July 2016. (*Exh. 3; Testimony of Appellant*)

5. In March, 2016, Mr. Lima took and passed a military make-up examination for Police Officer and his name was added to the then current eligible list, which since has expired. (*Exh. 1*)

6. On or about April 4, 2016, Mr. Lima completed and submitted his Employment Application to the NBPD in connection with the department's on-going hiring (Certification

#03724) for the original appointment of permanent, full-time Police Officers with the NBPB.  
(*Exhs. 2 & 18*)

7. During the NBPB's background investigation, the investigators discovered that (while on duty as an NBPB Police Cadet), Mr. Lima logged on to the department's computer system and made queries of a personal nature in the NBPB's internal Master Names Index (MNI) data base and the CJIS<sup>3</sup> network about his estranged wife and a mutual friend she had started dating. These queries included:

03/27/2016 – CJIS motor vehicle query of estranged wife (divorce pending)

04/14/2016 – CJIS motor vehicle query of ex-wife

04/25/2016 – Department MNI query of friend after learning of his alleged arrest

Mr. Lima's ex-wife claimed that, at some point, Mr. Lima told her that he "ran her plates" and, also some of her other friends (although no evidence conclusively confirmed this). (*Exhs. 3, 8 through 12; Testimony of Officer Goncalves, Detective Sherburne & Lt. Rezendes*)<sup>4</sup>

8. As part of the background investigation into Mr. Lima's application, on July 13, 2016, two background investigators (one male and one female) interviewed Mr. Lima's ex-wife.<sup>5</sup> The former spouse described her ex-husband as a "hot head" with "anger issues" who physically and

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<sup>3</sup> CJIS is a "restricted information system" maintained by the Department of Criminal Justice Information Services which contains a variety of personal information, including motor vehicle and criminal offender records, to which access and disclosure is regulated by statute (G.L.c.6,§167 et seq.) and regulations (803 CMR 7.00). improper access of CJIS for any "non-criminal justice purpose" is prohibited and may be punished by state and federal civil and criminal penalties. (*Exhs. 6 & 7*) In addition, NBPB officers are annually trained on these restrictions and NBPB General Order 2-13 on Computer Usage Policy provides: "The computer, software, and network they connect to are the property of the City of New Bedford and may only be used for legitimate business purposes." (*Exh. 4; Testimony of Officer Goncalves*)

<sup>4</sup> The 4/14/2018 CJIS query was made with the log-on ID of another NBPB cadet, but NBPB records confirmed that cadet did not work that day but Mr. Lima did. I infer that Mr. Lima is responsible for this query. There were also queries about the mutual friend made by a different Cadet who admitted that he had also accessed the MNI data base in 2016 out of "curiosity" after Mr. Lima had told him of the friend's alleged arrest. (*Exhs. 9,10 & 15; Testimony of Officer Goncalves*)

<sup>5</sup> In an initial telephone conversation with the male NBPB investigators who asked about "domestic issues" she paused and then said she would prefer not to answer the question. She requested a female officer to attend the interview. (*Exh. 3; Testimony of Officer Goncalves & Detective Sherburne*)

emotionally abused her throughout their six-year relationship, at least six times strangling her almost to the point of unconsciousness. She said she was “young and stupid” and never reported the abuse. She reported that after he came home from overseas, Mr. Lima has been texting her, coming to her home and confronting visitors who would no longer visit her. She said she was in fear of Mr. Lima, told him to stop texting and to stay away or she would take “legal action”, and blocked his number. (*Exhs.3,13,14&16; Testimony of Officer Goncalves & Detective Sherburne*)

9. The ex-wife described two specific events to the investigators. The first incident occurred three months earlier, around the end of April, when Mr. Lima arrived at her home and she let him in while calling his roommate to come get him. She claimed he was physically abusive, picking her up in a “bear hug” and throwing her to the floor. The second incident was on or about a month prior to the interview (June 17) when he confronted their mutual friend as he left her home. (*Exhs. 3, 13, 14 & 16; Testimony of Officer Goncalves & Detective Sherburne*)<sup>6</sup>

10. The NBPD investigators advised the ex-wife of her right to seek a Chapter 209A abuse prevention order. On July 14, 2016, based on an affidavit which described, among other things, the two specific incidents described above, the ex-wife obtained an ex-parte Abuse Prevention Order which required Mr. Lima to stay away from the former spouse’s home and workplace and to surrender all firearms in his possession. On July 21, 2017, after a hearing at which the ex-wife testified and Mr. Lima was represented by counsel but did not testify, the court extended the Abuse Prevention Order for one year and expressly reaffirmed the firearms surrender order. (*Exh.14; Testimony of Appellant*)

