

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

CIVIL SERVICE COMMISSION  
One Ashburton Place, Room 503  
Boston, MA 02108

RONALDO MEDEIROS,  
Appellant

v.

G1-17-161

CITY OF LAWRENCE,  
Respondent

Appearance for Appellant:

James M. Bowers, Esq.<sup>1</sup>  
Manzi, Bonanno & Bowers  
280 Merrimack Street, Suite B  
Methuen, MA 01844

Appearance for Respondent:

Wendy Chu, Esq.  
Jennifer King, Esq.  
Deutsch Williams Brooks DeRensis  
& Holland, P.C.  
One Design Center Place, Suite 600  
Boston, MA 02210

Commissioner:

Cynthia Ittleman

**DECISION**

Mr. Ronaldo Medeiros (Appellant or Mr. Medeiros), acting pursuant to G.L. c. 31, §2(b), filed an appeal with the Civil Service Commission (Commission) on August 11, 2017 challenging the decision of the City of Lawrence (Respondent or City) to bypass him for appointment to the position of permanent, full-time Police Officer with the Lawrence Police Department (LPD). A pre-hearing conference was held on September 11, 2017 at the Mercier Community Center in Lowell, Massachusetts and a full hearing was held on November 13, 2017

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<sup>1</sup> The Appellant was initially represented by Attorney Christopher M. Buckley, of the Law Office of Christopher M. Buckley, who attended the pre-hearing conference held on September 11, 2017. Attorney Bowers represented the Appellant at the full hearing.

at the Mercier Center and on December 4, 2017 at the Commission's office in Boston.<sup>2</sup> The proceedings were digitally recorded and copies of the recording were sent to the parties.<sup>3</sup>

Witnesses were sequestered. The parties submitted proposed decisions on January 9, 2018. For the reasons stated herein, the appeal is denied.

### **FINDINGS OF FACT**

Exhibits 1 through 18 were entered into evidence.<sup>4</sup> Based on all of the exhibits, the testimony of the following witnesses:

*Called by the Respondent:*

- James X. Fitzpatrick, then-Chief, LPD
- Thomas Cuddy, Detective, LPD
- Joseph Cerullo, Sergeant, LPD
- John Horvath, Chief, Rockport Police Department (RPD)

*Called by the Appellant:*

- Ronaldo Medeiros (Appellant)

and taking administrative notice of all matters filed in the case, pertinent statutes, case law, rules regulations, policies, and reasonable inferences from the evidence; a preponderance of the credible evidence establishes the following facts:

1. The Appellant is a veteran of the U.S. Army National Guard, having entered the Guard in 2009. He served a tour of duty in Afghanistan from March 2011 to March 2012. At the

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<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

<sup>3</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to supply the court with the 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.

<sup>4</sup> The exhibits entered into the record are: Joint Exhibits (Jt.Exs.) 1, 2, 2A3, 3A, 4A, 4B, 4C, 5 through 7 (with Jt.Ex. 7 being a stipulation); and Respondent's Exhibits (R.Exs.) 8 through 18. R.Ex. 18 contains the application file of each of the thirteen (13) candidates who bypassed the Appellant. The Appellant offered no exhibits.

time of this hearing, the Appellant was in the U.S. Army National Guard reserves. He has received a number of awards and commendations including, for example, the U.S. Army Achievement Medal, the Army Good Conduct Medal, Global War on Terrorism Service Medal, the NATO Medal and the Driver and Mechanic with Driver Wheeled Vehicle(s) Clasp. (Jt.Ex. 5; Testimony of Appellant)

2. The Appellant possesses a number of certifications including in the Basic Reserve Intermittent Program (MPTC), Defensive Tactics (New England Law Enforcement Training), Basic Life Support, and First Responder Provider (MPTC). (Jt.Ex. 5; Testimony of Appellant)
3. In late 2016, the City sought to appoint a number of full-time police officers to the LPD. (Jt.Ex. 2)<sup>5</sup>
4. On December 16, 2016, the Respondent received Certification 04204 from the state Human Resources Division (HRD). The Appellant's name appeared second on this Certification. (Jt.Ex. 2)
5. Among the candidates who were ultimately appointed, thirteen (13) ranked below the Appellant on the Certification. (Jt.Exs. 3, 3A)
6. As part of the application process, the Appellant completed a Police Applicant Questionnaire Form. (Jt.Ex. 5)

