

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ANTONE MATTHEWS,
Appellant,

v.

G1-07-241

CITY OF BOSTON,
Respondent.

Appellant's Attorney:

Pro Se
Antone E. Matthews

Respondent's Attorney:

Jordan N. Ablon, Esq.
City of Boston Labor Relations
Boston City Hall Room 624
Boston, MA 02201
617-635-4525

Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Antone Matthews, (hereinafter, "Matthews" or "Appellant") seeks review of the State's Human Resource Division's (HRD) decision to accept the reasons proposed by the City of Boston (hereinafter "City") for bypassing him for original appointment to the position of Fire Fighter in the BFD. A full hearing was held on March 21, 2008 at the offices of the Civil Service Commission. One (1) tape was made of the hearing.

FINDINGS OF FACT:

Seven (7) exhibits and a stipulation of facts were entered into evidence at the hearing.

Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- Robert Moran, Human Resources Director, Boston Fire Department;

For the Appellant:

- Antone E. Matthews, Appellant;

I make the following findings of fact:

- 1) In April 2004, the Appellant took the BFD Civil Service Exam and scored 98, but was never contacted to begin the hiring process. (Stipulation)
- 2) In August 2006, the cognitive ability test given to minority applicants was found to be discriminatory; as a remedy, the City was required to hire six minority candidates and Appellant was placed at the top of the amended 2007 civil service exam list. (Testimony of Moran)
- 3) In January 2007, the Appellant was contacted by the City to begin the hiring process, beginning with a credit check, driving record check, criminal record check, employment check, and personal reference check. The Appellant completed the required application accurately and honestly. (Ex. 1, Testimony Moran)
- 4) The Appellant believed he had one felony on his record and admitted that on his application. (Testimony Moran)
- 5) The review process took place from December 2006 through January 2007. (Testimony Moran)

- 6) On April 18, 2007, Fire Commissioner Roderick Fraser sent the Human Resource Department (HRD) stating that the Appellant had been bypassed for original appointment due to a “lengthy criminal record”. (Ex. 5)
- 7) Specifically, the bypass letter stated that on August 19, 1994, the Appellant was arraigned on offenses of shoplifting, disorderly conduct, and assault and battery on a police officer. The disposition of these charges was continuance without a finding. The Appellant paid a fine and performed community service for the assault and battery on the police officer. (Ex. 5, 6, Testimony Appellant)
- 8) The Appellant testified that he was with someone who was shoplifting and did not attack a police officer, but that the officer got into the middle of a scuffle that occurred between them and a security guard to break it up, which resulted in the charge. He pled guilty so he could go away to college out of state that fall. (Testimony Appellant, Ex. 5 and 6)
- 9) The City’s bypass letter also stated On January 22, 1996 the Appellant was arrested in Georgia for Financial Transaction Card Theft, Financial Transaction Card Fraud, and Obstruction of Police Officers. The Appellant had been placed on probation in a matter in which he took responsibility, in court in Atlanta GA., for a stolen car when it was involved in an accident to cover for a friend and was charged with Theft of Lost or Mislaid Property. (Testimony Appellant, Ex. 5 and 6)
- 10) He pled no contest to these charges in Georgia and was found guilty, which violated his probation. He was sentenced to two years with a one year suspended sentence, but was institutionalized, paroled to a boot camp program and was

- 11) On September 17, 1996, he was arrested again for simple battery, but that charge was dismissed and the Appellant denies having committed it. (Ex. 2, 5, Testimony of Appellant)
- 12) On December 27, 1998, the Appellant was arrested for Assault with a Dangerous Weapon, Domestic Assault and Battery, and Malicious Damage to a Motor Vehicle. At the time, he was very intoxicated to the point that he blacked out and does not remember what happened. He paid a fine for these offenses, in Quincy court which were continued without a finding then dismissed one week later. (Ex. 2, Testimony of Appellant)
- 13) The Appellant has not had a drink since that incident. (Testimony Appellant)
- 14) Boston firefighters must be honest, trustworthy, and dependable to be qualified to effectively carry out their duties and responsibilities. (Ex. 5, Testimony Moran)
- 15) Under M.G.L. c. 274 § 1, a felony is any crime which is punishable by imprisonment in a state prison and all other crimes are misdemeanors.
(administrative notice)
- 16) Under M.G.L. c. 266 § 37C, credit card theft and fraud are crimes punishable by imprisonment in a state prison and are thus felonies. Therefore, if the Appellant had been charged in Massachusetts for the crimes involving the credit cards instead of Georgia, the offenses would have been felonies. (administrative notice)
- 17) The Appellant also admitted to being convicted of a felony when filling out his paperwork. (Ex. 1, Testimony Appellant, Moran)

- 18) The City produced convincing evidence as to why a criminal record is a serious concern to the Fire Department. Specifically, the City stated that it is the responsibility of fire fighters to safeguard the public and enforce the fire prevention and arson laws of the Commonwealth. They may also cite individuals and initiate court actions based on the state fire code and criminal violations related to fire and public safety laws. Fire fighters must also be honest, trustworthy, and dependable for the effective discharge of duties in a public safety department and cannot be compromised. Having an extensive criminal record may diminish the Appellant's credibility when he is needed to testify in court and his criminal behavior conflicts with intents and goals of a public safety department. The Appellant's criminal past is also likely to lower the trust and feeling of safety that the community places in the City. Finally, the Appellant has shown a disregard for the law in committing these crimes and may be unable to conform to the Rules and Regulations of the Department. (Exs. 5 & 6, testimony of Moran)
- 19) The Appellant graduated from Norfolk State College in Virginia, in 2002 with a Bachelor of Science degree in Biology. (Ex. 1, Testimony Appellant)
- 20) The Appellant has been gainfully employed since 2003 and has been working as a middle school science teacher since July 2005. (Ex. 1, 3, Testimony Appellant)
- 21) The Appellant received a somewhat unfavorable reference from Carletha Shaw, a principal at the first school where he worked. The principal stated in the reference that the Appellant was "disciplined for improper actions at work" and that she would rehire the Appellant but "with some reservations". The Appellant testified