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<sup>6</sup> Detective Sherburne currently works as a detective in the juvenile sex crimes unit. She presented as a well-trained, articulate witness with considerable experience in domestic violence cases. Her judgment that the ex-wife’s statements were credible is based on that experience as well as the text messages she viewed and the ex-wife’s body language and demeanor in this particular instance. She does not necessarily need to see photographs or other physical evidence of abuse to believe a victim of domestic violence. (*Testimony of Detective Sherburne*)

11. On July 15, 2016, NBPD Lieutenant Rezendes, the superior officer supervising the hiring process, along with the two background investigators conducted a recorded interview of Mr. Lima. The interview began as a “non-criminal” employment interview,<sup>7</sup> but midway through, Mr. Lima was given his “Miranda Rights.” Mr. Lima admitted to “running the plates” of his ex-wife (he said, to get information needed for the divorce proceedings) and, after initially being equivocal about it, admitted to making a query of the mutual friend after hearing he had been arrested (apparently by reading about it in the newspaper). He denied any domestic abuse, stating that he only gave “bear hugs” to his ex-wife in the past to restrain her when she got physical and violent. After he returned, he was getting “mixed messages” and said he did see her, drive by or text her occasionally, essentially, just to “check on her.” He confirmed the incident on which he said he showed up after having “three beers” and she called his roommate to bring him home. He confirmed the encounter on June 17, 2016, claiming he had only been “driving by” and happened to notice the friend. (*Exhs. 3, 13 & 15; Testimony of Appellant, Lt. Rezendes, Officers Goncalves & Sherburne*)

12. Following his interview, Mr. Lima withdrew his name from consideration for hiring as a NBPD Police Officer. He also resigned his position as an NBPD Police Cadet, effective August 5, 2016. (*Exh. 18*)

13. On December 1, 2016, Mr. Lima called the NBPD to report that, while he was at work, his ex-wife had come to his home, left a box that belonged to him on the porch and starting asking his roommate if Mr. Lima still lived there, as well as “all kinds of questions on how Mr. Lima was doing.” The responding NBPD officer spoke with Mr. Lima, who reported that there was an outstanding restraining order against him and he did not know why his ex-wife would be

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<sup>7</sup> Mr. Lima was asked about discrepancies in his application and performance as a Police Cadet which are not part of the reasons for his bypass and need not be further addressed in the Decision.

coming to his house. The responding officer confirmed that there was an active restraining order and filed a “No Crime Involved” report. (*Exh. 21; Testimony of Appellant*)

14. In December 2016, as amended in February 2017, a new Certification (#04224) was issued to authorize the NBPD to hire up to 14 additional permanent, full-time Police Officers. Mr. Lima’s name appeared on the certification and he reapplied, submitting a new NBPD Employment Application dated December 20, 2016. (*Exhs. 1 & 19*)

15. On or about January 9, 2017, Detective Sherburne was assigned to investigate Mr. Lima’s second application. She confirmed that the 209A abuse prevention order and the firearms restriction it imposed remained in effect. She confirmed (with the commanding officer of the NBPD’s firearms division) that an open restraining order precluded Mr. Lima from obtaining a license to carry a firearm, essential to become a police officer and, therefore, that Mr. Lima was ineligible to be appointed as an NBPD police officer. This report ended further consideration of his application. (*Exh. 20; Testimony of Detective Sherburne & Lt. Rezendes*)

16. On March 3, 2017, on a motion requesting that the 209A restraining order be vacated, the court entered a finding that “based on plaintiff having gone to defendant’s home in December and her failure to appear at show cause hearing . . . she no longer has ongoing fear of defendant” and terminated the prior restraining order. (*Exh. 14*)

17. By letter dated March 23, 2017, New Bedford Mayor Jonathan Mitchell, the appointing authority for the NBPD, requested approval from the Massachusetts Human Resources Division (HRD) to bypass Mr. Lima and remove his name from the current eligible list for future consideration for appointment to the NBPD, pursuant to Personnel Administration Rule PAR.09. The reasons stated for this request included “Allegations of Domestic Abuse” and “Abuse of official authority” while serving as a NBPD Police Cadet. (*Exh. 1*)

18. By letter to Mr. Lima dated April 28, 2017, HRD notified Mr. Lima that his bypass and PAR.09 removal were approved. This appeal duly ensued. (*Exh.1; Claim of Appeal*)

### **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31 for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L.c.31, §1.

Basic merit principles in hiring and promotion calls for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L.c. 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.09.

In order to deviate from that formula, an appointing authority must provide written reasons – positive or negative, or both, consistent with basic merit principles, to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L.c.31,§27; PAR.08(4)

A person may appeal a bypass decision under G.L.c.31,§2(b) for de novo review by the Commission. The Commission’s role is to determine whether, by a preponderance of evidence, the appointing authority had “reasonable justification” to bypass the candidate after making an “impartial and reasonably thorough review” of the background and qualifications of the candidate that was sufficient to form a “credible basis” to believe allegations of misconduct or other facts that presented “legitimate doubts” about the candidate’s present fitness to perform the

duties of the position, in this case, the sensitive job of a police officer. Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law’ ”. Brackett v. Civil Service Comm'n, 447 Mass. 233, 543 (2006); 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). See also Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”) The Commission has primary concern to ensure that the action comports with “[b]asic merit principles.” G.L.c.31,§1. See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182,188 (2010); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev.den.,423 Mass.1106 (1996)

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The commission

“ . . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*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.”