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<sup>5</sup> Prior to the first day of hearing in this case, the Respondent submitted that it sought to appoint eight (8) full-time police officers in the hiring cycle at issue here but subsequently (and prior to the second day of hearing) the Respondent realized that it had requested additional candidates' names on the list in order to appoint more officers and that thirteen (13) had bypassed the Appellant. (See November 20, 2017 email from Respondent's counsel, attaching email messages between HRD and the Respondent's Human Resources office.) At the outset of the case, the certification that the Commission received from HRD related only to filling the initial eight (8) vacancies that the Respondent sought to fill. The subsequent certifications that the Respondent requested and HRD provided appear to be incomplete. However, there can be no question that the Appellant was bypassed since the subsequent certifications provide additional names that are lower on the certification than the Appellant. Thus, thirteen (13) candidates ranked below the candidate were selected and bypassed the Appellant.

7. Question 4 on the application form asks candidates whether they have applied for a public safety position with any other city, town, agency, etc. The Appellant answered that he had applied to positions in other police departments, including the Rockport Police Department and North Adams Police Department. (Jt.Ex. 5; R.Exs. 16 and 17))
8. Question 18(b) of the LPD application form asks candidates A) whether there have been any civil actions pending against them and B) whether there had been any civil actions concluded against them in the past seven (7) years (favorably or unfavorably). (Jt.Ex. 5)
9. The Appellant checked off the box next to question 18(A) indicating that his answer was “no” and he checked off the box next to question 18(B) indicating that his answer was “yes”. The question asked for details if the candidate answered “yes” to 18(A) or 18(B).

On a separate page, the Appellant provided the following information:

Date: 09/03/2009

Location of court: Lawrence, MA

Incident Number: 2009xxxxxxx

Plaintiff

Details: Ex-girlfriend's father [Ms. A's father] wanted to cause harm to me at my place of work at the time. District Attorney dismissed the case.

Date: 08/31/2009

Location of court: Salem, MA

Docket Number: xxxrxroxxx

Defendant

Details: Ex-girlfriend [Ms. A] stated two years after we broke up, that I raped her. Judge dismissed the case.

(Jt.Ex. 5)

10. From December 2006 to on or about June/July 2008, the Appellant dated Ms. A. For some time while they were dating, Ms. A was sixteen (16) years old. While they dated, the Appellant was not honest with Ms. A and her parents about his age. (R.Exs. 10 and 11)

11. When asked at the Commission hearing how old he was when he started dating Ms. A, the Appellant first stated that he was nineteen (19) years old. However, he also testified that he was born in 1985. (Testimony of Appellant; Jt.Ex. 5) Thus, the Appellant was twenty-one (21) years old when he started to date Ms. A in 2006. (Administrative Notice)
12. On July 17, 2009, approximately one year after the relationship between the Appellant and Ms. A ended, Ms. A's father was involved in an altercation with the Appellant in North Andover, MA, which was the subject of a police incident report based on the Appellant's allegations. This is one of the two (2) matters to which the Appellant referred in his answer to application question 18(B) regarding civil matters. (Jt.Ex. 5 and R.Ex. 11) However, the July 17, 2009 incident is documented as a North Andover police incident report. (R.Ex. 11)
13. According to the police report, on July 17, 2009 Ms. A's parents saw the Appellant and a woman in a shopping plaza in North Andover. It was the first time Ms. A's father had seen the Appellant since the Appellant's relationship with his daughter had ended. They were upset because the Appellant did not tell them his age while he was dating Ms. A and Ms. A's father wanted to warn the woman with the Appellant about him. A verbal altercation ensued. The police report states that the Appellant alleged that he was the victim of an assault and battery committed by Ms. A's father. The Appellant did not report the matter to the police until ten (10) days later. (R.Ex. 11)
14. The second matter the Appellant referred to in his LPD employment application in response to question 18(B) was a restraining order that Ms. A obtained against the Appellant on August 7, 2009. (Jt.Ex. 5; R.Ex. 10)

