

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

CHRISTOPHER MANCA,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

Case No.: G1-12-35

DECISION

The Civil Service Commission (Commission) voted at an executive session on November 1, 2012 to acknowledge receipt of: the Recommended Decision of the Administrative Law Magistrate dated August 28, 2012. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on November 1, 2012.

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:

Christopher Manca (Appellant)

Kerry A. Rice (for Respondent)

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

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CHRISTOPHER MANCA,
Appellant

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**DEPARTMENT OF
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OPINION OF THE FULL COMMISSION

Since we concur with the Magistrate that DOC provided sound and sufficient reasons for bypassing the Appellant, including a 2010 OUI charge and a poor driving record, we dismissed the instant appeal.

A review of the record, however, prompts the Commission to issue this addendum to address a procedural issue regarding all DOC bypass decisions.

Here, similar to many other bypass appeals, the bypass letter to the Appellant stated that he was bypassed for: “unsatisfactory criminal history report (CORI).” It was not until *after* the Appellant filed his appeal with the Commission that DOC provided the Appellant with a more-detailed explanation regarding his bypass, referencing the 2010 OUI and the Appellant’s driving history.

On a going forward basis, DOC should provide the more detailed explanation for the bypass *as part of the bypass letter*, as opposed to waiting until an Appellant files an appeal with the Commission. This would provide all candidates with a clear, understandable explanation of the reasons for bypass, and better inform their decision about whether to file an appeal with the Commission.

Civil Service Commission

Christopher C. Bowman
Chairman
November 1, 2012



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

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BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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WEBSITE: www.mass.gov/dala

August 28, 2012

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Christopher Manca v. Department of Correction
DALA Docket No. CS-12-235
CSC Docket No. G1-12-35

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CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Christopher Manca
Kerry A. Rice

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

CHRISTOPHER MANCA,
Petitioner

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Petitioner:

Pro se

Appearance for Respondent:

Kerry A. Rice
P.O. Box 946
Industries Drive
Norfolk, Mal 02056

Administrative Magistrate:

Angela McConney Scheepers, Esq.

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Docket No: G1-12-35
CS-12-235

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CIVIL SERVICE COMMISSION

SUMMARY OF DECISION

The Department of Correction had reasonable justification for bypassing the Appellant for original appointment to the position of Correction Officer I because of his criminal history and his poor driving history.

RECOMMENDED DECISION

Pursuant to the provisions of M.G.L. c. 31, § 2(b), the Appellant, Christopher Manca (hereinafter "Manca" or "Appellant"), filed an appeal on February 3, 2012 of the Department of Correction's (hereinafter "DOC" or "Appointing Authority") decision to bypass him for original appointment to the position of Correction Officer I. A pre-hearing conference was held on

March 13, 2012 at the offices of the Civil Service Commission, One Ashburton Place, Boston, MA 02108. A full hearing was held on May 21, 2012 at the offices of the Division of Administrative Law Appeals (“DALA”), One Congress Street, Boston, MA 02114. The hearing was digitally recorded. The Respondent submitted a post-hearing brief on June 21, 2012.

Ten (10) exhibits were admitted into evidence. The Respondent’s prehearing memorandum was marked “A” for identification.

FINDINGS OF FACT

Based on the documents admitted into evidence and the testimony of:

For the Appointing Authority:

- James O’Gara, Personnel Officer II, Human Resources Division, Department of Correction

For the Appellant:

- Christopher Manca, Appellant

I make the following findings of fact:

1. The Appellant is a graduate of Mt. Wachusett Community College. As part of his study, he interned for two hundred hours at the Gardner Police Department. (Testimony of Appellant)
2. The Appellant is now working towards his Bachelor’s degree at Fitchburg State College. (Testimony of Appellant)
3. The Appellant has been working as a mall security officer for the last two years. (Testimony of Appellant)
4. The Appellant passed the civil service examination for the position of Correction Officer I on September 26, 2009. He received a score of 90% on examination Certification 4010045. (Stipulated Facts)

5. An eligible list of candidates for Correction Officer I was established on February 8, 2010.

(Stipulated Facts)

6. HRD sent the Certification of eligible candidates to the Appointing Authority on September

28, 2011. (Stipulated Facts)

7. On January 18, 2012, DOC notified the Appellant of his bypass due to an “unsatisfactory Criminal History Report (CORI).” (Stipulated Facts; Exhibit 2)

8. The sole offense listed on the Appellant’s CORI is operating a motor vehicle under the influence on June 16, 2010. The Appellant received a continuance without a finding for one year which was dismissed on June 20, 2011. (Exhibit 4)

9. The Appellant has a long and checkered driving history. He was found responsible for speeding five times between 2005 and 2009. Two of those violations occurred while the Appellant was in high school. In February 2010, the Appellant’s license was suspended indefinitely because of these five surcharge events. The suspension was overturned after he completed a class in April 2010. (Testimony of Appellant; Exhibit 7)

