

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**JOHN LY,**  
*Appellant*

v.

**LOWELL POLICE  
DEPARTMENT,**  
*Respondent*

**Case No.: G1-13-178**

**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).

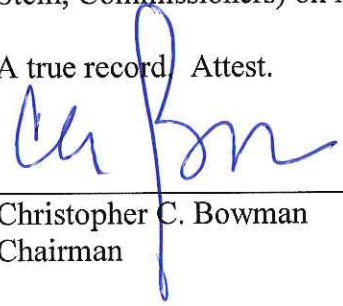
Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Lowell Police Department to bypass Mr. Ly for original appointment to the position of police officer is affirmed and the Mr. Ly's appeal under Docket No. G1-13-178 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on March 6, 2014.

A true record. Attest.

  
\_\_\_\_\_  
Christopher C. Bowman  
Chairman

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)(I), 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.

Notice to:

John Ly (Appellant)

C. Michael Carson, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals  
1 Congress Street, 11th Floor  
Boston, MA 02114  
[www.mass.gov/dala](http://www.mass.gov/dala)


**John Ly,**  
Appellant

v.

CSC Docket No. G1-13-178  
DALA Docket No. CS-13-525

**Lowell Police Department,**  
Respondent

**Appearance for Appellant:**

John Ly  


**Appearance for Respondent:**

C. Michael Carlson, Esq.  
Assistant City Solicitor  
City of Lowell – Law Department  
375 Merrimack Street, 3rd Floor  
Lowell, MA 01852-5909

**Administrative Magistrate:**

**Kenneth Bresler**

**SUMMARY OF TENTATIVE DECISION**

The Lowell Police Department had reasonable justification to bypass the Appellant for the position of police officer, because his accounts relating to firearms in his possession were not credible and he would have been unable to receive a firearms license. I therefore recommend that the Civil Service Commission dismiss the appeal.

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## **TENTATIVE DECISION**

The appellant, John Ly, appeals the decision of the Lowell Police Department to bypass him for a position as a police officer. I held a hearing on October 28, 2013, which I recorded digitally.

Mr. Ly represented himself, testified, and called no other witness. The Lowell Police Department called one witness, Sergeant Thomas Fleming, the department's director of recruitment and hiring.

I accepted into evidence eight exhibits. Both parties submitted post-hearing briefs.

The Human Resources Division accepted the Lowell Police Department's reasons for the bypass on November 14, 2013 after the hearing.

### **Findings of Fact**

1. When John Ly applied in February 2013 to the Lowell Police Department to be an officer, he was a 28-year-old resident of Lowell, a student of criminal justice in Middlesex Community College, a merchandiser for an employer in Wilmington called PBG, and veteran who had served in the U.S. Marine Corps from 2005 to 2006. (Ex. 6.)

2. In or around 2007, Mr. Ly lived in the first floor of a two-family house in Lowell. It had three bedrooms. He shared one bedroom with his wife. His father-in-law and his wife's cousin from California each occupied a bedroom. (Ly testimony.)

3. In or around January 2007, approximately two months after he had left the Marines, the Lowell Police Department arrived at Mr. Ly's home with a search warrant for gambling equipment. (Ly testimony.)

4. Mr. Ly's father-in-law told Mr. Ly shortly before the hearing on October 28, 2013 that he had run a gambling operation by telephone. (Ly testimony.)

5. When the police arrived in or around January 2007, the officers asked if there were any weapons in the home. Mr. Ly let the police know that he had firearms in his dresser drawer. (Ly testimony.)

6. Mr. Ly was arrested for and charged with two counts of having a firearm without an identification card; two counts of storing a firearm improperly; possessing a firearm with a defaced serial number; running an illegal lottery; and a conspiracy charge related to the illegal lottery charge. (Ex. 7.)

7. On October 31, 2007, the gambling charges were the subject of a *nolle prosequi*. (Ex. 7.)

8. On April 7, 2008, the firearms charges were dismissed because firearms certificates had not been prepared by a particular court date. (Ex. 7; Fleming testimony.)

9. The firearms charges were reinstated, but on January 8, 2009, were again dismissed, this time with prejudice, when a judge granted a motion under G.L. c. 140, § 129C on the basis that Mr. Ly's alleged crimes had occurred within 60 days of his discharge from the Marines. (Ex. 7.)

10. After Mr. Ly applied to become a Lowell police officer, he was interviewed in or around April 2013 by Sergeant Fleming, a Captain Richardson, and a Deputy Taylor. (Fleming testimony.)

11. The interviewers asked Mr. Ly how he came to possess the firearms. Mr. Ly answered that he had been driving on Walker Street in Lowell one evening at approximately 11:00 p.m., had passed a pickup truck, and saw two handguns under the truck. He stopped, took the handguns home, put them in a dresser drawer in his bedroom, and covered them with clothes. (Fleming testimony.)

12. Sergeant Fleming was familiar with Walker Street and found it unlikely that a motorist at 11:00 p.m. could see two handguns under a parked pickup truck. (Fleming testimony.)

13. Knowing that Mr. Ly had been a Marine, Sergeant Fleming also did not believe that Mr. Ly would take two loaded firearms and, without securing them, put them in a dresser drawer. (Fleming testimony.)