15. In her affidavit in support of her request for a restraining order, Ms. A stated that the Appellant did not disclose his age during their relationship and she felt pressured into sexual relations with the Appellant when she was sixteen (16) years old because he would threaten her and her family if she refused. She also wrote that after their relationship ended, the Appellant continued to call her and show up at her place of work, which statements are consistent with the statements that Ms. A's parents made to the North Andover Police in connection with the verbal altercation that her father had with the Appellant on July 17, 2009. (R.Exs. 10 and 11) The initial restraining order was to end on August 17, 2009 but on that date, the court extended it to August 31, 2009. The restraining order was not extended beyond August 31, 2009. (R.Ex. 10; Testimony of Appellant)
16. On August 26, 2016, the Appellant applied to the Rockport Police Department. Question 25 in the application asks the candidate 1) if there are any civil actions pending against the candidate and 2) if there have been any civil actions against the candidate in the last seven (7) years. The Appellant wrote "no" in response to both of these questions. (R.Ex. 16) At an initial Rockport interview, the interview panel asks a variety of questions, including whether the candidate would like to disclose anything negative and the Appellant mentioned the restraining order against him. (Testimony of Horvath) At an unknown date, the Appellant withdrew his application to the Rockport Police Department, which had not yet notified the Appellant whether he was hired, not hired or bypassed. (Testimony of Appellant)

17. On September 5, 2016, the Appellant applied to the North Adams Police Department. Question 34 in the application asks the candidate if he or she is now or ever been a defendant in a civil court action. The Appellant answered “yes” and he listed 1) the report he made to the police about the alleged criminal incident in 2009 and 2) that his ex-girlfriend “stated two years after we broke up, that I raped her. Judge dismissed the case.” (R.Ex. 17) The Appellant did not indicate that he was the defendant in a temporary civil restraining order involving his ex-girlfriend. (Administrative Notice) At an unknown date, the Appellant withdrew his application to the North Adams Police Department, which had not yet notified the Appellant whether he was hired, not hired or bypassed.

*Processing of Appellant’s LPD Application*

18. In January 2017, Det. Cuddy of the LPD was assigned to conduct a background investigation of the Appellant as part of the employment application process. (Jt.Ex. 4C; Testimony of Cuddy)
19. Det. Cuddy reviewed the Appellant’s application materials, including his responses to Question 18(B). (Testimony of Cuddy)
20. Det. Cuddy checked the Appellant’s Board of Probation (BOP) record, which showed that the Appellant was the defendant in a restraining order issued by a court in Salem. (Jt.Ex. 4C; Testimony of Cuddy)
21. Det. Cuddy obtained a copy of the restraining order from the court, the affidavit submitted in support of the request for the restraining order and the police report from the North Andover police. He found that the North Andover Police report that the Appellant

mentioned in his application in his response to Question 18(B) and the restraining order were connected. (Jt.Ex. 4C; Testimony of Cuddy)

22. Knowing that the Appellant also applied for positions with the North Adams and Rockport Police Departments, the LPD contacted them and confirmed that the restraining order had been brought up in the Appellant's application processes with these departments. (Jt.Ex. 4C; Testimony of Fitzpatrick, Cuddy and Horvath) Specifically, Det. Cuddy spoke to a Detective at the North Adams Police Department who was investigating the Appellant and that the Detective said that the restraining order came up after they found it on a Board of Probation record check but that the NAPD was "going in a different direction" so it did not pursue the matter. (Testimony of Cuddy) Then-LPD Chief Fitzpatrick spoke to Rockport Police Chief Horvath, who indicated that the subject of the restraining order came up in considering the Appellant's application there. (Testimony of Fitzpatrick and Horvath)
23. Thereafter, the LPD contacted the Appellant and asked him to come to the police station to clarify his responses to Question 18(B) and to discuss the restraining order. (Jt.Ex. 4C; Testimony of Cuddy and Appellant)
24. On or about January 9, 2017, Detective Cuddy and Sgt. Cerullo met with the Appellant at the LPD police station. (Testimony of Cuddy, Cerullo and Appellant)
25. In the meeting, Detective Cuddy asked the Appellant about his responses to Question 18(B). (Testimony of Cuddy, Cerullo and Appellant) After the Appellant commented about the circumstances regarding Ms. A and her father, Det. Cuddy and Sgt. Cerullo asked the Appellant at least twice whether the issue of the restraining order came up in the screening process of any other police departments to which the Appellant had applied



for employment. The Appellant repeatedly said that it had not come up in the screening process of the other police departments. (Jt.Ex. 4C; Testimony of Cuddy and Cerullo)

