

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

RICHARD J. MELANSON,
Appellant

CASE NO. G1-18-198

v.

CITY OF GLOUCESTER,
Respondent

Appearance for Appellant:

Edward F. Pasquina, Esq.
75 Middle Street
Gloucester, MA 01930

Appearance for Respondent:

Krisna M. Basu, Assoc. Gen. Counsel
City of Gloucester –Legal Department
City Hall – Nine Dale Avenue
Gloucester, MA 01930

Commissioner:

Paul M. Stein

DECISION

The Appellant, Richard J. Melanson, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), to contest his bypass by the City of Gloucester (Gloucester) for appointment as police officer with the Gloucester Police Department (GPD).¹ The Commission held a pre-hearing conference on January 14, 2019 and a full hearing on March 6, 2019 and April 24, 2019, which was digitally recorded and subsequently transcribed by the parties.² Witnesses were sequestered. Twenty-five Exhibits (Exhs.1 - 4, 6 - 8, 10 - 26) were received in evidence, and two documents marked for identification (Exhs. 5ID & 9ID). One additional exhibit was marked after the hearing (PHExh.27) Proposed decisions were filed on July 8, 2019. For the reasons stated below, Mr. Melanson’s appeal is allowed.

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 If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated 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.

FINDINGS OF FACT

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

Called by the Appointing Authority:

- GPD Lieutenant Michael A. Williams, Jr.
- GPD Lieutenant David Quinn
- GPD Detective Steven Mizzoni

Called by the Appellant:

- Richard J. Melanson, Appellant
- Richard A. Melanson (Appellant's father)

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, Richard J. Melanson, is a life-long Gloucester resident. He graduated from Gloucester High School (2004), received a Bachelor of Science Degree in Sport & Movement Science (Fitness/Wellness) from Salem State College (2010) and received an Associate's Degree in Criminal Justice from Endicott College (2016). (*Exhs.1, 6, 10, & 14 through 16; Tr.157 [Appellant]*)

2. In June 2007, Mr. Melanson was returning home when he noticed that a neighbor's house was on fire. He called 911, roused his sleeping neighbor, and kept the flames under control with a garden hose until the Gloucester Fire Department arrived on scene. His valor was reported in the local paper; he was called a "hero" (by his neighbor) who "saved the home" (according to the Fire Chief). As a result of his actions, Mr. Melanson, then 21, was awarded a Certificate of Bravery and a \$1,000 award for his "brave rescue" by the Massachusetts Humane Society. This incident prompted him to consider a career in fire service but, eventually, decided that working on the "front lines" as a police officer was his preferred choice. (*Exh.23; Tr.197-198 [Appellant]*). See also, "Gloucester Man praised for saving family, house from fire", *Gloucester Times, June 4, 2007*.

3. Since 2013, Mr. Melanson has been employed with the Endicott College Public Safety Department as a full-time sworn police officer for Endicott College. He is fully armed on duty and serves as the first responder to any calls that come into the police station. (*Exhs.1,6 & 10; PHEXh.27; Tr.157-158 [Appellant]*)

4. Mr. Melanson is licensed by the Commonwealth of Massachusetts as a Special State Police Officer and as a Deputy Sheriff by the Essex County Sheriff's Office. He holds a Class A (Large Capacity) License To Carry issued by the Gloucester Chief of Police. (*Exhs.1,6 10 & 24*)

5. Mr. Melanson completed the MLETA Reserve Police Academy in 2015. He also holds certificates as a Field Training Officer and serves as a Field Training Officer for the Endicott College Public Safety Department. He also holds certificates for completion of MPTC Firearms Training, Massachusetts State Police Firearm Safety, and Basic Police Mountain Bike Patrol. (*Exhs. 17 thorough 22; PHEXh.27*)

