

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

STEPHENS LIMA,  
Appellant

G1-20-080

v.

NEW BEDFORD POLICE DEPARTMENT,  
Respondent

Appearance for Appellant:

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

Appearance for Respondent:

Elizabeth Treadup Pio, Esq.  
Associate City Solicitor  
City of New Bedford  
133 William Street, Room 203  
New Bedford, MA 02740

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION**

1. On February 18, 2019, the Civil Service Commission (Commission) upheld a decision by the New Bedford Police Department (NBPD) to bypass Stephens Lima (Appellant) for appointment as a police officer. See [Lima v. New Bedford Police Department](#) (G1-17-093 (2019)).
2. In the 2019 decision, the Commission concluded that the reasons put forth for bypass by the NBPD (i.e. – Appellant accessing CJIS information of private citizens while a cadet; existence of a restraining order against him for one year) were valid reasons for bypass.

3. The 2019 decision also stated in part that, “It may be that, in time, he will be able to establish that the blemishes on [his] record which tripped him up this time are behind him.”
4. On September 4, 2019 and December 26, 2019, the Appellant’s name appeared on Certification No. 06566 from which the NBPD appointed 13 police officer candidates, all of whom were ranked below the Appellant.
5. The NBPD relied on the same reasons for bypass that were upheld by the Commission in its 2019 decision.
6. The Appellant filed an appeal with the Commission on May 8, 2020 and I held a pre-hearing conference via videoconference on June 2, 2020 that was attended by counsel for both parties.
7. As part of that pre-hearing, counsel for the Appellant argued that given the passage of time since the underlying incidents, and given that the Appellant has had an exemplary record during that time period, there is no longer reasonable justification to bypass the Appellant.
8. Counsel for the NBPD argued that the reasons for bypass reflected serious misconduct and the City’s decision to bypass here is less than 1 year since the Commission upheld the reasons for bypass as valid.
9. Based on the above, I provided the NBPD with thirty (30) days to file a Motion for Summary Decision with the Appellant to file an opposition within thirty (30) days thereafter, which the parties submitted.

*Legal Standard for Motion for Summary Decision*

A motion for summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., “viewing the evidence in the light most favorable to the non-moving party”, the

undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

### *Parties’ Arguments*

The NBPD argues that it was proper to rely on the same reasons identified in the prior hiring cycle, as the City’s current decision came less than one year after the Commission upheld those reasons for bypassing the Appellant in the prior hiring cycle. Even, however, if more time had passed, the NBPD argues that time alone is not enough to overcome the serious impairments to the Appellant’s candidacy for police officer – improperly accessing citizens’ CJIS records while serving as a Cadet for the NBPD and being subject to a restraining order that, after a hearing, was extended by the Court for one year.

The Appellant argues that the NBPD’s “recycled” reasons for bypass are not justified in the current hiring cycle given the passage of time since the actual prior non-selection (2017) and because of the Appellant’s exemplary record during this intervening time, including obtaining “secret” security clearance with the United States Army.

### *Analysis*

Prior Commission decisions have clearly stated that an Appellant’s prior misconduct, with the exception of certain criminal conduct that statutorily disqualifies a candidate, should not and cannot serve as an automatic disqualifier of a candidate for a public safety position. Leaders across the political spectrum in Massachusetts have stressed the need to avoid looking at a snapshot of who a candidate was many years ago, but, rather, to look at who that candidate is

today, as defined primarily by the intervening years since the misconduct occurred, which is a better predictor of whether the candidate is suitable for employment.

Here, however, relatively little time has transpired since the misconduct occurred. Less than five years ago, the Appellant was the subject of a restraining order, which, after hearing, was extended by the Court by one year. At or around the same time, the Appellant, while serving as a Police Cadet for the NBPD, improperly accessed the CJIS system to obtain information on private citizens, on one occasion using another Cadet's sign-in credentials to do so. This misconduct is serious; relatively recent; and occurred while the Appellant was employed by a Police Cadet for the same agency for which he now seeks to be a permanent, full-time police officer.

In his brief, the Appellant raises some of the same issues raised in the prior appeal, including allegations of disparate treatment and termination of the restraining order. These issues were already considered and addressed by the Commission as part of the prior bypass appeal. Given the relatively short period of time that has transpired since the Appellant's misconduct occurred, the serious nature of the misconduct; and the Commission's very recent decision upholding those reasons for bypass as valid, the Appellant has no reasonable expectation of prevailing in this new bypass appeal.

For this reason, the NBPD's Motion for Summary Decision is allowed and the Appellant's appeal under Docket No. G1-20-080 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on August 27, 2020.

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)(l), 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:

Matthew A. Viana, Esq. (for Appellant)

Elizabeth Treadup Pio, Esq. (for Respondent)