26. After the meeting with the Appellant, Det. Cuddy reported to then-Chief Fitzpatrick regarding the Appellant's responses to the questions. (Testimony of Cuddy) Chief Fitzpatrick instructed Det. Cuddy to draft a report about the meeting with the Appellant. Det. Cuddy wrote the report three (3) days after the meeting with the Appellant, referring to the "serious nature of the allegations" involving the restraining order and the Appellant's allegations against Ms. A's father in the police report and that he and Sgt. Cerullo asked the Appellant if these matters "were raised" by the other police departments to which the Appellant was applying and the Appellant said that they had not come up in his consideration elsewhere. (Testimony of Cuddy; Jt.Ex. 4C)
27. Thereafter, Chief Fitzpatrick met with Mayor Daniel Rivera (the Appointing Authority), the Mayor's Chief of Staff, and the City's Personnel Director and recommended which of the candidates to hire and which of them to bypass. (Testimony of Fitzpatrick)
28. In the discussion regarding the Appellant, Chief Fitzpatrick expressed concern about the Appellant's lack of candor when the Appellant met with Det. Cuddy and Sgt. Cerullo and with Ms. A's statements about the Appellant in her affidavit in support of her request for a restraining order against the Appellant. (Testimony of Fitzpatrick)
29. The LPD regards truthfulness as a requirement for police officer candidates because police officers write reports that may be used as evidence in court proceedings and they are called upon to testify in court where their credibility may be challenged. (Testimony of Fitzpatrick)

30. Given the information in the restraining order application and the Appellant's lack of candor about the restraining order, the Appointing Authority decided to bypass the Appellant for employment as a police officer with the LPD. (Jt.Exs. 1, 4A and 4B; Testimony of Fitzpatrick)
31. By letter dated January 26, 2017, Mayor Rivera requested approval of the bypass of the Appellant, stating that in the Appellant's interview, he was "not found to be forthcoming and truthful" regarding an ex-girlfriend's allegations of sexual assault and regarding a restraining order. (Jt.Ex. 1)
32. By email dated June 14, 2017, HRD informed the Appellant that it accepted the Respondent's reasons for bypassing the Appellant, attaching the January 26, 2017 letter to HRD requesting approval to bypass the Appellant. (R.Ex. 4A)
33. The Appellant filed the instant appeal with the Commission on August 11, 2017. (Administrative Notice)

*Candidates Who Bypassed the Appellant*

34. Thirteen (13) candidates bypassed the Appellant. Their LPD employment applications and background investigations indicate<sup>6</sup>:

civil cases – none of the 13 had civil cases against them  
employment terminations – candidates 3, 6 and 7 of the 13 were terminated or left by mutual agreement  
driving records – candidates 1 – 6, 10 and 13 had such records  
criminal records – candidates 2, 7, 12 and 13 had such records

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<sup>6</sup> The Respondent produced, at my request, the voluminous files of the candidates who bypassed the Appellant. The files were to include, as available, the investigation reports, applications, driver's records, criminal records, credit records and other documents considered in the files. Some of the files are missing pages here and there, some pages are duplicated and the files are not necessarily in the same order but there is no consistency in these occasional shortcomings suggesting ill intent. Rather, I find that production of the significant volume of documents and their organizing, copying, collation and transmission was the likely cause of the occasional shortcomings and that they do not affect the outcome here.

35. The record provides the following criminal record information about candidates 2, 7, 12 and 13:

Candidate 2 – pleaded guilty in another state in 2012 to public drunkenness, disorderly, failure to disperse and paid a \$164 fine

Candidate 7 – was charged with rape years ago and the case was “dismissed, nolle prosequi, no probable cause, not guilty” and the record was sealed by the court and probation department. The candidate took and passed a polygraph test about the case. At the LPD, the candidate acknowledged that the case came up in discussions when he applied to other police departments.

Candidate 12 – charged with assault with a dangerous weapon in 2014 in Lawrence but a detailed police investigation and report indicates that the case was dismissed because of mistaken identity and written corroboration by his employer indicating that he was at work in Andover at the time of the alleged incident. The record was sealed.