6. In 2015, Mr. Melanson applied for a position as a police officer with the Gloucester Police Department. After submitting his Application Packet, he was called in to the GPD and advised to withdraw his application, which he did in early 2016. (*Exhs. 1 & PHEXh27; Tr.25-29 [Williams]; Tr.174-176 [Appellant]*)

7. At the Commission hearing, the GPD officers who handled Mr. Melanson's 2015 background investigation testified that they performed a "complete" investigation at that time, which, typically, included a criminal history and driving record check and interviews with professional and personal references. None of those records, however, were produced at the Commission hearing. The officers made no "findings" and prepared no written background investigation report. Save for phone interviews with one of Mr. Melanson's former girlfriends (Ms. A) and another male acquaintance of hers, and speaking with one of the two GPD officers

about a traffic stop of Mr. Melanson approximately thirteen years ago,³ the background investigators had no specific recollection of conducting any other interviews as part of their 2015-2016 investigation. (*Tr.25-28,50-60 [Williams]; Tr.115-129 [Mizzoni]*)

8. Mr. Melanson took and passed the next civil service examination and his name appeared on Certification #05683 requisitioned by the GPD for appointment of up to 6 full-time permanent police officers, issued by the Massachusetts Human Resources Division (HRD) on or about July 18, 2018. Mr. Melanson was ranked in fifth place on the certification. Eventually, the GPD appointed four candidates, effective 10/18/2018, all ranked below Mr. Melanson. (*Exhs.2 & 3*)

9. Mr. Melanson signed Certification #05683 willing to accept appointment and, on or about July 30, 2018, submitted a new application form to the GPD. (*Exhs. 1 & 2 tr.37-38 [Williams]*)

10. Upon receiving Mr. Melanson's 2018 application, Lt. Michael Williams, the GPD superior officer who handled new recruit background investigations, spoke with GPD Police Chief John McCarthy. Chief McCarthy informed Lt. Williams that further investigation of Mr. Melanson's application was not required as he again would be disqualified based on the results of the 2015 application process. As a result, Lt. Williams took no action to investigate Mr. Melanson's application in 2018. (*Tr. 30-31,43-47 [Williams]*)

11. By letter dated September 4, 2018, Gloucester HR Director Donna Leete informed Mr. Melanson that "you will be by-passed on certification #05683 and not offered employment with the City of Gloucester Police Department" for the following reasons:

"The background investigation revealed that you have had two restraining orders from former girlfriends, two assault charges, stalking allegations with threats, verbal confrontation with property damage, and a report as an unwanted guest. In addition, in December after being pulled over in Gloucester, MA for a speeding violation, you called the police officer a "dickhead" and continued to yell at the officer. In February 2011 you were pulled over in

³ The other responding officer was Sgt. John Bichao, now retired from the GPD, who later provided a recommendation for Mr. Melanson's appointment as a Special Police Officer. (*Exh. 13; Tr.50 [Mazzoni]; Tr.192 [Appellant]*)

Wenham, MA for a stop sign violation and told the police officer that you “did stop” and continued with aggressive conversation.”

“Your conduct demonstrates a past history of control issues and is inappropriate behavior for a candidate for the Gloucester Police Department.”

(Exh. 4)

12. This appeal duly ensued. (*Claim of Appeal*)

13. The evidence presented by the GPD at the Commission hearing in support of the bypass reasons stated in the September 4, 2018 letter to Mr. Melanson consisted of oral testimony from the two GPD officers who had conducted Mr. Melanson’s 2015-2016 background investigation and “Affidavits” tied to the two restraining orders referenced in Mr. Melanson’s application (one in 2001 and the second in 2006). Neither the restraining orders, nor any other civil or criminal court records, nor any police incident reports were specifically identified, let alone proffered in evidence. Neither GPD officer who testified at the Commission hearing possessed percipient knowledge of any of the incidents involved and provided only general recollections of the contents of documents which they could not be certain when they last reviewed. (*Exhs. 25 & 26; Tr.25-100 [Williams]; Tr.101-132 [Mizzoni]*)⁴

14. The GPD’s bypass letter appears to catalogue numerous incidents of civil or criminal misconduct, but several of the references overlap. The disclosures by Mr. Melanson, the only percipient witness to testify, in the 2015 and 2018 application packets, and his testimony at the Commission hearing, establish seven actual incidents, only one of which was criminal in nature.

