**COMMONWEALTH OF MASSACHUSETTS**
**CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**MATTHEW McMANUS,**
*Appellant*

**CASE NO. G1-19-024**

v.

**WALTHAM FIRE DEPARTMENT,**
*Respondent*

Appearance for Appellant:

Joseph G. Donnellan, Esq.
Rogal & Donnellan, P.C.
100 River Ridge Drive, Suite 203
Norwood, MA 02062

Appearance for Respondent:

Bernadette Sewell, Esq.
City of Waltham Law Department
119 School Street
Waltham, MA 02451

Çommissioner:

Paul M. Stein

## DECISION

The Appellant, Matthew McManus, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), from his bypass for appointment as a Firefighter with the City of Waltham Fire Department (WFD).[1] A pre-hearing conference was held at the Commission's Boston office on September 4, 2018 and a full hearing was held at the Law Department of the City of Waltham on April 30, 2019 and May 11, 2019, which was digitally recorded.[2] Ten (10) exhibits (*Exhs. 1 through 9 & 11)* were received in evidence and one exhibit was marked for Identification (*Exh. 10*). I reserved Exh. No. 12 to be submitted by Waltham

[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.

after the hearing, but it was not received.[3] As announced at the hearing, I have taken administrative notice of a Google® map of the Appellant's residence, marked as an additional exhibit (*PHExh.13*).[4] Proposed Post-Hearing Decisions were filed on October 8, 2019 by the WFD and on October 15, 2019 by the Appellant. For the reasons stated below, Mr. McManus's appeal is allowed.

**FINDINGS OF FACT**

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

*Called by the Appointing Authority*:

- Timothy Cadman, Police Officer, Waltham Police Department
- Scott Perry, Lieutenant, Waltham Fire Department

*Called by the Appellant:*

- Matthew McManus, Appellant

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, Matthew McManus, is a life-long resident of Waltham, MA. He resides with his parents in a home located on a wooded, sparsely populated dead-end street. (*Exhs. 3 & 13; Testimony of Appellant*).

2. Mr. McManus graduated from high school in 2008 and attended Nichols College and UMass Boston, where he earned 69 credits toward a Bachelor's Degree in Management. (*Exh. 3: Testimony of Appellant*)

3. While in college, Mr. McManus was involved in two alcohol-related incidents. In October 2009, he was found intoxicated in a dormitory stairway and fled from campus security officers who were then performing rounds. In February 2010, he had become intoxicated and engaged in a verbal argument with another student which required a campus security officer to

[3] The document related to the application of one of the candidates who bypassed Mr. McManus. I draw no adverse inference, however, from Waltham's failure to produce the document. It would not change this Decision.

[4] The neighborhood's geography is relevant to one of the disputed reasons stated in the WFD's bypass letter. (*Exh.4*)

intervene. In March 2010, Dudley police responded to a fist-fight between Mr. McManus and several others, in which Mr. McManus was kicked and his jaw broken. The police report indicated that assault and battery charges were going to be filed against McManus and one of the other parties, but no record of such charges appears on Mr. McManus's criminal record. (*Exh. 3*)

4. Mr. McManus works for a commercial construction company that performs site utility and related heavy construction work. Initially hired in 2005 as a laborer, he was recently promoted and currently holds the title of operator, which involves supervision of crews, dealing with "hazmat" abatement, as well as operation of heavy construction equipment (e.g., front-end loaders and large [12,000 lb.] excavators). He holds a Massachusetts Hoisting License and an Asbestos Abatement Supervisor's License. (*Exhs.2 & 3; Testimony of Appellant*)

5. For about four years prior to his recent promotion to operator, Mr. McManus also held a second job with a towing company, where he operated a wrecking truck, towing over 1000 vehicles involved in break-downs, rollovers and other serious accidents. His assignment included covering accidents on the Mass. Pike, and required working side-by-side at accident scenes with State Troopers and municipal police and fire departments. (*Exhs 2 & 3, Testimony of Appellant*)

6. Both of Mr. McManus's employers are subject to the U.S. Department of Transportation mandatory drug testing protocols and have a zero-tolerance policy for alcohol and substance abuse. (*Testimony of Appellant*)

7. In September 2010, while still a minor, Mr. McManus was seen driving erratically in a residential neighborhood. The Waltham Police responded and administered a field sobriety test which he failed. He was arrested and taken into custody and, according to the booking officer, yelled obscenities at him and was "arrogant and obnoxious." Although the booking officer stated that Mr. McManus "could not understand the OUI form even after I read it 3 times and he read it

twice", he took a breathalyzer test and blew twice the adult legal limit. He was charged with DWI and required to complete a Youth Alcohol Program. In October 2010, after completing that program, his driver's license was reinstated and the criminal charges were continued without a finding for one year. The criminal case was dismissed in October 2011. (*Exhs. 2 & 3*)

8. In May 2012, Mr. McManus's father received a call from a friend of Mr. McManus (the Appellant), who had been drinking with him in a bar in Boston and said that the Appellant was too intoxicated to drive and needed a ride home. Mr. McManus (the father) drove to Boston and picked up his son (the Appellant). After they arrived home, Mr. McManus (the son) became angry and started acting out of control until he (the father) called the Waltham police. When the police arrived, Mr. McManus (the Appellant) was standing in the hallway with his back to the door and "screaming at the top of his lungs". He was escorted outside where he "started to calm down and stated that . . . he would cooperate with the Police." He was placed in protective custody and transported to the Waltham Police station, booked and placed in a cell. No criminal or civil complaints were issued. (*Exh.3*)