14. Although Sergeant Fleming had not been in the apartment where Mr. Ly lived, he was generally familiar with the size and layout of apartments in the neighborhood. He found it not credible that Mr. Ly did not know that a gambling operation was being run from his residence. (Fleming testimony.)

15. The main criterion for a candidate for police officer is credibility: whether he or she is truthful in the application and interview. (Fleming testimony.)

16. Closely related to a candidate's credibility is his or her ability to obtain a license to carry a firearm, which in turn is a requirement to be a police officer. Because Sergeant Fleming doubted Mr. Ly's account of how he came to have firearms in his dresser drawer, Sergeant Fleming doubted that the police superintendent would issue a license to carry to Mr. Ly. (Fleming testimony.)

17. Mr. Ly's non-credible account of how he came to possess the firearms was the major reason that he was bypassed. The fact that Mr. Ly had dismissals of criminal charges on his record was not a major reason for the bypass. (Fleming testimony.)

18. Sergeant Fleming prepared the bypass letter for the police superintendent. (Fleming testimony.)

19. On May 30, 2013, Deborah H. Friedl, the Interim Superintendent of Police, wrote to the Human Resources Division to ask that Mr. Ly be removed from the certification list. The reason was that "Mr. Ly is unsuitable to be issued a license to carry a firearm," which "is a requirement of the job as a police officer in the City of Lowell." (Ex. 4.)

20. The letter continued that Mr. Ly had been charged with possession a firearm and other criminal charges, which were dismissed because the firearms certification had not been prepared in a timely fashion. He had also been charged with gambling offenses; those charges were also dismissed. (Ex. 4.)

21. The letter continued:

Mr. Ly took part in a pre-employment interview conducted by Deputy Taylor, Capt. Richardson and Sgt. Fleming. Mr. Ly stated that in fact he did have two loaded handguns in his bedroom dresser draw[er]. He went on to state that he was driving down Walker St. in the middle of the night and saw the two loaded handguns under a truck. As police officers for the past thirty years the panel knew this is simply not credible. He went on to tell them that as a former U.S. Marine he thought that the safest thing to do was bring them to his house and put them in his dresser draw[er]. Again this is simply not credible. He also explained that his father-in-law was running a gambling operation in the apartment that he lived in but he (LY) was not aware of the operation. This is simply not credible.

The background investigation conducted by my staff has shown a pattern of conduct, which indicates Mr. Ly is unsuitable for a job as a police officer. My staff and I are of the collective opinion that Mr. Ly has not demonstrated the level of responsibility and character that is required as a police officer in the City of Lowell.

(Ex. 4.)

22. Sergeant Fleming is unaware of the Lowell Police Department hiring any candidate for police officer who had firearms charges. (Fleming testimony.)

23. None of the candidates for whom Mr. Ly was bypassed had adult criminal charges; one had a juvenile charge. (Fleming testimony.)

24. Mr. Ly appealed on June 14, 2013. (Ex. 1.)

### Conclusion and Order

The members of Mr. Ly's interview panel did not find a significant account credible: how he came to possess two firearms. They also found not credible his explanation that he, a former Marine, thought that taking the loaded firearms home and putting them in a dresser drawer would be the safest course of action.

Mr. Ly's non-credible explanations had to do with firearms. They are directly related to his fitness to carry a firearm. Firearms charges against Mr. Ly were twice dismissed – but the reasons did not include that the charges were baseless. Mr. Ly's possession of unlicensed firearms was directly related to his fitness to receive a license to carry firearms.

The superintendent, who had the power to decide whether Mr. Ly should receive a firearms license, was also the person who signed the bypass letter. Whether Mr. Ly could receive a firearms license, which was an essential requirement of becoming a police officer, was not the subject of speculation. Mr. Ly would not have received a license.

Thus, the appointing authority was reasonably justified in bypassing Mr. Ly. The appointing authority has sustained its burden by preponderance of the evidence that there was reasonable justification. The reasons were adequate, sufficiently supported by credible evidence, and guided by common sense. The bypass comported with principles of merit hiring. *See Police Department of Boston v. Kavaleski*, 463 Mass. 680, 688 (2012), and cases cited.

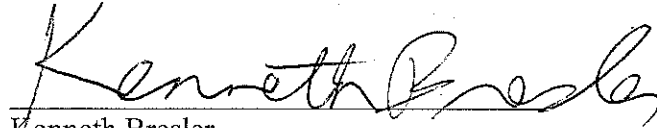
Considering that the appointing authority had reasonable justification in bypassing Mr. Ly for his non-credible account about the firearms, which in turn would keep him from receiving a firearms license, it is not necessary to discuss the following: whether Mr. Ly knew or should have known about the gambling operation, and whether an appointing authority is reasonably justified in bypassing a candidate whose criminal charges were the subject of a *nolle prosequi*.



### Discussion

The Appointing Authority had reasonable justification to bypass the appellant. I recommend that his appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

A handwritten signature in dark ink, appearing to read "Kenneth Bresler", is written over a horizontal line.

Kenneth Bresler  
Administrative Magistrate

Dated: **JAN - 9 2014**