- November 2001. Mr. Melanson, then a sophomore in high school (age 15), had a girlfriend (Ms. G.) who spoke with a guidance counselor and stated she was having

⁴ Most of the GPD’s assertions were not corroborated and many were contradicted by other credible evidence., i.e., Tr.32, 50, 54-55, 74-75 [Williams] (no evidence of “multiple license suspensions”; wrong “back-up officer in Gloucester traffic stop; no evidence that Mr. Melanson ever “pulled” a knife or gun or threatened to do so; Mr. Melanson’s aunt, not Mr. Melanson, was the intoxicated person in the “unwanted guest” incident) and Tr.104-106, 109-111 [Mizzoni] (timing of incident with “Ms. A (11:30 pm not 4:00 am as she claimed and, false claim that Mr. Melanson had frequent “blackouts”, implying he was habitually intoxicated)

“issues” with Mr. Melanson and “was beginning to see another boy.” Mr. Melanson and Ms. G. were called to the principal’s office, where he was asked to empty his pockets, producing his “wallet, breathe mints, keys and a fishing pocket knife”. Ms. G.’s mother procured a 10-day 209A restraining order against Mr. Melanson, which was dismissed when Ms. G. failed to appear in court. Mr. Melanson was suspended from school for possession of a knife in school. A charge of A&B w/deadly weapon was continued without a finding and duly dismissed.⁵ Ms. Melanson and Ms. G. parted ways and have not been in contact since high school. (*Exh.1 & PHExh.27; Tr.176-180 [Appellant]*)

- June 2006. Mr. Melanson (then age 19) was at a local church festival when he spotted Ms C whom he previously dated in an altercation with a male companion. He mistakenly (his word) tried to intervene. No criminal charges emanated from this incident but Ms. C.’s grandmother obtained a 209A restraining order which Mr. Melanson did not contest and remained in effect for one year and was not renewed. Ms. C lives in Gloucester and works as Head Teller at a Gloucester savings bank and has remained “close friends” with Mr. Melanson to this day. (*Exhs. 1 & PHExh.27; Tr. 180-182, 207 [Appellant]*)⁶
- February 2005/December 2006. Mr. Melanson was stopped in Gloucester for speeding on two occasions. During one of the stops (the evidence did not indicate which one), Mr. Melanson said, referring to one of the responding officers: “I don’t understand why he’s being such a dick head.” Mr. Melanson was issued a civil citation and appeared in court, not to contest it, but to apologize. The other responding officer, Sgt. Bricheo, was

⁵ The only evidence of the 2001 case came from Mr. Melanson & his father. Neither the court record nor the CORI report of this juvenile offense was produced in evidence. Mr. Melanson acknowledged a CWOFF in response to a question on the GPD application which asked: “Have you ever had a court case continued without a finding?. If Yes, complete the following [Arrest Date & Final Disposition –Dismissed, for which he listed the same date, 11/14/2001] (*Exhs. 1 & PHExh.27; Tr. 151-156 [R.A.Melanson]*)

⁶ Ms. C. prepared a written statement to corroborate Mr. Melanson’s version of the 2006 incident. I did not accept Ms. C.’s statement in evidence but I take note that it was marked for identification. (*Exh.9ID*)

present at the court hearing and, after Mr. Melanson apologized for his remark about the other officer, the clerk waived the citation. (*Exh. 1; Tr. 191-193 [Appellant]*)