9. In April 2016, Mr. McManus took the civil service examination for Firefighter and received a score of 100. He was placed on the eligible list established in November 2016 as the top scoring civilian candidate. *(Stipulated Facts; Testimony of Appellant*)

10. Mr. McManus's name appeared on Certification # 05032 dated October 27, 2017, issued by the Massachusetts Human Resources Division (HRD) to the WFD to hire a class of Firefighters. Mr. McManus's name appeared in 11th place, seventh in rank among the candidates who signed willing to accept appointment. (*Exh. 1*)

11. Mr. McManus attended an orientation for candidates held by the WFD at which he learned that the WFD application consisted of two parts, a 21-page application including 45

questions about his education, employment, personal relationships and references; and a second Supplemental Information form containing 42 additional questions about his personal life, criminal history, civil court cases and income tax filings. The first part was to be returned with all required documentation on or before November 20, 2017; the second part would be provided to the Waltham Police Officer later assigned to perform a background investigation of his application. His background interview date was his "Amnesty Day" and, if he discovered that he had made any mistakes in his application, he would be allowed to correct them at the interview and the mistakes would not be held against him. (*Testimony of Appellant*).

12. Mr. McManus completed the first part of the application and returned it to the WFD on or about November 16, 2017. Question 29 in the application asked "Has your license ever been suspended or revoked," to which he answered: "YES" and stated, the "reason(s) for revocation" as "OUI resulted in a CWOF in September 2010." (*Exh. 2*)

13. The first part of the application contained several pages of disclosures, disclaimers and waivers, Most needed to be signed before a notary. These documents included the following:

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> "I MATTHEW MCMANUS do hereby authorize a review of and a full disclosure of all records and information, or any part thereof, concerning myself, by and to any duly authorized agent of the Waltham Fire Department, where the said records and or information are public, private or confidential [in] nature."
>
> "*The intent of this authorization is to give my consent for a full disclosure of any and all records and information* . . . which may provide pertinent date for the Waltham Fire Department to consider in determining my suitability for employment by the Waltham Fire Department, *including but not limited to* . . . *records of complaints, arrest, trial and/or convictions for alleged or actual violations of the law, including criminal, civil and/or traffic records* . . . and to include the records and recollections of attorneys at law or other counsel, whether representing me or another person . . ."
>
> I agree to indemnify and hold harmless the Waltham Fire Department . . . and its agents and employees, from and against all claims . . . arising out of or by reason of complying with this request."

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"*CORI REQUEST FORM. Waltham Fire Department has been certified by the Criminal History Systems Board for access to convictions and pending criminal case data. As an applicant/employee for the position of Firefighter I understand that a criminal record check will be conducted for convictions and pending criminal case information only and that is [sic] will not necessarily disqualify me*."

(*Exhs.2 & 3*) (*emphasis added*)

14. On January 17, 2018, Mr. McManus was interviewed by a five-member committee consisting of a WFD Fire Captain, two WFD Fire Lieutenants, a WFD Firefighter and the City of Waltham HR Director. A video recording of the interview was introduced into evidence. The interview, lasting approximately 35 minutes, followed a semi-structured format, with panel members asking several "stock" questions as well as engaging in personal colloquy particular to each candidate. The committee had the first part of Mr. McManus's application, but his background interview had not been conducted and they did not have the Supplemental Information form. (*Exh. 7A; Testimony of Appellant & Lt. Perry)*

15. Toward the end of the interview, Mr. McManus was asked: "What do you want us to know, good or bad, that isn't in the application" and "might come up in the background investigation". Mr. McManus mentioned that, in high school, he did get disciplined a lot. (*Exh 7A; Testimony of Appellant & Lt. Perry*)

16. None of the committee members asked Mr. McManus about the DWI disclosed on the application or asked anything about his drinking habits, past or present. Mr. McManus (and each other candidate) was told that, after the background investigation was complete, candidates "may or may not" be called back if there were additional questions but, whether or not he was called back or whether others were called back and he was not, he shouldn't read anything positive or negative about his status from that. (*Exh. 7A & 7B)*

17. On January 29, 2018, Waltham Police Officer Timothy Cadman conducted a background interview with Mr. McManus. Prior to the interview, Officer Cadman performed a criminal history check and obtained a number of incident reports from the Waltham Police Department and other law enforcement agencies. (*Exh.3; Testimony of Appellant & Officer Cadman*)

18. At the outset of the interview, Mr. McManus was asked to review the first part of the application packet he had submitted and was told that he could make any changes or corrections prior to beginning the interview. Mr. McManus said that the application was accurate, which it was. (*Exh. 3; Testimony of Appellant & Officer Cadman*)

19. Mr. McManus then provided Officer Cadman with his completed Supplemental Information form. Upon reviewing it, Officer Cadman saw that Mr. McManus checked off "NO" to a question that asked if he had ever been placed in "protective custody for alcohol."[5] Having already obtained the Waltham Police incident report on that matter, Officer Cadman asked Mr. McManus about the discrepancy. Mr. McManus apologized for the omission, stating that "he and his father have not talked about the incident since" and he had forgotten about it. (*Exh. 3; Testimony of Officer Cadman*)

20. Officer Cadman had Mr. McManus complete the following handwritten statement which he attached to the application packet and noted in his report, without comment:

> "I am writing this to acknowledge that I made a mistake on my application because I forgot that I had been placed in protective custody in 2012 due to an argument with my dad. I blocked out this incident because it is not one of my proudest moments in life."