- 22) The Appellant coaches girls' swimming and boys' track teams and has a Mortgage Broker's License in the State of Florida. (Ex. 3, Testimony Appellant)
- 23) The Appellant also has three sons that are 1, 6, and 9 years old. (Testimony Appellant)
- 24) The Appellant is straight-forward and direct in his answers. He could almost be described as honest to a fault. He displayed a detailed memory of the incidents vaguely outlined in the exhibits, regarding past criminal charges and court appearances. He admitted to negative facts that could not be proven otherwise. He is very honest, but has made some bad choices and shown poor judgment in the past. He is likeable, polite and engaging. I find his testimony to be credible. He presents himself as a person who has grown through experience and is now a responsible and mature man. (Ex. 5, Testimony Appellant)

CONCLUSION

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). 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

_____, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by 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 Commission, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

Appointing Authorities are rightfully expected to exercise sound discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The appointing authority may not be required to appoint any person to a vacant post. “He may select, in the exercise of a sound discretion, among persons eligible for promotion or may decline to make any appointment. *See* Commissioner of the Metropolitan Dist. Commn. v. Director of Civil Serv. 348 Mass. 184, 187-193 (1964). *See also* Corliss v. Civil Serv. Commrs. 242 Mass. 61, 65; (1922) Seskevich v. City Clerk of Worcester, 353 Mass. 354, 356 (1967); Starr v. Board of Health of Clinton, 356 Mass. 426, 430-431 (1969). Cf. Younie v. Director of Div. of Unemployment Compensation, 306 Mass. 567, 571-572 (1940). The Appointing Authority is also assumed to make selections among the eligible candidates with honesty and good faith. A judicial judgment should "not be substituted for that of . . . [a] public officer" who acts in good faith in the performance of a duty. *See* M. Doyle & Co. Inc. v. Commissioner of Pub. Works of Boston, 328 Mass. 269, 271-272.” Goldblatt vs. Corporation Counsel of Boston, 360 Mass 660, 666, (1971) 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 Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, 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. City of Cambridge, 43 Mass. App. Ct. at 304.

Although I don't doubt his sincere desire to serve as a Fire Fighter for the City of Boston, the City has provided reasonable justification for bypassing him for appointment. The City expressed a legitimate concern raised by the Appellant's criminal activity and court appearances, which span over a period of five years. The City provided explanations for why these offenses would affect his ability to be a competent fire fighter if he were appointed to the position. The traits of trustworthiness and good judgment are necessary for a fire fighter to perform his duties and responsibilities properly. Specifically, the City stated that it is the responsibility of fire fighters to safeguard the public and enforce the fire prevention and arson laws of the Commonwealth. They may also cite individuals and initiate court actions based on the state fire code and criminal violations related to fire and public safety laws. Fire fighters must also be honest, trustworthy, and dependable for the effective discharge of duties in a public safety department and cannot be compromised. Having an extensive criminal record may diminish the Appellant's credibility when he is needed to testify in court and his criminal behavior conflicts with intents and goals of a public safety department. The Appellant's criminal past is also likely to lower the trust and feeling of safety that the community

places in the City. Finally, the Appellant has shown a disregard for the law in committing these crimes and may be unable to conform to the Rules and Regulations of the Department. The Appellant's record includes crimes against public safety officials and felonies, which bodes against the honesty and trustworthiness of the candidate. The Appellant also showed poor judgment in listing as a reference, an employer with whom he did not get along very well, without stating an anticipatory explanation.

It is the function of the hearing officer to determine the credibility of the testimony presented before him. *See* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997). *See also* Covell v. Dep't of Social Services, 439 Mass. 766, 787 (2003); (In cases where live witnesses giving different versions do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing); Connor v. Connor, 77 A. 2d. 697 (1951) (the opportunity to observe the demeanor and appearance of witnesses becomes the touchstone of credibility).

Here, there is no evidence of any inappropriate motivations on the part of the City. Robert Moran was a credible witness whose only interest was in selecting the best candidate for the position of Fire Fighter. The Appellant was also a credible witness; he was honest about the offenses and has shown that he has made efforts to improve his life. The Appellant has shown a pattern of criminal behavior over a number of years; this was not one isolated incident. The Appellant did admit to the underlying facts and circumstances of these criminal offenses. Although this commissioner believes that the Appellant has changed his life around and corrected his prior bad behavior and poor

judgment, there is a need of a longer period of time to establish and document this turn around. The Commission would encourage him to reapply for the position of Firefighter after he has established a longer period of documented law abiding and responsible behavior.

Upon consideration of all the credible and reliable evidence in the record, I conclude that the City of Boston shown by a preponderance of the evidence, that it did have sound and sufficient reasons for bypassing the Appellant, Antone Matthews, for selection as a firefighter.

For all of the above reasons, the appeal under Docket No. G1-07-241 is hereby *dismissed*.

Civil Service Commission,

Daniel M. Henderson,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein, and Taylor, Commissioners on July 9, 2009)

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Antone Matthews (Appellant)

Jordan Ablon, Atty. (City of Boston)

John Marra, Atty. HRD