

The Commonwealth of Massachusetts

Decision mailed: 10/2/09
Civil Service Commission *JB*

CIVIL SERVICE COMMISSION

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

DANIEL P. McGRATH,
Appellant

v.

CITY OF LOWELL
Respondent

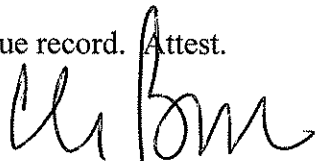
Case No.: G1-08-255

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on October 1, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 18, 2009. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on October 1, 2009.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 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 to:

Daniel P. McGrath, (*pro se*)
R. Eric Slagle, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)
John M. Marra, Esq. (HRD)



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
98 NORTH WASHINGTON STREET, 4TH FLOOR
Boston, MA 02114

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August 18, 2009

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

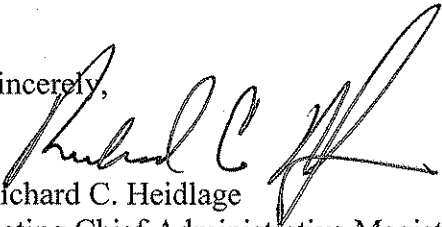
Re: Daniel P. McGrath v. City of Lowell
DALA Docket No. CS-08-828

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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
Acting Chief Administrative Magistrate

RCH/das

Enclosure

cc: Daniel P. McGrath
R. Eric Slagle, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Daniel P. McGrath,
Appellant

v.

Docket No. G1-08-255
DALA No. CS-08-828

City of Lowell,
Appointing Authority

Appearance for Appellant:

Daniel McGrath, *pro se*
[REDACTED]
[REDACTED]
[REDACTED]

Appearance for Appointing Authority:

R. Eric Slagle, Esq.
City of Lowell
375 Merrimack Street
Lowell, MA 01852

Administrative Magistrate:

Maria A. Imparato, Esq.

SUMMARY OF RECOMMENDED DECISION

The City of Lowell has sustained its burden of proving that there was reasonable justification for bypassing the Appellant for appointment as a police officer in view of his poor driving record that includes five citations for motor vehicle violations and five license suspensions between 1999 and 2006.

RECOMMENDED DECISION

Under G. L. c. 31, s. 2(b), Daniel McGrath appeals the action of the Personnel Administrator in accepting reasons proffered by the City of Lowell in bypassing him for appointment as a police officer in the Lowell Police Department.

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I held a hearing on January 26, 2009 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA. I admitted documents into evidence. (Exs. 1 – 6) Sergeant Thomas Fleming, Director of Recruitment and Hiring in the Lowell Police Department, testified on behalf of the Appointing authority. Mr. McGrath testified on his own behalf.

FINDINGS OF FACT

1. Daniel McGrath, d.o.b. 3/17/1972, took the Civil Service examination to become a police officer in the City of Lowell. His name appears on the Human Resources Division Certification list #280025 dated January 11, 2008. (Ex. 1; Testimony, Fleming.)
2. Sgt. Fleming obtained Mr. McGrath's driving record from the Registry of Motor Vehicles which demonstrated that Mr. McGrath had five surchargeable events and five license suspensions between February 1999 and September 2006. (Ex. 5; Testimony, Fleming.)
3. Mr. McGrath's license suspensions were for failure to pay fines. Eventually all of the fines were paid. The failure to pay fines goes to the issue of Mr. McGrath's character. (Testimony, Fleming.)
4. Sgt. Fleming did not consider Mr. McGrath's driving record prior to February 1999 because a letter from the State of Colorado dated in May 1998 indicated that the record of another person with Mr. McGrath's name and date of birth had become entangled with Mr. McGrath's information. Sgt. Fleming therefore looked at Mr. McGrath's driving record in the light most favorable

to Mr. McGrath by looking only at events that occurred after February 1999.

(Testimony, Fleming.)

5. By letter of April 20, 2008, Lowell Police Superintendent Kenneth Lavallee advised the Human Resources Division that he was bypassing Mr. McGrath for appointment as a police officer due to his poor driving history in the Commonwealth that included five citations for motor vehicle violations and five license suspensions. (Ex. 2.)
6. By letter of July 29, 2008, the Human Resources Division informed Mr. McGrath that the City of Lowell's reasons "are acceptable for removing you from not only this certification but also the 2007 Lowell eligible list." (Ex. 3.)
7. Mr. McGrath filed an appeal with the Civil Service Commission on October 9, 2008. (Ex. 4.)
8. Of the Lowell Police Officers who were appointed from certification list #280025, no one had a driving record as poor as, or worse than, Mr. McGrath's driving record. All candidates in the pool who had a driving record as poor as, or worse than, Mr. McGrath's driving record were bypassed for appointment. (Testimony, Fleming.)

CONCLUSION AND RECOMMENDATION

The City of Lowell has sustained its burden of proving that there was reasonable justification for bypassing Daniel P. McGrath for appointment as a Lowell Police Officer in view of his poor driving record.

The role of the Civil Service Commission in bypass cases is to find whether, on the basis of the evidence before it, 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 Serv. Comm'n*, 43 Mass. App. Ct. 300, 303 (1997). “‘Justified’” in the context of review, 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.’” *Id.* At 304 (citing *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928)). The Civil Service Commission cannot “substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *Id.*

The City of Lowell bypassed Mr. McGrath based solely on his poor driving record. In view of the fact that police officers drive department police cruisers, the City needs to hire police officers who are safe and careful driver. The City of Lowell was therefore reasonably justified in finding that five motor vehicle citations and five license suspensions between 1999 and 2006 render Mr. McGrath unsuitable for the job of police officer.

In the recent case of *Jones v. Boston Police Department*, G1-07-392, 21 MCSR 568 (2008), the Commission upheld the bypass of a candidate for the job of police officer where his driving record included three motor vehicle accidents where he was found to be more than 50% at fault between 1993 and 2006; ten motor vehicle citations between 1994 and 2005; and non-payment or payment by bad checks of citations on eight occasions, as well as an employment record marked by a discharge for failing to follow the “no call/no show” rule of the employer.

The Commission concluded that the Appointing Authority was “justified in disqualifying a candidate whose driving record is problematic and presents a reasonable

concern about the candidate's judgment, respect for the law and prudent operation of a motor vehicle," and that the Appellant's "driving record presents an unacceptable risk for someone seeking to be appointed a Boston police officer." *Id.* At 572.

I conclude that the City of Lowell's reasons for bypassing Mr. McGrath were true and were applied equally to the other bypassed candidates, the allegations of poor driving are capable of substantiation and the City of Lowell did not use Mr. McGrath's driving record as a pretext for other impermissible reasons to bypass him. *Borelli v. MBTA*, 1 MCSR 6 (1988).

I recommend that the Civil Service Commission affirm the bypass of Mr. McGrath as a Lowell Police Officer.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imparato

Maria A. Imparato
Administrative Magistrate

DATED: **AUG 18 2009**