(*Exh. 3; Testimony of Appellant & Officer Cadman*)

21. Officer Cadman formed an opinion that Mr. McManus "appeared to be forthcoming and honest." He reported: "When discussing details about his operating under the influence arrest, he

[5] This question was one in a series of eight questions which asked him to disclose whether he had ever been convicted of a felony, misdemeanor or "sexual offense", had any criminal charges pending, or was ever imprisoned after conviction for a crime, the subject of a c.209 restraining order or currently on parole or probation. (*Exhs. 3 &5*)

appeared remorseful and it was apparent to me that he took the matter seriously. He answered all my questions without hesitation." (*Exh.3; Testimony of Officer Cadman*)

22. Officer Cadman also interviewed Mr. McManus's father and learned that the May 2012 incident was the "one and only time Matthew has ever acted that way" and that "he hardly sees his son drink anymore." (*Exh. 3; Testimony of Officer Cadman*)

23. Officer Cadman conducted a phone interview with a former girlfriend identified in the application (who Mr. McManus started dating in high school). She never knew him to use illegal drugs and said he "drank like a normal college kid." She has not stayed in touch since they broke up in 2009 but said that "while he was growing up", he had "problems with people who were not white Americans" or who were "different from him". She could not give any specific examples. (*Exh. 3; Testimony of Officer Cadman*)[6]

24. Officer Cadman also came across a 2014 Beverly Police incident report about an altercation involving Mr. McManus, his current girlfriend (Ms. A) and neighbors in her apartment's elevator. The neighbors alleged that Mr. McManus called them out, using the "n" word. Mr. McManus admitted that there had been an argument, but adamantly denied ever using racist comments. The police report notes that Ms. A's "child [from a former relationship] is biracial." The responding officers filed a report but took no other action. (*Exh. 3*)

25. Officer Cadman interviewed Ms. A, who has been dating Mr. McManus for about 5 years. They have one daughter together for whom Mr. McManus is a "wonderful father". She also confirmed that she has an 11-year old daughter from a prior relationship who is bi-racial and "Mr. McManus is great with her as well." (*Exh. 3*)

[6] When Officer Cadman spoke on the phone with the former girlfriend's mother, she called Mr. McManus "a sweetheart" and a "hard worker" who always "treated her daughter with respect" and would recommend him for hire by the WFD. (*Exh. 3; Testimony of Officer Cadman*)

26. Asked about the 2014 Beverly incident, Ms. A took responsibility for getting angry with the neighbors, which she attributed to anxiety about her pregnancy (she delivered the next day). Mr. McManus actually intervened to diffuse the situation. Neither of them used any racist language. She has never heard Mr. McManus use negative language about another person's race, gender or sexual orientation. She would not be with him if that were the case. (*Exh. 3*)

27. Officer Cadman's background investigation produced positive interviews with every one of more than two dozen persons, including several law enforcement officers, a former college roommate (who is Hispanic), past and current employers and co-workers (including one African-American who called Mr. McManus a "close friend" and "stand-up guy" without "any negative feelings about anyone based on race"), as well as other personal references and neighbors. (*Exh. 3*)

28. Officer Cadman had several follow-up conversations with Mr. McManus after his initial interview. He "spoke at length" with Mr. McManus about the Beverly incident. Mr. McManus confirmed that the argument was between his pregnant girlfriend and a female party in the elevator. He denied that he or his girlfriend ever used any racial remarks. (*Exh. 3; Testimony of Appellant & Lt. Perry*)

29. In his final report 23-page report dated February 20, 2018, Officer Cadman concluded:

> "While performing the background investigation of Mr. McManus, *I found him to be very responsive and quick to do anything I asked of him. He appeared to be very honest and forthcoming at all times* that we spoke." [7]
>
> "After speaking with Mr. McManus, his girlfriend, his family and his friends and co-workers *I have found nothing that led me to believe that he is a racist, sexist or is in any way prejudice [sic] against anyone*. I spoke to people of different backgrounds and who have known Mr. McManus at different points of his life. They all described him as being friendly, nice and easy going. Besides his ex-girlfriend, no one mentioned anything about Mr. McManus having any sort of prejudice. *I spoke with several people*

[7] At the Commission hearing, Officer Cadman testified that, his report notwithstanding, he found it "hard to believe" that Mr. McManus would have forgotten being placed in a jail cell. I gave that statement some, but diminished weight compared to the contemporaneous opinions provided in his written report.(*Testimony of Officer Cadman*)

*who are in law enforcement who know Mr. McManus personally. No one had anything negative to say about him and no one thought that he had any negative views on anyone based on race, gender or sexual orientation.*"

"All of Mr. McManus's co-workers described him as being extremely hard working and family oriented. *He is usually the first one to the job site each day and appears to be respected amongst his peers and supervisors. Mr. McManus holds two (2) jobs and appears to be excelling in both*."

"*In my opinion, Mr. McManus had an issue with alcohol when he was younger* which led him being in several difficult situations. *He has admitted to his mistakes* and has said that he has learned from them. *Since 2012, Mr. McManus has not received a traffic citation or been in trouble with law enforcement.* He appears to be family driven and doing his best to achieve his goal of becoming a firefighter or police officer."