- February 2011. Mr. Melanson was stopped in Wenham by an officer doing a traffic detail at a construction site who said he observed Mr. Melanson fail to come to a complete stop at a nearby intersection. Mr. Melanson, who worked as an instructor for a local driving school for three years after college, honestly believed he had fully stopped and said so to the officer. Mr. Melanson subsequently received a citation in the mail and paid the \$100 fee. (*Exh. 1; Tr.194-196 [Appellant]*)
- June 2013 (approximate). Mr. Melanson's mother had received an email from her sister (Mr. Melanson's aunt) that had upset his mother and "she starting crying about it." Mr. Melanson drove to his aunt's home to find her "intoxicated". When she told him to leave and said she was calling the police, he walked outside and waited until the police arrived. No citations, restraining orders or summons issued as a result of this incident. (*Tr.187-189 [Appellant]*)
- Summer 2015 (approximate). Mr. Melanson received a call while on duty at Endicott College from his then girlfriend (Ms. A). Their relationship had become strained, although they continued living together. Ms. A told him that she was "upset about some things but wanted to work them out. . . . she was currently out having drinks with her sister and asked me if I would come see her after work." When Mr. Melanson arrived after his shift at approximately 11:30 pm, he found Ms. A in bed with another "gentleman" (his words) whom Mr. Melanson knew from the gym where they both worked out. The man apologized, explaining that Ms. A had led him to believe that she had ended her relationship with Mr. Melanson. Mr. Melanson was surprised to hear this,

as he still had a key to the house, kept his belongings there, and Ms. A had just told him to come home and that she wanted to patch things up. No physical violence was involved, the police were not called and no restraining orders or criminal complaints were sought.⁷

(Exhs. 1 & PHExh.27; 151-152 [RA Melanson]; Tr.159-172, 20-202 [Appellant])

- Time Uncertain. At some unspecified time, Mr. Melanson happened to cross paths in Gloucester with another man who admitted to stealing money from Mr. Melanson's younger brother. They engaged in a heated argument about it and, as he went to leave, Mr. Melanson kicked the man's car, causing a dent. The Gloucester Police responded, but no citations were issued. Mr. Melanson admitted responsibility for the damage and voluntarily paid the man \$700 to have the car repaired. *(Tr.189-191 [Appellant])*

15. The GPD took little, if any, notice, of Mr. Melanson's employment history and personal references which he supplied as part of his applications, both in 2015 and, again, in 2018. These included two letters written in 2014 by career GPD Sergeants in support of Mr. Melanson's candidacy for the position of Special State Police Officer. Each officer attested to his percipient knowledge of Mr. Melanson's professional and personal life. In view of their positions with the GPD and the business purpose for which the letters were prepared, I find their statements reliable and credible. Sgt. Bichao, now retired (who was the "back-up officer" involved in the traffic stop that involved the "dickhead" remark), stated that "integrity" was Mr. Melanson's "strongest quality" and his "concern for others, his respect for family, friends and community are unmatched by any young man I have come into contact within the past 40 years." Det. Sgt. Conners stated that he had been "privileged to watch him mold into a well-rounded, highly

⁷ It appears that the only reason that the GPD was made aware of Ms. A is because Mr. Melanson disclosed his relationship with her (as well as his current girlfriend Ms. S.), as required by the GPD application, the names and contact information for "all boyfriends/girlfriends or any person you have dated for one month or more during the past five years." *(Exh.1 & PHExh.27; Tr.104-106,126-127 [Mazzoni])*

motivated, charismatic young man” who “excels in all he does . . . [w]hether he is instructing at Nicastro’s Driving School or simply education someone on fitness and wellness, it shows [Mr. Melanson’s] desire to make a difference in his community and is a testament to his ‘do for other attitude.’ . . . Particularly noteworthy is the care and respect [Mr. Melanson] has for the law enforcement profession. . . .” (*Exhs. 12 & 13*)

