

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

JESSZIRIS LOPEZ,
Appellant

CASE NO. G1-19-071

v.

**MASSACHUSETTS DEPARTMENT
OF CORRECTION,**
Respondent

Appearance for Appellant:

Jessziris Lopez, Pro Se

Appearance for Respondent:

Norman Chalupka, Jr., Esq.
Joseph S. Santoro, Labor Relations Advisor
Department of Correction
P.O. Box 946 – Industries Drive
Norfolk, MA 02056

Commissioner:

Paul M. Stein

DECISION

The Appellant, Jessziris Lopez, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), to contest her bypass for appointment as a Correction Officer I (CO-I) with the Massachusetts Department of Correction (DOC).¹ A pre-hearing conference was held at the Commission’s Boston office on April 23, 2019, and a full hearing was held at that location on June 10, 2019, which was digitally recorded.² Fifteen (15) exhibits (*Exhs. 1 through 15*) were received in evidence. Two additional exhibits were received from the DOC after the close of the hearing and marked in evidence (*PHExh.13A & PHExh.14A*). Neither party chose to file a proposed Post-Hearing Decision. For the reasons stated below, Ms. Lopez’s appeal is denied.

¹ 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.

² 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:

- Eugene T. Jalette, DOC Supervising Identification Agent
- Jason Romans, DOC Sergeant (CO-II), Background Investigator

Called by the Appellant:

- Jessziris Lopez, Appellant
- MR, Appellant's significant other

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, Jessziris Lopez, currently resides where she was born and raised. She is a graduate of Westfield State University, where she received a Bachelor of Science Degree (Major: Criminal Justice; Minor: Psychology) and is continuing to study toward a Master's Degree in Criminal Justice. (*Exhs 1 & 12; Testimony of Appellant*)

2. Ms. Lopez took and passed the civil service examination for CO-I on April 14, 2018, achieving a score of 93. Her name was placed on the eligible list for CO-I dated October 27, 2018 and appeared in the 39th place on Certification #05868 issued by the Massachusetts Human Resources Division (HRD) to DOC on or about January 19, 2018, from which DOC eventually hired 160 applicants, of which 113 were ranked below Ms. Jessziris on the Certification. (*Stipulated Facts*)

3. Ms. Lopez signed the Certification willing to accept employment and completed the standard DOC Application for Employment. (*Testimony of Appellant, Jalette & Romans*)

4. The DOC conducted its standard "law enforcement CJIS" check of Ms. Lopez's criminal record and driving history which disclosed the following initial information:

April 10, 2014 – Operating after Suspended License –Dismissed 5/30/14
February 24, 2016 – Civil Restraining Order – Expired 06/09/16

April 20, 2016 – A&B Dangerous Weapon/A&B Aggravated Pregnant Woman/Malicious Destruction of Property over \$250 – Dismissed After one year Pre-trial Probation

July 29, 2017 – Weapon in Motor Vehicle (Connecticut) – Verdict Date: 02/13/2018

(Exh.4; Testimony of Jalette & Romans)

5. DOC Sergeant Jason Romans was assigned to conduct Ms. Lopez’s background investigation. He obtained a Springfield Police Department “Order Report” regarding the 2016 civil restraining order and a Holyoke Police Department Report regarding the 2016 A&B incident. Sergeant Romans was unsuccessful in obtaining further documentation about the 2014 license suspension or the 2017 Connecticut weapons offense also identified in the CJIS record.³

6. The Springfield Police Department “Order Report” documented service of a domestic abuse restraining order “Effective 3/10/2016” and “Expires: 3/20/2017”, also noting that the “Order Status” [as of the 12/17/2018] was “Vacated/Terminated”. The report indicates that initial service of the restraining order was attempted on 2/24/2016 and eventually “served in Court” in hand on 3/10/2016.” The report contains no details about the underlying circumstances and Sergeant Romans did not obtain the 209A complaint, affidavit or restraining order itself.

(Exh. 6; Testimony of Romans)

7. The Holyoke Police Department Report contains detailed narratives prepared by two of the police officers who responded to the scene. These narratives, which are based, in part, on percipient observations by the responding officers, reported that Ms. Lopez, her younger sisters and friends, were stopped by the police about 11:30 pm on April 20, 2016 as they were leaving the scene in Ms. Lopez’s car, after an attack upon the reporting female victim (4½ month’s pregnant), her boyfriend and his car, which had multiple dents, all its windows smashed and all