See City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (*emphasis added*) However, the governing statute, G.L.c.31,§2(b), gives the Commission’s de novo review “broad scope to evaluate the legal basis of the



appointing authority's action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

The Commission does recognize that law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct:

“Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”

Police Comm’r v. Civil Service Comm’n, 22 Mass.App.Ct. 364, 371, 494 N.E.2d 27, 32 rev.den. 398 Mass. 1103, 497 N.E.2d 1096 (1986). An appointing authority is justified to refuse to hire and/or to terminate a police officer who repeatedly demonstrates his “willingness to fudge the truth”. See City of Cambridge v. Civil Service Comm’n, 43 Mass. 300, 303 (1997) (“a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.”) See also Everton v. Town of Falmouth, 26 MCSR 488 (2013) and cases cited, aff’d, SUCV13-4382 (2014); Gonsalves v. Town of Falmouth and cases cited, 25 MCSR 231 (2012), aff’d, SUCV12-2655 (2014); Keating v. Town of Marblehead, 24 MCSR 334 (2011) and cases cited.

## **ANALYSIS**

New Bedford has proved by a preponderance of the evidence that the decision to bypass Mr. Lima was reasonably justified after they performed a reasonably thorough and impartial review of the facts relevant to his suitability to serve as a NBPD Police Officer.

First, in March and April 2016, while serving as an NBPD Police Cadet, Mr. Lima violated the NBPD rules and Massachusetts regulations prohibiting access to the NBPD’s internal MNI data base and the state-wide CJIS data base, by using his position as a Police Cadet to retrieve

information from those data bases for personal, and not “criminal justice” or “police” business. On at least one occasion, Mr. Lima accessed the data by logging in with the access code of a co-worker, rather than his own. These recent incidents of misconduct, alone, provide reasonable justification to bypass him.

Second, the 209A restraining order against Mr. Lima also provides independent, reasonable justification for the bypass. Although Mr. Lima denies that he ever physically abused his ex-wife, and accuses her of false claims against him, the NBPD does not have the burden to prove, and the Commission is not required to find, who is telling the truth here. “Reasonable justification” means only that, after an “impartial and reasonably thorough review”, there is a “credible basis” to believe allegations of misconduct that present “legitimate doubts” about Mr. Lima’s suitability to serve in the sensitive job of an NBPD police officer. E.g., Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182 (2010) New Bedford met this standard, based on the testimony of the background investigators who found the ex-wife’s claims to be credible, the order entered by a judge after hearing from both the ex-wife and Mr. Lima’s counsel, and his own admission to behavior (e.g., a tumultuous relationship that required restraining her with “bear hugs”). New Bedford had reason to infer that there was, indeed, more physical altercation between them than he acknowledged, which, together with the judicially approved restraining order, serves to confirm the NBPD’s “legitimate doubt” about his present suitability for appointment.

I have not overlooked the fact that, as of March 23, 2017, the date on which New Bedford sent its request to HRD to bypass and PAR.09 remove Mr. Lima, the restraining order had been vacated. The evidence did not indicate that New Bedford learned of that fact before it submitted the request to HRD and, more importantly, the decision to bypass Mr. Lima was made in

January, while the order was still active and, legally, prevented Mr. Lima from carrying a firearm for at least another six months. New Bedford had no obligation, having completed a “through and impartial review” in January, to further investigate the status of the restraining order before formally submitting the bypass request, even after Mr. Lima had filed a police report concerning his ex-wife’s unannounced visit to his home when he was away. Finally, even if the termination of the restraining order was a fact that New Bedford “knew or should have known” at the “time of the bypass”, the close proximity of the underlying event remains sufficient to present “legitimate doubt” about Mr. Lima’s suitability for appointment.

Third, I find no indication that Mr. Lima was bypassed for any ulterior political reasons, favoritism toward others or unlawful bias. Indeed, Mr. Lima’s overall ambition and solid service as a NBPD Police Cadet and his military service were included among the positive attributes in his record that NBPD recognized he possessed. It may be that, in time, he will be able to establish that the blemishes on that record which tripped him up this time are behind him.

Fourth, as the eligible list from which this appointment was made has now expired, and the effectiveness of the PAR.09 removal no longer effective, the PAR.09 removal issue is now moot and the Commission need not separately address it here.

### **CONCLUSION**

In sum, for the reasons stated herein, this appeal of the Appellant, Stephens P. Lima, is *dismissed*.

Civil Service Commission  
/s/Paul M. Stein  
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 28, 2019.

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:

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