16. At the Commission hearing, Mr. Melanson proffered five additional letters in the nature of character references. This included a letter from the Mr. Melanson’s current employer, the Chief of Police at Endicott College, letters from a patrol officer and a lieutenant who worked with him at Endicott College and letters from the proprietor of the driving school and the President of the gym, his two prior employers. The authors were listed as part of Mr. Melanson’s GPD applications, but they were not called to testify and their letters were prepared after Mr. Melanson had been bypassed. As there was no other record of what contact, if any, the GPD investigators had with these employers, I admitted these documents into evidence solely for the limited purpose of showing what those witnesses were likely to have said, all of which was highly positive, had they been contacted by the GPD investigators as part of the background investigation, as the investigators claimed is typically done. (*Exhs. 6 thorough 8, 10 & 11; Tr. 26 [Williams]*)⁸

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,

⁸ At the Commission hearing, the GPD raised additional issues, including multiple alleged driver license suspensions, an alleged confrontation at the gym where Mr. Melanson was then employed, and untruthfulness in his application. While none of these were stated as reasons for the bypass, and, therefore are not properly before the Commission and need not be addressed further in this appeal (See G.L.c.31, §27, ¶2; PAR.08(4)), I note that (save for a one-time license suspension as a juvenile), I found nothing that corroborated any of these additional reasons by a preponderance of the evidence.

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 a certain degree of 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), gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority’s action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

ANALYSIS

The GPD has failed to establish by a preponderance of the evidence that it made a thorough and impartial review of the relevant facts bearing on Mr. Melanson’s suitability for appointment as a GPD police officer and that the reasons asserted for his bypass were reasonably justified as required by basic merit principles of civil service law and rules. Accordingly, Mr. Melanson deserves another opportunity to be considered for appointment after appropriate consideration as required by law.

First, as to Mr. Melanson's 2018 application itself, it is not disputed that the GPD decided that any substantive review or investigation of that application was "not required", and none was conducted. HRD provides a procedure to enable, and the Commission has permitted, in certain circumstances, such rote rejection of a candidate who has been recently lawfully bypassed, especially, when the two bypass decisions emanate from a certification from the same eligible list. See, e.g., Personnel Administration Rules, PAR.09(2); *Wosney v. Boston Police Dep't*, 29 MCSR 33 (2016).

However, the circumstances that would permit application of that principle do not apply here. Mr. Melanson withdrew from the 2015 hiring process and the GPD never completed its investigation of Mr. Melanson and made no prior "findings" of his suitability. Mr. Melanson had no right of appeal to the Commission to obtain a review of the lawfulness of the GPD's actions at that time.

Second, as to the GPD's reliance solely on information derived during the 2015 hiring process, the evidence presented to the Commission in this appeal falls woefully short of what is required under basic merit principles to establish that, even in 2015, the GPD conducted an "impartial and reasonably thorough review". The GPD presented little direct evidence that established, what, if any, investigation was actually conducted two years earlier or what information the documents, if any, obtained actually stated. Although the GDP offered conclusory testimony that it performed its typical "complete" background investigation at that time, little documentary evidence was offered to corroborate that conclusion – no CORI report, no driver's history, no police incident reports, no civil or criminal court records, and no investigator's notes or background investigation report. The GPD investigators could not recall who, if anyone, they actually interviewed, other than Ms. A, her boyfriend and one of the two

GDP officers involved in a thirteen-year old traffic stop (but not the GPD officer who had written a reference for Mr. Melanson in 2014). In particular, no evidence pointed to any outreach to Mr. Melanson's current or past employers, to his current significant other or to Ms. C, who was the alleged victim in the 2006 incident at the church festival, all of whom were listed in both the 2015 and 2018 applications and fully available to be interviewed.

Third, the lack of a thorough review aside, after taking account of the very limited evidence that the GDP did proffer, virtually all of it multilayer hearsay, together with other relevant and percipient evidence to the contrary, the preponderance of the credible evidence comes up short of meeting the GDP's burden of proof to show that the reasons given to bypass Mr. Melanson are reasonably justified and support the decision to bypass him.