(*Exh 3 (emphasis added);: Testimony of Officer Cadman*)

30. The WFD ultimately appointed seven candidates to the position of Firefighter from Certification #0503, one candidate who was ranked above Mr. McManus and six candidates from the 13th tie group ranked below him. The higher ranking candidate and two of the lower-ranked candidates were appointed on October 29, 2019; one lower-ranked candidate was appointed on November 7, 2018; the remaining candidates were appointed on December 2, 2018. (*Exhs.1 & 11*)

31. As of November 15, 2018, at least four of the candidates had started their training at the Massachusetts Firefighting Academy. (*Exhs. 8 & 9*)

32. By letter dated December 3, 2018 to Mr. McManus from the Waltham Human Resources Director, he was informed that "[t]he hiring committee had very difficult decisions to make, and, in the end, I regret to inform you that you were not selected for hire."(*Exh. 4)*

33. Attached to the December 3, 2018 letter was a letter dated November 28, 2018 entitled "Certification #05032 – PAR.09 Removal Request" addressed to HRD's Civil Service Unit.[8] The letter was drafted by WFD Lt. Scott Perry after a discussion among the five members of the

[8] There was no evidence that HRD received the November 28, 2019 letter or took any action on it. Insofar as the letter was intended to request a PAR.09 removal, or if HRD had done so, that action would now be moot because the relevant eligible list expired prior to the bypass.

interview panel and, then, presented by the Fire Captain who headed the interview committee for signature by WFD Fire Chief Thomas MacInnis. There was no evidence as to when the committee reached its final conclusion or when the letter was drafted. No other documentation was known to have been provided to Chief MacInnis. (*Exh.4; Testimony of Lt. Perry*)

34. The November 28, 2019 letter stated that the WFD "is bypassing, non-selecting applicant Matthew McManus from Certification #05032 for appointment to the Waltham Fire Department" for the following specific reasons:

> ***Omissions/Veracity*** . . . "[E]ach applicant is asked if there is anything not listed on the application that may turn up during the background investigation, good or bad, that the [hiring committee] board should know about or anything the applicant would like to explain. The question is designed to afford the interviewee . . . an opportunity to offer a description or explanation for anything negative that may come up during the background investigation. [Mr. McManus] confidently stated, "No". However, during the background investigation, it was revealed that in May of 2012 Mr. McManus had been placed in police protective custody due to being intoxicated and creating a public disturbance, a fact that Mr. McManus failed to mention during the interview. . . . This omission . . . was gleaned and discussed during the initial meeting with his assigned background investigator. When asked about this omission, Mr. McManus stated he was extremely ashamed of the event but also stated that he simply forgot about the protective custody incident. . . ."
>
> [Quoting the background investigator's report in which he reports that Mr. McManus had "blocked it out of his memory" and "apologized for the omission"]
>
> "The omission during the hiring committee interview gives the impression of being intentional and deceiving. To say it was an embarrassing moment in your life and then say you forgot about it appears to be both contradictory and contrived. Further, to compound this by deliberately answering, "No" when asked directly about protective custody demonstrates an intentional deception on Mr. McManus's part so as to not provide a negative image of himself."
>
> ***Conduct not Becoming, Maturity and Character*** . . . "Another area of concern is Mr. McManus's lack of accounting for an OUI arrest. Mr. McManus was involved in [a] motor vehicle crash where he drove off the road while intoxicated. The background investigator asked Mr. McManus about this incident and Mr. McManus stated that he made a huge mistake and he learned from it. Operating a motor vehicle while intoxicate [sic] is concern enough especially for persons who would be responsible for operating oversized, extremely heavy fire apparatus during emergency situations. However, the police accounting of Mr. McManus's attitude and conduct during this arrest brings about further concern."

> [Quoting the booking officer's observations about Mr. McManus's arrogant, obnoxious and obscene behavior while being booked]
>
> "Police, Fire and EMS are all public servants working side-by-side with each other. A requisite level or [sic] trust and respect between these branches of public service must exist and is required to mitigate various challenging incidents every day. Mr. McManus's comments during booking demonstrate a particular bias against law enforcement, one which could be viewed as problematic for a public servant."
>
> "Still, adding to the concern is the timing of the aforementioned and omitted intoxication/public disturbance protective custody episode. . . . approximately six months (6) months after the OUI continuance tolled. Mr. McManus's actions contradict his statement that he learned from his mistake. It appears the lessons of the OUI were not heeded."
>
> "Another troubling issue pertaining to Mr. McManus's character which revolves around statements by a background reference who mentioned Mr. McManus may have issues with differing cultures."
>
> [Quoting background investigation report of telephone interview with former girlfriend]

(*Exh. 4*)

35. At the Commission hearing, Lt. Perry (the only committee member to testify) explained that, the November 28, 2018 letter intentionally listed only negative concerns about Mr. Manus that the committee "as a group" had agreed upon as reasons for the bypass because he understood that was what civil service bypass rules required. The committee made no record of its assessment, took no formal vote, and Lt. Perry could not recall the specific views, positive or negative, of any particular committee member. Speaking solely for himself, his opinions were as follows:

- Neither the DWI nor protective custody incident or any other "youthful indiscretion" was "in and of itself", disqualifying.
- The conduct that refuted Mr. McManus's claim that he had "learned his lesson" included his silence during the committee interview about the DWI and the protective custody incident when asked by the committee if there was "anything they should know about him", and lying about the 2012 protective custody incident on the Supplemental

Information form. Lt. Perry also took into account that he believed the protective custody incident had involved a "public disturbance", as stated in the bypass letter, and believed that, had it been a few months earlier, while Mr. McManus was still serving his one-year "continuance", the CWOF would have been changed to a conviction.