Candidate 13 – charged with OUI in 2010. The case with continued without a finding and then dismissed.

36. The Appellant’s information provides the following:

criminal record – restraining order against the Appellant 8/7/09 through 8/31/09<sup>7</sup>  
driving record – 2007 speeding, 2006 speeding (with surchargeable accident), and 2005 speeding

civil matters against the candidate – the candidate answered that a restraining order was issued against him in 2009 and that he reported to police the incident involving Ms. A’s father in 2009<sup>8</sup>

employment – the Appellant wrote on his application that he was terminated from a job in 2009 for not writing a report that was not assigned to him.  
(Jt.Ex. 5)

#### *Applicable Civil Service Law*

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

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<sup>7</sup> I take administrative notice that although the Board of Probation record contains criminal record information, it also maintains information about civil restraining orders, which, if violated, may be a criminal offense. Ms. A obtained the restraining order approximately a year after her relationship with the Appellant had ended, alleging that the Appellant was harassing her. There is no indication in the record here that the Appellant violated the temporary restraining order.

<sup>8</sup> There is no indication in the record indicating that Ms. A’s father was criminally charged for the incident that the Appellant alleged occurred.

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 of Boston, 359 Mass. 214 (1971). G.L. c. 31, s. 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 the 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).

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. 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, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission recognizes that law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct: “Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question

their ability and fitness to perform their official responsibilities.” Police v. Comm’r v. Civil Service Comm’n, 22 Mass.App.Ct. 364, 371, 494 N.E.2d 27, 32 *rev.den.* 398 Mass. 1103, 497 N.E.2d 1096 (1986). An appointing authority is justified to refuse to hire and/or to terminate a police officer who repeatedly demonstrates his “willingness to fudge the truth”. See City of Cambridge v. Civil Service Comm’n, 43 Mass. 300, 303 (1997) (“a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.”). See also Everton v. Town of Falmouth, 26 MCSR 488 (2013) and cases cited, *aff’d*, SUCV13-4382 (2014); Gonsalves v. Town of Falmouth and cases cited, 25 MCSR 231 (2012), *aff’d*, SUCV12-2655 (2014); and Keating v. Town of Marblehead, 24 MCSR 334 (2011) and cases cited.

#### *Analysis*

The Respondent has established by a preponderance of the evidence that it had reasonable justification to bypass the Appellant. The Appellant was untruthful in December 2006 when he began a dating relationship with Ms. A and during the relationship. At the time, Ms. A was sixteen (16) years old and was led to believe by the Appellant that he was nineteen (19) years old, when he was actually twenty-one (21) years of age. He continued this conduct during their relationship. The affidavit submitted by Ms. A in support of her request for the restraining order against the Appellant and a separate police report regarding the incident between the Appellant and Ms. A’s father both indicate that the Appellant was dishonest to Ms. A and her parents. Worse still, this conduct was designed to deceive a young woman in high school (and her parents) into dating him and from finding out that the person who is romantically interested in her is years older than her. The Respondent was justified in being concerned that

someone who is willing to be untruthful about his age in such circumstances may also be untruthful about other matters.

In the course of considering the Appellant's application to the LPD, Det. Cuddy checked the Appellant's Board of Probation record. The search revealed that a restraining order was issued against the Appellant in 2009 at the request of Ms. A. Det. Cuddy invited the Appellant to a meeting to discuss the restraining order. At the interview, Det. Cuddy and Sgt. Cerullo asked the Appellant on multiple occasions whether the restraining order had arisen at other police departments to which the Appellant had also applied. The Appellant repeatedly answered that the subject had not come up with the other departments. To verify the Appellant's responses to these questions, Det. Cuddy called a member of the North Adams PD who said that they had discussed the restraining order with the Appellant after they found it on a check of the Board of Probation records. LPD Chief Fitzpatrick called Rockport Chief Horvath to inquire about the Appellant's restraining order. Although the Appellant did not disclose the restraining order on his Rockport PD application, he mentioned it at an initial interview at Rockport. The Appellant subsequently withdrew his applications to the North Adams and Rockport PDs. Given the importance of the truthfulness of police officers, it was valid for the Respondent to bypass him therefor.