³ Sergeant Romans also routinely checks police records in each city or town where the applicant resided. Sergeant Romans also procured additional police reports involving Ms. Lopez in 2011, but none of these incidents were cited or relied upon by the DOC in the assessment of her suitability and did not form any basis for the bypass decision. *(Exhs. 2, 7 through 10; Testimony of Appellant, Romans & Jalette)*

four tires slashed. The female had been cut and scratched and had a bump on her head, and was treated at the scene by paramedics. A search of Ms. Lopez's car found 2 knives, bb's a bb gun, a paintball gun and a steering wheel lock, items that were consistent with the description of what had been used to attack the victims and their car. Ms. Lopez's car had its rear window smashed, also consistent with what the boyfriend reported to police he had done as Ms. Lopez was driving away. The female victim's car keys were found in Ms. Lopez's car.⁴ When asked at the scene how the female victim's keys got into the car, Ms. Lopez said: "I don't know, maybe she threw them there." Ms. Lopez and the other passengers in her car were arrested and booked on two counts of A&B w/deadly weapon, Aggravated A&B and Malicious damage over \$250. While the boyfriend was giving his statement, Ms. Lopez was texting him, and the police took copies of the messages and placed them in the case file.⁵ (*Exh. 5; Testimony of Romans*)

8. As part of the background investigation, Sergeant Romans interviewed Ms. Lopez's professional references, all of whom recommended her for hire, commenting that she was dependable and friendly. Save for work as a personal caretaker since 2012, Ms. Lopez provided no employment history that Sergeant Romans could verify. (*Exh. 3; Testimony of Romans*)

9. On December 17, 2018, Sergeant Romans conducted a home interview with Ms. Lopez. She was provided with a copy of her CJIS records (*Exh. 4*) and asked about her past negative interaction with law enforcement. She replied by providing two letters which Sgt. Romans asked her to sign and he placed them in her application folder. (*Exh3; PHEXh.3A & PHEXh.14A; Testimony of Appellant & Romans*)

⁴ The officers' reports differ as to where in Ms. Lopez's car the victim's keys were found, one stating they were between the seats and the other stating they were in the trunk, but I do not find this discrepancy sufficient reason to question the overall reliability of the officer's percipient observations of the scene or the accuracy of their reports.

⁵ The Holyoke police report also makes reference to another incident a week earlier. (*Exh.5*) The record does not contain any other reference to such an incident.

10. The first letter addressed the 2016 Holyoke A&B incident. Ms. Lopez stated that she had taken her younger sisters and friends to the mall and had stopped at her mother's ex-boyfriend's apartment, where one of her sisters went to get some milk formula for her newborn baby brother. Ms. Lopez claims that she was not involved in the altercation and only entered the fray after the ex-boyfriend was wielding a baseball bat at one of her sisters and smashed out the rear and front windows of her (Ms. Lopez's) car. She claims that her sister was the one who fired paint balls and does not know how the boyfriend's car windows got smashed. She wrote that all of the passengers in her car were arrested but "some of us did not participate in the same way", "it was very surprising to many people throughout the court process as to why the other party didn't get arrested" and they "were going back and forth to court for about a year before all of the charges were finally dismissed." (*Exh. 13A*)

11. The second letter addressed the 2017 Connecticut incident. According to Ms. Lopez, she went to Connecticut with friends to celebrate the 21st birthday of her significant other (MR) and was the "designated driver" for the night. Everyone else had become "belligerently drunk" and MR was in the back seat, angry and appeared passed out. Ms. Lopez stopped the car, MR got out and a scuffle ensued trying to get MR back into the car when the police arrived. Ms. Lopez was arrested and, after completing a Domestic Abuse program, the charges were dismissed. The statement does not address the "weapons" charge. (*Exh. 14A*)

12. Sergeant Romans submitted his background investigation report on December 31, 2018, concluding that Ms. Lopez's background included both positive and negative aspects:

Positive Employment Aspects

Positive Professional References

Spanish, French and English capabilities

Negative Employment Aspects

Negative interaction with law enforcement. Reports supplied in applicant's folder.

(*Exh. 3; Testimony of Romans*)

10. After Ms. Lopez's application was presented to DOC Commissioner Mici and a committee of senior DOC management, Ms. Lopez was informed, by letter dated July 9, 2018 from Deputy Commissioner Preston, that she was not selected for appointment due to "Background Investigation. On 7/28/2017 you were arrested in Connecticut for a weapon in a motor vehicle, on 4/21/2016 you were arraigned in Massachusetts for 1 count of A&B, 1 count of malicious destruction of property and 3 counts of assault with a deadly weapon. On 4/10/14 you were arraigned for operating on a suspended license, from 2/24/16 to 6/9/16 you were listed as a defendant on a civil restraining order." Mr. Jalette was present for the DOC management review, and recalled that the DOC's concern was with the applicant's history of multiple, recent incidents involving physical conflicts and failure to adhere to the requirements of the law. (*Exh.2; Testimony of Jalette*)