- Mr. McManus's conduct while being booked in for DWI in 2010 also showed another "troubling" character flaw, namely, a "bias against law enforcement" which "could be viewed as problematic", making it hard for him to be respected by police officers with whom he would be required to work in responding to emergency calls. However, when asked how Mr. McManus could be held accountable for behavior in custody while extremely intoxicated, Lt. Perry did not have any clear explanation. He conceded that Mr. McManus's intoxication was a factor that could "tip the balance" and explain why his behavior might not equate to intentional bias.
- Mr. McManus's explanation that he had forgotten about the protective custody incident until Officer Cadman brought it up was "potentially" true, but Lt. Perry disbelieved it because he "assumed" Mr. McManus would have researched all the Waltham Police incident reports and must have seen the protective custody report before he completed his application.
- As far as the alleged character flaw that Mr. McManus was, in effect, a bigot, Lt. Perry did not, personally, share that opinion, nor could he identify any other committee member who supported that finding.
- The decision was not based on any single negative factor, but on the "general gist" of the "totality" of all of them.

(*Testimony of Lt. Perry*)

36. Two other candidates (from the 13th tie group) who bypassed Mr. McManus were not disqualified despite incidents that reflected patterns of immaturity and disregard for the law.

- Candidate A, was charged in 2012 with disturbing the peace, after police responded an "out-of-control" house party in progress. He was taken into protective custody in 2013 after becoming intoxicated at a music concert and causing a public disturbance. In 2016, police found him fishing with friends on land he "knew they were not supposed to be on", and the officers "took their information", but Candidate B claimed he "never knew that [he] had been summoned to court for trespassing." (*Exh. 6A*)
- Candidate B admitted to being a regular marijuana user for years. He was the subject of three substance abuse incident reports while in college during 2011-2012. He was put on academic probation and later dropped out of school. He also dropped out of another college in 2014 because he still "wasn't driven to succeed". He had several driving citations, including a 2010 citation for leaving the scene of an accident. He said the "light went off" in 2016 after deciding to become a firefighter and that turned his life around. One of his references, who knew him his entire life, thought he "had issues dealing with his immaturity and purpose in life and it's taking him a long time to grow up." The background investigator also noted: "It appears on the surface that [Candidate B] did in fact have a time period of immaturity; irresponsibility and uncertainty . . ." (*Exh. 6B*)

37. During the Commission hearing, Lt. Perry was asked why (in the nine months between the background interview and the bypass) Mr. McManus was not invited back for a follow-up interview with the committee to allow him to address matters uncovered during the background investigation. Lt. Perry said, if the committee had called Mr. McManus back, they would have to have called all other potentially bypassed candidates back as well. (There were five candidates ranked above Mr. McManus). He claimed that the committee lacked the time or the resources to conduct all those additional interviews. (*Exh.1; Testimony of Lt. Perry*)

38. At the Commission hearing, Mr. McManus renewed his denial that failure to disclose his 2012 protective custody incident on the application was an intentional or deceitful concealment. He stood by his statements to the background investigator that the episode was never mentioned at home, that he had totally forgot about it until the background investigator reminded him of it and the omission was an oversight. He knew that the Waltham Police Department would generate and maintain an incident report on every call. (*Testimony of Appellant*)

**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 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), also gives the Commission's de novo review "broad scope to evaluate the legal basis of the appointing authority's action"; it is not necessary for the Commission to find that the appointing authority acted "arbitrarily and capriciously." Id.

**ANALYSIS**

The WFD's bypass of Mr. McManus was the product of a flawed application process and is not reasonably justified as required by basic merit principles. The WFD did not conduct an accurate, reasonably thorough, impartial review of the critical facts and circumstances relevant to his suitability; it did not give him fair notice and opportunity to address their concerns; and it did

not prove by a preponderance of the evidence that Mr. McManus was intentionally untruthful about his past, that Mr. McManus has a bias against law enforcement or that he may harbor racial and ethnic prejudice.

The Application Process

Massachusetts law imposes specific limitations on an employer's ability to access and use information about the criminal history of a candidate for employment. G.L.c.151B, §4(9) and §4(9½), contained within the state's antidiscrimination law and applicable to both private and public employers, prohibits an employer from asking a candidate to disclose information about his criminal record save for certain enumerated offenses. That statute makes it unlawful:

> "*For an employer, himself or through his agent, in connection with an application for employment . . . or in any other matter relating to the employment of any person, to request any information,* to make or keep a record of such information, *to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted,* or (ii) *a first conviction for any of the following misdemeanors:* drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, *or (iii) any conviction of a misdemeanor* where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, *occurred 3 or more years prior to the date of such application* for employment or such request for information . . . ."
>
> "*No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection*."
>
> . . .
>
> "*For an employer to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any criminal convictions on an applicant's application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses*; . . . ."

Id. See G.L.c.151B,§1 ("The term 'employer'' . . . shall include . . . the commonwealth and all political subdivisions, boards, departments and commissions thereof.")

The Commission has been clear that no public employer is exempt from the requirements of this law and, specifically, that "broad questions . . . designed to obtain information from the applicant, beyond what is provided for under Chapter 151B, are not permissible." See Kodhimaj v. Department of Correction, 32 MCSR 377 (2019) and cases cited. Thus, an employer may ask a candidate about a specific matter which came to the employer's attention through an independent lawful source other than the candidate.[9] However, no employer may directly or indirectly, ask a candidate for employment to disclose information about prohibited matters contained within G.L.c.151B,§4 and may not charge him or her with untruthfulness for failing to volunteer such a disclosure. Compare Kraft v. Police Comm'r of Boston, 410 Mass. 455 (1991) (police officer could not be terminated for providing a false answer to a prohibited matter (medical condition) covered by G.L.c.151B,§4); Kerr v. Boston Police Dep't, 31 MCSR 35 (2018) (BPD impermissibly disqualified candidate for untruthfulness who answered "NO" to the question: "Is there anything not previously addressed that may cause a problem concerning your possible appointment as a police officer?") with Bynes v. School Comm. of Boston, 411 Mass. 264 (1991) (school committee lawfully obtained CORI information independently, not from employee); Ryan v. Chief Admin. Justice, 56 Mass.App.Ct. 1115 (2002) (information about a 209A restraining order reported in the media)