Further, at the Commission hearing the Appellant testified inconsistently about his and Ms. A's ages during the relationship. On direct examination, the Appellant testified that he told Det. Cuddy and Sgt. Cerullo that he was twenty-one (21) years old and Ms. A was seventeen (17) years old when they started dating in December 2006. Having been born in 1985, the Appellant was truthful in regard to his own age but he was not truthful about Ms. A's age because she was only sixteen (16) years old when they began dating in December 2006. The

Appellant also falsely testified that when his relationship with Ms. A ended in the summer of 2008, she was nineteen years old (at which time the Appellant would have been twenty-three (23) years old). However, Ms. A was only eighteen (18) years old when their relationship ended. When asked about this on cross-examination, the Appellant contradicted himself by claiming on one hand that Ms. A had lied to her parents about his age while they were dating and, on the other hand, alleging that Ms. A's parents had always known his age because he had been honest with them about it. Additionally, at one point during cross-examination, the Appellant testified that he was nineteen (19) years old when he and Ms. A began dating in December 2006, the age that he had claimed to Ms. A and her parents to be at the start of the relationship. The Appellant's erroneous responses on direct examination and contradicting testimony on cross-examination seriously diminish his credibility.

The Appellant alleges that he should not have been bypassed because some of those who bypassed him had similar backgrounds. Specifically, the Appellant references Candidate #7 above. However, the charges against Candidate #7 were dismissed ("dismissed, nolle prosequi, no probable cause, not guilty") and sealed after the victim indicated that she would not go forward and a witness apparently undermined the allegations. Candidate #7 was later being considered for hire at an out-of-state police department, he told them about the matter, he took and passed a lie detector test and was subsequently hired by the out-of-state police department, where he was working when he applied to the LPD. Candidate #7 disclosed the charges and results to the LPD during the hiring process and the LPD hired him. He otherwise had no driving record violations, no civil matters against him, and had not been terminated from employment. Thus, it appears that the Respondent carefully perused Candidate #7's background,

was satisfied that he had not committed the crime with which he was charged and, unlike the Appellant, they found that Candidate #7 was forthcoming with them.

As a result, the Appellant did not receive disparate treatment.

The hearing record also indicates that (3) other candidates had criminal records. Specifically, Candidate #12 was charged with assault in Lawrence a few years prior to the hiring cycle at issue here. The case was dismissed and sealed after a detailed police investigation found that it was a case of mistaken identity and the candidate's employer in Andover provided a written report that the candidate was at work at the time of the alleged incident. Candidate #13, was charged with an OUI in 2010, which was continued without a finding and then dismissed. Candidate #2 pleaded guilty to an incident in another state in 2012 involving public drunkenness, disorderly conduct and failure to disperse, for which he paid a \$164 fine. There is no indication in the record that any of these candidates, as well as the others who bypassed the Appellant, presented concerns about their truthfulness to the Respondent. In addition, I find that there is no indication in the record that the Respondent's hiring in the hiring cycle at issue here was biased or the subject of other inappropriate motive, nor were the Respondent's hiring decisions arbitrary or capricious.

### *Conclusion*

For all the above-stated reasons, the bypass appeal of Ronaldo Medeiros, under Docket No. G1-17-161, is hereby *denied*.

Civil Service Commission

/s/ Cynthia Ittleman  
Cynthia Ittleman  
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 the Commission's decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), 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. 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 to:

James Bowers, Esq. (for Appellant)

Wendy Chu, Esq. (for Respondent)

Jennifer King, Esq. (for Respondent)

Michelle Heffernan, Esq. (HRD)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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CONCURRING OPINION OF COMMISSIONERS BOWMAN & STEIN

We concur with the conclusion of Commissioner Ittleman that there was reasonable justification to bypass the Appellant, but on much narrower grounds. We do not believe that all of the allegations of untruthfulness have been proven by a preponderance of the evidence. However, deferring to Commissioner Ittleman's credibility assessment of the Appellant at the hearing, and because it appears to be undisputed that the Appellant gave an incorrect answer to investigators regarding the screening process in Rockport, we voted to deny his appeal.

Civil Service Commission

/s/ Christopher C. Bowman

/s/ Paul M. Stein