The Supreme Judicial Court has recently clarified the quantum of proof that is necessary for an appointing authority, including a law enforcement agency such as the GPD, to carry the burden of establishing facts that justify a bypass to the satisfaction of the Commission. In Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 461 (2019), the Court considered, among other issues, the degree of deference that a law enforcement appointing authority deserves from the Commission, when it serves as a de novo fact-finder in a bypass appeal. By a 6-1 decision, the SJC's majority opinion dismissed the notion (arguably embraced previously by the Appeals Court and supported by the lone dissent) that, when a case comes before the Commission on disputed facts regarding a candidate's conduct, the appointing authority "need only provide a 'sufficient quantum of evidence to substantiate its legitimate concerns' regarding that candidate . . . rather than providing reasonable justification by a preponderance of the evidence as required by G. L. c.31,§2(b)".

"[T]he dissent claims that an appointing authority can demonstrate reasonable justification by presenting a "sufficient quantum of evidence" to substantiate its "legitimate concerns"

about the risk of an applicant's misconduct. [citing Beverly, 78 Mass. App. Ct. 182 (2010)]. We agree that a police department should have the discretion to determine whether it is willing to risk hiring an applicant who has engaged in prior misconduct (including one who has done so and subsequently lied about it). However, where, as here, the alleged misconduct is disputed, an appointing authority is entitled to such discretion only if it demonstrates that the misconduct occurred by a preponderance of the evidence. See Cambridge, 43 Mass. App. Ct. at 305, 682 N.E.2d 923; G.L.c.31,§2(b).”

“[T]he misconduct in Cambridge was undisputed by the applicant. Here, in contrast, the question whether Gannon engaged in past misconduct was the single issue brought before the commission. . . . To the extent that the dissent suggests that there are occasions when an appointing authority need not demonstrate reasonable justification by a preponderance of the evidence as required by G.L.c.31,§2(b), we disagree.”

. . .

“Citing to Cambridge . . . the court in Beverly . . . suggested that to require an appointing authority to prove a candidate's alleged misconduct “would force the city to bear undue risks.” However, the “risk” discussed in Cambridge pertained to risk that the candidate might engage in future misconduct, not risk that the candidate engaged in past misconduct.”

“For these reasons, the 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 (emphasis added) (emphasis in original)

Applying this standard to the evidence presented in this appeal, the GPD fails to meet the required preponderance of the evidence test. Mr. Melanson’s only formal brush with the criminal law arose from a 2001 ex-parte (10-day) restraining order against him as sophomore in high school. The absence of any subsequent criminal history since then, alone, justifies discounting this incident as probative of his present unsuitability. See, e.g., Wallace v. Town of Saugus, 32 MCSR 29 (2019); Stylien v. Boston Police Dep’t, 31 MCSR 154 (2018). Moreover, although Mr. Melanson admitted that he agreed to a CWOFF of a serious criminal offense, he also provided the only percipient account of what actually did happen. I found his demeanor and candor as a

witness honest and credible, and his testimony was far more persuasive than the multi-level hearsay account provided by the GPD about this decades-old incident.

Similarly, as to the 2006 restraining order, it too, carries diminished weight from the stale nature of the incident. In addition, Mr. Melanson has stayed on good terms with the alleged victim, Ms. C. and provided her contact information to the GPD. She was fully prepared to tell the GPD that she had foolishly embellished her story thirteen years ago. She she now holds a position of trust with a local Gloucester savings bank, but the GPD never reached out to her (as it did to Ms. A). Again, I found Mr. Melanson's recollection of the church festival to be credible.

In the same vein, GPD simply got the incident with Ms. A horribly wrong. Without a record of what she actually told Sgt. Mizzoni, I cannot actually credit anything he claimed she said, but, whether she put the incident at 4:00 am or Sgt. Mizzoni's recollection is faulty, Mr. Melanson credibly explained that simply wasn't true, and neither was most of the story Ms. A allegedly recounted to Sgt. Mizzoni.