Second, when an employer intends to use negative information about a candidate lawfully obtained about the candidate's criminal record, the law also requires that the candidate be informed of that intention, provided a copy of the relevant documentation on which the employer

[9] I note that "criminal justice agencies", such as police departments, are authorized to access a broader scope of CORI information than typical employers. G.L.c.6,§172. Although, here, the WFD delegated to the Waltham Police Department responsibility to conduct its criminal background checks, the key information involved in this appeal comes from police incident reports available to any employer. Thus, I did not consider that open question in this appeal, which would have arisen if the CORI information were available only to a criminal justice agency, as to whether the law permits the Waltham Police Department to share such specialized CORI information that would not otherwise be lawfully available to the WFD.

relies, and be afforded an opportunity to address the information. See Kodhimaj v. Department of Correction, 32 MCSR 377 (2019) citing G.L.c.6,§171A and Governor Patrick's Executive Order 495, "Regarding the Use and Dissemination of Criminal Offender Record Information.by the Executive Department" (2008).

The WFD's application process that led to the decision to bypass Mr. McManus did not comply with these requirements. He was expected to elaborate at the committee interview on the facts and circumstances surrounding his arrest for DWI, as to which no conviction resulted, in response to a broad, subjective question and without being provided a copy of the documentation that the WFD relied upon. He was then considered untruthful for not addressing the arrest, an inference that the law expressly prohibits the WFD from drawing.

Although the WFD may have correctly accessed Mr. McManus's DWI criminal history, if it wanted to use information about his arrest to make an adverse decision about his suitability, it still needed to apprise him specifically of what it intended to rely and afford him an opportunity to address them. The WFD's failure to do so taints the process and requires that Mr. McManus be afforded a further consideration in compliance with this requirement. I do not accept the WFD's explanation it did not have the time or resources to call Mr. McManus in for a follow-up interview and, therefore, be excused from complying with these requirements of the law.

The WFD's right to rely on Mr. McManus's "untruthful" response to the question on the supplemental application about whether he was ever "taken into protective custody for alcohol" is a closer call. As the Appellant points out, detention of an individual in protective custody is an action taken for the safety of a person in "need of medical assistance"; it is not considered an "arrest" and the person so detained "shall not be considered to have been charged with any crime." G.L.c.111B,§8. Thus, on the one hand, protective custody fits expressly within a

definition of "detention . . . in which no conviction resulted" under G.L.c.151B,§4(9)(i); on the other hand, it is not a "detention . . . regarding any violation of law . . ." I do find relevant that the question appears in the WFD's supplemental application in the section devoted primarily to other impermissible disclosures about an applicant's criminal history. The question is further complicated by the express provision in the civil service law that bars public employment, or retention in public employment, of any person who is "habitually using intoxicating liquors to excess." G.L.c.31,§50.

On balance, I agree that alcohol abuse is relevant to the suitability of a candidate for public employment, especially for a public safety position. It is also true that the police incident record of a protective custody action is available to any employer. Thus, while requiring an applicant to voluntarily disclose a prior protective custody seems to be prohibited by the spirit and, possibly, the letter of Chapter 151B's protections (including absolute exclusion of first offenses for drunkenness and all convictions more than three years old), the strong public policy regarding workplace substance abuse tends to support a rationale for allowing inquiry into this particular type of non-criminal behavior.[10] I also find troubling that the WFD's application process did not document and ensure that all relevant information about Mr. McManus, both positive and negative, was shared with the final decision maker, i.e. the Fire Chief, who received only a recommendation that he be bypassed, supported by a letter stating the negative aspects in his background. It does not appear that the Fire Chief was ever provided with any of the extensive positive facts about Mr. McManus, including, among other things, a background investigator's findings that Mr. McManus was forthcoming, truthful and honest, that he had learned from his

[10] Although there is no legal impediment to including the protective custody question on the application, this conclusion does not change this decision, as I find below that, as a substantive matter, neither Mr. McManus's written response to the question, nor his failure to bring up the issue during his committee interview, were intentional or deceptive.

past mistakes and presented a clean record with no other criminal or driving infractions since 2010, no subsequent alcohol related incidents save for the one in 2012, and an extensive and positive record of employment, including two jobs which included responsibility to operate heavy motor vehicles, work alongside public safety personnel (who recommended him highly), and adhere to a "zero tolerance" policies for alcohol and substance abuse. As a general rule, basic merit principles require that a bypass decision be based on a thorough review of all of the relevant facts by the appointing authority. As noted below, the obligation to weigh carefully and thoroughly all positive facts along with negative ones becomes especially imperative when the bypass reasons include potentially career-ending charges such as presented here.[11]

Finally, I address the Appellant's procedural argument that the timing of Mr. McManus's bypass, which apparently post-dated the appointment of at least some of the candidates who bypassed him, violates civil service procedure requiring that a bypassed candidate must be informed "immediately" when a decision to bypass him or her is made, that no appointment of any other candidate of lower rank is permitted until such notice is given, and that this violation automatically requires allowing Mr. McManus's appeal, citing G.L.c. 31,§27 as interpreted by the decision of the Superior Court (Wilkins, J.), in the case of Otero v. City of Lowell, Suffolk No. SUCV2016-3429 (Sup. Ct. 2019). The Commission has not applied the ruling in the Otero case, a promotional bypass appeal, to any other bypass appeal and, as there are other reasons to allow this appeal, the Commission need not consider the Appellant's Otero argument at this time.