11. At the Commission hearing, Ms. Lopez submitted substantially the same documentation regarding the 2017 Connecticut arrest and the 2016 Holyoke incident as she had provided to Sergeant Romans. She also explained that the "weapon" involved in the Connecticut incident was a hooking tool that she used for retrieving boxes in a temporary warehouse job in which she was then employed.⁶ The license suspension was due to her getting a speeding ticket which, being under age 18, resulted in an automatic suspension and, once she took care of the ticket her license was restored. (*Exhs. 13 & 14; Testimony of Appellant*)

12. As to the 2016 restraining order, Ms. Lopez does did not have a clear recollection of the legal proceedings, except that she does remember that MR and a school security officer appeared and testified under oath, after which the restraining order was extended for one year. MR testified at the Commission hearing, affirming her written statement that her decision to obtain a restraining order was an over-reaction to a break-up early in their relationship, she was "playing

⁶ I do not see any reference to this employment in the background investigation report. (*Exh. 3*)

victim to get revenge” and was untruthful in her testimony in court. In June 2016, she returned to court, stated that she was not in fear and wanted to terminate the restraining order, which was then vacated at her request. (*Exh. 15; Testimony of Appellant & MR*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” 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. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev.den.,423 Mass.1106 (1996)

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 specific, 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 the appointing authority had shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass

after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 474-78 (2019); 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) and cases cited. 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”)

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.”

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.

ANALYSIS

The DOC has established, by a preponderance of the evidence, that it had reasonable justification for the decision to bypass Ms. Lopez for appointment as a Correction Officer. Ms.

Lopez has successfully achieved a Bachelor's Degree in Criminal Justice and is pursuing a Master's Degree in that field. She appears to have a strong and sincere desire to become a Massachusetts Correction Officer. However, her recent record of personal misconduct, including physical violence and disregard for the law, that has occurred within two years before she applied to the DOC, provides reasonable justification for her non-selection at this time.

The DOC is a para-military organization where order and discipline is a critical component of the work that is required of the high-stress work of a Correction Officer responsible for the care and custody of incarcerated criminals and other persons who present risks to the safety of themselves and others. While Ms. Lopez sincerely believes that she possesses the qualities that would enable her to work under the pressures of such a position, the record provides reasonable justification for DOC to believe that Ms. Lopez is not ready to assume the responsibility of such a position. This record includes a credible description by percipient law enforcement officers that details her involvement in a very disturbing act of violence committed in April 2016, as well as undisputed evidence that she had been driving while her license had been suspended due to non-payment of a speeding ticket in 2014, for which a warrant had been issued for her arrest. The underlying facts surrounding the 2017 Connecticut arrest are not documented by any official record (other than the CJIS report), and I credit Ms. Lopez's testimony that the "weapons" charge did not involve a firearm, but some sort of blunt instrument that she legitimately possessed. Nevertheless, Ms. Lopez admits that there was some form of "physical contact" between MR and herself, witnessed by Connecticut police, and that she was ordered to complete a Domestic Violence course. Similarly, as to the 2016 restraining order, I credit the testimony of Ms. Lopez and MR that they are now reconciled and have maintained a stable relationship for the past few years. The fact remains, however, that a court of law, after hearing the testimony

from both Ms. Lopez, MR and a disinterested school officer, concluded that the 209A restraining order against Ms. Lopez should be extended for a year. Although MR recanted her story, at the time DOC decided to bypass Ms. Lopez, DOC did not have the benefit of this information.

I have considered Ms. Lopez's argument that she has overcome the obstacles of a troubled youth and has learned from her past mistakes. That argument might carry more weight if the incidents were less recent and her testimony had indicated more clearly than she did, that she fully accepts responsibility for her actions. Should she maintain her desire to become a Correction Officer, at some point in time, DOC may be able to conclude that, absent any future problematic incidents, Ms. Lopez, indeed, has overcome her history of negative behavior. On the facts presented in this case, however, DOC is fully justified to conclude that far too little time has passed for DOC to assume that Ms. Lopez has, indeed, matured sufficiently, truly put her past behind her, and is ready to join a para-military organization tasked with the stressful duties of the care and protection of inmates required of a Correction Officer.

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Jessziris Lopez, is ***denied***.

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 January 30, 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)(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:

Jessiris Lopez (Appellant)

Norman Chalupka, Jr., Esq. (for Respondent)

Joseph S. Santoro (for Respondent)