The remaining incidents can be addressed summarily. Mr. Melanson's accounts of the two traffic stops, the "unwanted guest" complaint, and his anger after a run-in with a thief (at a date unknown), all rang true. GPD never reached out to speak to the second GPD officer present at the traffic stop and at that court hearing and offered none of the police reports or other credible explanation to justify why his conduct in any of those other incidents was sufficient discount the considerable evidence to the contrary, from his current police department employer and others, and disqualify him from becoming a GPD police officer.

In sum, GPD failed to prove that its bypass of Mr. Melanson was based on a reasonably thorough and independent review that established, by a preponderance of the evidence, misconduct on the part of Mr. Melanson that reasonably justified its decision.

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Richard J. Melanson, 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 City of Gloucester in its delegated capacity take the following action:

- Place the name of Richard J. Melanson at the top of any current or future Certification for the position of GPD Police Officer until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. Melanson is appointed as a GPD Police Officer, he shall receive a retroactive civil service seniority date which is the same date as the first candidate ranked below Mr. Melanson who was appointed from Certification No. 05683. This retroactive civil service seniority date is not intended to provide Mr. Melanson with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By a 3-1 vote of the Civil Service Commission (Bowman, Chairman [NO]; Camuso [AYE], Stein [AYE] and Tivnan [AYE], Commissioners) on January 30, 2020 [Ittleman – Not Participating].

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)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Edward F. Pasquina, Esq. (Appellant)
Krisna M. Basu, Esq. (for Respondent)
Patrick Butler, Esq. (HRD)
Regina Caggiano (HRD)

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CITY OF GLOUCESTER,
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OPINION OF COMMISSIONER BOWMAN

While I defer to the findings of Commissioner Stein, I respectfully reach a different conclusion regarding whether the City had reasonable justification to bypass the Appellant for the position of permanent, full-time police officer.

The City bypassed the Appellant for appointment after concluding that he demonstrated a history of control issues.

A preponderance of the evidence supports the City's conclusion.

In 2001, a female signed an affidavit under the pains and penalties of perjury stating in part that the Appellant “ ... grabbed my arm and pulled me down the hall, pushed me against the wall and said he had a knife and wasn't afraid to take it out in front of everyone ...”.

In 2006, a different female also signed an affidavit under the pains and penalties of perjury stating in part that the Appellant “ ... approached me at St. Peter's Fiesta and got in my face. I asked him several times to get away from me and to stay away from me. He continued to antagonize me and I pushed him away from me. Then he grabbed my boyfriend's shirt and was pulling it, he then spit in his face. I again pushed him away and other people pulled him off of my boyfriend and I ...”.

In his testimony before the Commission, the Appellant acknowledged that a restraining order was issued regarding this matter and was extended for one year.

In 2013, in response to an email that his mother received from his aunt, the Appellant went to the aunt's house, uninvited, to confront her. Based on his own testimony, the Appellant refused to leave the premises when told to do so by his aunt.

In 2015, the Appellant engaged in a confrontation that involved a different female. Based on his own testimony before the Commission, the Appellant, during the confrontation, ominously informed her male partner that he (the Appellant) owned a firearm.

Finally, the Appellant acknowledged being involved in another incident, in which he kicked a citizen's automobile, causing \$700 in damage, purportedly because the citizen had allegedly stolen money from the Appellant's brother.

While I concur with Commissioner Stein that the review process here wasn't perfect, I believe that the preponderance of the evidence supports the City's conclusion that the Appellant has a history of control issues.

Having met that evidentiary burden, the City, as reaffirmed in Gannon, has wide latitude to conclude, in their judgment, that the Appellant is not an appropriate candidate for police officer at this time.

The City's decision to bypass the Appellant should be affirmed and the appeal should be denied.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman
January 30, 2020