Untruthfulness

The WFD claimed that Mr. McManus was intentionally untruthful and deceptive during the application process in two respects: (1) he was not forthcoming with the interview committee

[11] A bypass letter is available for public inspection upon request, so the consequences to an applicant of asserting serious misconduct in a bypass letter can extend beyond the original bypass. See G.L.c.31,§27,¶2.

about his DWI and protective custody incidents, and (2) he answered "NO" to the supplemental question about protective custody. Putting aside the legal issue addressed above, as to whether imputing untruthfulness for those reasons is prohibited as a matter of law, the WFD's claim also fails because neither claim of untruthfulness was proved by a preponderance of the evidence.

To be sure, an appointing authority is entitled to bypass a candidate who has "purposefully" fudged the truth as part of the application process. See, e.g., Minoie v. Town of Braintree, 27 MCSR 216 (2014). However, providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. "[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety." Kerr v. Boston Police Dep't, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016)

As the Commission explained in Kerr, *supra*, a charge of untruthfulness becomes especially problematic when it derives from a candidate's non-disclosure of information in response to the very type of broad question relied on by the WFD here:

> *The final question on the student officer application that BPD considered as part of this bypass asks: "Is there anything not previously addressed that may cause a problem concerning your possible appointment as a police officer?"* The BPD found Mr. Kerr's "no" answer to this question was untruthful, citing his arrests in high school for offenses of minor in possession of alcohol and driving without a license, as well as his reprimand from the Marines. First, *this question is highly subjective and provides no guidance as to what may be considered a problem concerning possible appointment.* For example, for many of the reasons previously cited, Mr. Kerr could have reasonably concluded that one (1) 'administrative remark' while serving in the United States Marines would not 'cause a problem concerning [his] possible appointment as a police officer.' Rather, Mr. Kerr could have (rightfully) concluded that his exemplary service in the military would be beneficial to the Boston Police Department, as opposed to being a "problem". Similarly, Mr. Kerr could have reasonably concluded that arrests in high school, prior to his military service, would not 'cause a problem' concerning his appointment as a police officer." (*emphasis added*)

Thus, in addition to the question being improper, Mr. McManus cannot be charged with untruthfulness for not bringing up his DWI or protective custody at the committee interview in response to such a subjective and ambiguous question. Indeed, when these subjects later came up in the background interview, Mr. McManus answered all relevant questions "without hesitation".

The second instance of alleged untruthfulness, i.e., Mr. McManus's state of mind in answering "NO" to the written question about protective custody, is a separate matter. At the Commission hearing, Lt. Perry agreed that it was a close call and that Mr. McManus's statement that he had simply forgotten the incident "potentially" could be true. In deciding this close question, neither the committee nor the appointing authority had the benefit, as I did, to assess Mr. McManus's credibility when he testified under oath, to observe his demeanor as he credibly withstood rigorous cross-examination, and to thoroughly review the evidence corroborating that testimony provided by the background investigator and the law enforcement references and others he interviewed, all of whom vouched for Mr. McManus's good character.

In sum, the preponderance of the evidence persuades me that Mr. McManus's omission was, as he testified, an oversight, and not, as the bypass letter claimed, an intentional deception "so as to not provide a negative image of himself." I credit the consensus of all those who knew him, including the background investigator who described Mr. McManus as "forthcoming", "honest" and "trustworthy". He took full responsibility for the serious lapse of judgment that resulted the more serious criminal DWI charges against him. I cannot reconcile his truthfulness and candor in being fully forthcoming about that criminal matter with an allegation that he intentionally tried to hide having too much to drink while out socially with friends and, then, "cooperating" with

police when he was placed in protective custody.[12] I also credit Mr. McManus with knowing the risk of lying and knowing that there would be a record of every encounter with the Waltham police. He is too savvy to think he could hide such information from the police investigator or the WFD.

Character and Immaturity

The WFD's bypass letter asserted that Mr. McManus possessed three disqualifying character flaws: (1) a "lack of accounting for an OUI arrest", specifically, his "attitude and conduct during this arrest" which suggested a "bias" against law enforcement; (2) the "timing and omitted intoxication/public disturbance protective custody episode . . . contradict[s] his statement that he learned from his mistakes" and proved that the "lessons of the OUI were not heeded"; and (3) "Mr. McManus may have issues with differing cultures." These disputed facts must be considered under the "preponderance of the evidence" standard of review as set forth in the SJC's recent decision in Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 461 (2019), which upheld the Commission's decision to overturn the bypass of a police candidate, expressly rejecting the lower standard espoused by the police department.

> "[T]he department may not rely on demonstrating a "sufficient quantum of evidence" to substantiate its "legitimate concerns" about the risk of a candidate's misconduct. . . . Instead, it must, as required by G.L.c.31,§2(b), demonstrate reasonable justification for the bypass by a preponderance of the evidence.")

Id., 483 Mass. at 333-36.