10. When the Appellant was charged with operating under the influence in May 2010, he automatically lost his license for one hundred eighty days for refusing to take the chemical test. His license was also concurrently suspended due to seven surcharge events. The Appellant did not get his license back until February 2011. (Testimony of Appellant; Exhibit 7)

11. James O’Gara has served as a Personnel Officer II for the DOC since 2006. It is part of his duties to process the civil service list for correction officer positions, reviewing the candidates’ CORIs and their driving histories. (Testimony of O’Gara)

12. The DOC bypassed the Appellant was bypassed due to his poor driving history and criminal background. Mr. O’Gara said that there is generally a five (5) year look back period for incidents that would disqualify a candidate. (Testimony of O’Gara; Exhibit 2)

13. The Appellant appealed DOC’s decision to the Commission on February 2, 2012. (Exhibit 1)

CONCLUSION

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001), citing *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 304 (1997). “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” M.G.L. c. 31, § 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. *Cambridge*, 43 Mass. App. Ct. at 304.

The Commission determines “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” *Id.* at 304. Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 214 (1971).

Bypass cases are decided based on a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has 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); M.G.L. c. 31, § 43.

The issue for the 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). See *Commissioners of Civ. Serv. v. Municipal Ct. of Boston*, 369 Mass. 84, 86 (1975); and *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 189 190-91 (2010), citing *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 824-26 (2006). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown.

The Commission has found that “it is permissible for the Department to review a CORI and make a determination based on the record as to whether the applicant should be denied.” See *Anderson v. Department of Correction*, 21 MCSR 647 (2008), *Dep’t of Correction v. Anderson and Civ. Serv. Comm’n*, No. 09-0290, Suff. Sup. Ct., (February 5, 2010) (superior court vacated Commission decision, finding that DOC could bypass candidate solely based on CORI report). Further, the DOC may rely on information in a CORI report to bypass a candidate, even if the

offenses were later dismissed. *Preece v. Dep't of Correction*, 20 MCSR 152 (2007) (DOC could rely on a CORI report even though the Appellant was exonerated on all criminal charges); *Lavaud v. Boston Police Dep't*, 17 MCSR 125 (2004) (Commission upheld bypass due to Appellant's long record of arrests although the charges were later dismissed); *Brooks v. Boston Police Dep't*, 12 MCSR 19 (1999) (Commission upheld original bypass despite age of criminal record).

The DOC had reasonable justification to bypass the Appellant. The DOC noted that the Appellant had a poor driving history, with surcharge events and license suspensions. He was also on probation until only last year for operating under the influence. The DOC especially considers any activity within the previous five years. The fact that the most serious events on the Appellant's record only occurred within the last year is very compelling.

The Appellant does not dispute that he has a poor driving history or that there is an operating a motor vehicle under the influence on his criminal record. Instead, he said that he had appealed the DOC decision so that he could ask for a chance. He explained that two of the surcharge events took place while he was in high school, traveling between school and his place of employment. He said that he has always wanted to be a correction officer and that his mother serves as a correction officer. He stated that he is now mature, but at the time of the events he lacked maturity. However, the fact remains that the Appellant was on probation until June 2011, just last year.

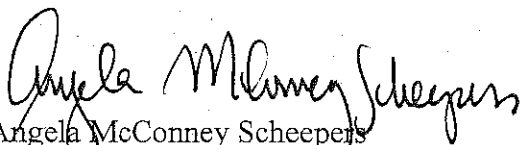
The DOC has the responsibility of hiring candidates who demonstrate good judgment, controlled behavior, and respect for others and the law. The DOC could reasonably infer that the Appellant's behavior, which occurred within approximately one year of DOC's review of his application and resulted in criminal charges against him, demonstrated a risk that the Appellant

may exercise the same poor judgment as a correction officer. This was a valid exercise of discretion based on merit and policy in which there was no evidence of political favoritism or bias.

The DOC has shown, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant for the position of Correction Officer I. The Commission lacks the authority "to substitute its judgment about a valid exercise of discretion based on merit and policy consideration by an appointing authority" *Burlington v. McCarthy*, 60 Mass. App. Ct. 914 (2004), quoting *Cambridge*, 43 Mass. App. Ct. 300, 304-05 (1997). "It is not for the Commission to assume the role of super-appointing agency, and to revise those employment determinations with which the Commission may disagree." *Burlington*, 60 Mass. App. Ct. 914, (2004).

Based on the preponderance of credible evidence presented at the hearing, I conclude that the Department of Correction was reasonably justified in bypassing the Appellant. Accordingly, I recommend that the appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS


Angela McConney Scheepers
Administrative Magistrate

DATED: **AUG 28 2012**