As to the issue of "bias" against law enforcement, the WFD relies on the statements of the booking officer that Mr. McManus swore at him and was "arrogant and obnoxious" during his DWI booking. Mr. McManus did not expressly dispute this evidence because he does not specifically recall his behavior while in custody, which is likely, as he was, by all accounts, then

[12] I find no nexus between the DWI and the protective custody incidents, or any basis to believe that the protective custody would have turned the DWI into a conviction had it occurred a few months earlier, as Lt. Perry assumed. In fact, until the May 2012 incident, Mr. McManus had no further driving infractions or drinking incidents.

highly intoxicated (twice the legal limit). Indeed, the booking officer confirmed how severely incapacitated and mentally disoriented Mr. McManus was during his booking. Yet, the WFD proffered no other evidence apart from Mr. McManus's inebriated behavior on this one occasion to support the allegation in the bypass letter that Mr. McManus's behavior then, or at any other time, evidenced a "bias" against law enforcement. Moreover, there is considerable evidence to the contrary.

For example, the background investigator found Mr. McManus was "forthcoming" and "remorseful" about the DWI incident and "took the matter seriously". He "took responsibility for his actions", admitted he was "an idiot" who had made a "huge mistake" and "now hardly drinks at all" (the latter fact confirmed to the background investigator by others and in Mr. McManus's testimony to the Commission). As the testimony and the background investigation also confirmed, Mr. McManus holds an unblemished criminal and driving record since 2010. Finally, of particular significance to the issue of police "bias", Mr. McManus has held a job as a tow-truck operator, which involved 1000 vehicle tows, working side by side with State Troopers, municipal police and fire department first responders, some of whom were interviewed and all gave positive references.

Similarly, the WFD's interpretation of the protective custody incident rests on material errors of fact that distort the severity of that incident. It did not involve a public disturbance as the bypass letter alleged, but was confined to the McManus residence located on secluded property. There was no evidence that any neighbors or any other member of the public took notice. Also, no evidence supports Lt. Perry's assumption that protective custody is equivalent to a violation of the terms of his DWI continuance and would have converted his CWOF into a conviction.

The WFD is certainly entitled to consider indicia of a candidate's character, but not without making an accurate, impartial and thorough review of the facts, including the considerable evidence over an eight year period following the DWI and protective custody incidents that detract from a conclusion that Mr. McManus is "biased" against law enforcement or cannot be trusted not to drink and drive. Moreover, there were at least two successful candidates ranked lower than Mr. McManus who presented with records of disregard for the law, substance abuse and other indicia of even more recent immaturity, who, inexplicably, unlike Mr. McManus, were hired despite that evidence.

In sum, the preponderance of evidence presented to the Commission showed that the WFD's bypass decision was made without the required accurate, impartial and thorough review of the relevant facts by the appointing authority and fails short, both as a matter of law and for lack of the quantum of proof needed to support its conclusion that Mr. McManus had not been forthcoming about his drinking behavior or that he harbored a "bias" against law enforcement, two of the three stated reasons used to bypass him.[13]

Similarly, the WFD's third contention that Mr. McManus harbors racial and ethnic animus was not proved. This claim is based solely on multi-layer hearsay attributed a former girlfriend of Mr. McManus who last saw him in 2009 and could offer no specific examples. The background investigator actually did make a thorough review of this suspicion and found it was not true. The overwhelming evidence to that effect is stated in the findings of fact and will not be repeated here. I add only that Mr. McManus learned of this accusation when he received the bypass letter. I find it especially disappointing that the WFD included such a thinly supported

[13] The WFD's bypass letter does not address whether Mr. McManus's history of alcohol abuse, per se, was deemed sufficient to disqualify him, or was too stale to be of concern. That issue remains an open question. This Decision is not intended to preclude (or encourage) the WFD, in any future application process, from reconsidering that issue, so long as it does so through a thorough review and decision by the appointing authority that includes both the past negative history and Mr. McManus's subsequent positive record.

charge in a bypass letter that is available for public inspection without giving Mr. McManus the courtesy of a follow-up interview and the opportunity to preserve his good name.

In sum, Mr. McManus was bypassed without reasonable justification. His application process was fatally flawed and the reasons for his bypass were not proved by a preponderance of the evidence. He deserves another opportunity to be considered for appointment as a WFD Firefighter under circumstances consistent with basic merit principles as outlined in this Decision.

**CONCLUSION**

For the reasons stated herein, this appeal of the Appellant, Matthew McManus, is ***allowed*** .

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS that the Massachusetts Human Resources Division and/or the Waltham Fire Department in its delegated capacity take the following action:

- Place the name of Matthew McManus at the top of any current or future Certification for the position of Firefighter with the Waltham Fire Department (WFD) until he is appointed or bypassed after consideration consistent with this Decision.

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 February 27, 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)(l), 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.Lc.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:
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**COMMONWEALTH OF MASSACHUSETTS**
**CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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**MATTHEW McMANUS,**
*Appellant*

**CASE NO. G1-19-024**

v.

**WALTHAM FIRE DEPARTMENT,**
*Respondent*

OPINION OF COMMISSIONERS BOWMAN AND ITTLEMAN

We concur with the conclusion that the Appellant should be afforded one additional opportunity for consideration, but for more limited reasons than outlined by Commissioner Stein. We agree that the deficiencies in the review process here were prejudicial to the Appellant, thus justifying the Commission's decision to provide him with reconsideration. That reconsideration should include the opportunity for the Appellant to address the full complement of reasons put forward by the Appointing Authority to justify his bypass, including two separate allegations related to intolerance.

We disagree with Commissioner Stein's conclusion, however, that none of the underlying reasons put forward by the Appointing Authority are supported by a preponderance of the evidence. Thus, after, correcting the prejudicial procedural flaws, we believe the Appointing Authority maintains its broad discretion to determine whether the Appellant presents too high of a risk to serve as a firefighter.

Civil Service Commission

*/s/ Christopher Bowman*

*/s/ Cynthia Ittleman*

February 27, 2020