

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JERIS MITCHELL,
Appellant

v.

G1-15-120

SPRINGFIELD FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Jeris Mitchell

Appearance for Respondent:

Maite Aponte Parsi, Esq.
City of Springfield
36 Court Street, Room 5
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

DECISION

On June 13, 2015, the Appellant, Jeris Mitchell (Mr. Mitchell), pursuant to G.L.c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Springfield Fire Department (SFD) to bypass him for original appointment to the position of permanent, full-time firefighter. A pre-hearing conference was held on June 24, 2015 at the Springfield State Building and a full hearing was held at the same location on July 8, 2015. The hearing was digitally recorded and both parties were provided with CDs of the hearing¹. At my request, the parties made closing arguments in lieu of submitting post-hearing briefs.

¹ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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. In such cases, these CDs should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

FINDINGS OF FACT

The SFD submitted thirty (30) exhibits (1-30) and Mr. Mitchell submitted three exhibits (31-33). Based on these exhibits, the testimony of the following witnesses:

Called by SFD:

- Joseph A. Conant, Fire Commissioner, City of Springfield;
- Erica Floyd, Director of Finance and Administration, City of Springfield;

Called by Mr. Mitchell²:

- Jeris Mitchell, Appellant;

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

1. Mr. Mitchell is a thirty-two (32) year-old black male and has one (1) child. (Testimony of Mr. Mitchell)
2. He has resided in Springfield since his parents moved from Tennessee to Springfield when he was eleven (11) years old. (Testimony of Mr. Mitchell)
3. Mr. Mitchell graduated from the Science and Technology High School in Springfield and received an Associates degree from Springfield Technical Community College in 2005. (Testimony of Mr. Mitchell)
4. For the past four (4) years, Mr. Mitchell has been a dispatcher for the Springfield Police Department. (Testimony of Mr. Mitchell)

² Mr. Mitchell's mother and brother were present at the outset of the hearing and identified by Mr. Mitchell as witnesses that would testify in regard to Mr. Mitchell's residency during the time period applicable to this appeal. The parties subsequently stipulated that, for the purposes of this appeal, Mr. Mitchell was a Springfield resident during the applicable time period. As such, these witnesses were not called and did not testify.

5. When Mr. Mitchell was appointed as a dispatcher in the Springfield Police Department (SPD), he received a letter from the SPD stating in relevant part: “Continued residency in the City of Springfield is a requirement of this employment.” (Exhibit 32)
6. The SFD is one (1) of seven (7) civil service fire departments in Massachusetts still subject to a consent decree to bring about parity in minority hiring.
7. When a vacancy requisition is filed with the state’s Human Resources Division (HRD) by an appointing authority, a list of candidates is forwarded to the appointing authority consistent with the provisions of Personnel Administration Rule .09, which requires that the referral contain enough names to reflect at least twice the number of vacancies plus one ($2n + 1$). Additionally, for referrals in a consent decree community, one minority candidate is certified first, followed by the names of three non-minority candidates.
8. If a consent decree community appoints individuals other than those ranked highest on the Certification, they are required to submit sound and sufficient reasons to HRD for review and approval. HRD reviews those reasons with plaintiffs’ counsel in the Beecher case and then notifies the appointing authority and the bypassed candidate if the bypass is approved. Bypassed candidates then have sixty (60) days from the date of notification of the bypass approval to file an appeal with the Commission.
9. Pursuant to the civil service law, individuals with a residency preference are ranked above those who do not have a residency preference. It is undisputed that, in order to qualify for the residency preference during the hiring cycle in question, the applicant must have resided in Springfield during the one-year period prior to when the qualifying civil service examination was administered.

10. On April 26, 2014 and May 23, 2014, Mr. Mitchell took and passed the two-part examination for firefighter consisting of a written, multiple choice examination and an entry level Physical Abilities Test (ELPAT). He received a score of 97. (Stipulated Fact)
11. Mr. Mitchell was given the residency preference as he indicated on the exam application that he resided in Springfield from April 26, 2013 to April 26, 2014.
12. As part of the review and selection process, Appointing Authorities, such as the SFD, are responsible for verifying that applicants claiming the residency preference actually resided in the city or town during the time period in question.
13. On January 16, 2015, Mr. Mitchell's name appeared on Certification No. 02567 from which the SFD eventually appointed twenty-eight (28) firefighters. (Stipulated Fact)
14. Mr. Mitchell was ranked 28th on Certification No. 02567 and one (1) of the twenty-eight (28) candidates appointed was ranked below Mr. Mitchell. (Stipulated Fact)
15. After signing the Certification indicating a willingness to accept employment if appointed, all candidates were given various documents including an application for employment and a memorandum that stated in relevant part:

"Please return the following completed documents to Fire Department Headquarters no later than the time of your interview:

➤ Proof of residency from 04/2013 – 04/2014

- This can be any of the following:
 - A utility bill or other record of a utility being in your name at that particular address.
 - Please note: to qualify under this category the utility must be linked to the property (electricity, cable, internet, heating) and cannot be a cell phone bill.
 - A rental agreement

- A mortgage document
- A property deed” (Exhibit 31)

16. On February 2, 2015, Mr. Mitchell completed his application for employment, listing the address of his mother’s house in Springfield, where he has resided since he was a child. (Exhibit 29 and Testimony of Mr. Mitchell)

17. As part of the professional reference section of the application, a current and past supervisor indicated that he has worked for the Springfield Police Department. Both supervisors provided glowing references, with his past supervisor stating: “Jenis will be an excellent candidate and firefighter as he will give his all to the job. Jenis follows instruction well and does not have to be told more than once how to do something. Jenis has a good personality.” His current supervisor in the Springfield Police Department stated: “I would hate to lose Mr. Mitchell as a Dispatcher, however, I fully support and encourage his desire to become a firefighter.” (Exhibit 29)

18. On February 10, 2015, Mr. Mitchell and others appeared at the Fire Department headquarters for an oral interview, at which time they could submit documentation to verify that they resided in Springfield from “04/2013 – 04/2014”. (Exhibit 31 and Testimony of Mr. Mitchell, Ms. Floyd and Commissioner Conant)

19. In prior hiring cycles, Commissioner Conant had relied on Deputy Fire Chiefs to assist him with the review and selection process. Here, because some of the Deputy Fire Chiefs could not participate due to potential conflicts of interest, Commissioner Conant relied solely on Ms. Floyd, the City’s Director of Administration and Finance, to assist him with the review and selection process. (Testimony of Commissioner Conant)

20. Commissioner Conant relied solely on Ms. Floyd to determine whether the candidates provided sufficient documentation to verify that they resided in Springfield from “04/2013 – 04/2014”. (Testimony of Commissioner Conant)
21. During the 15-minute interview, Ms. Floyd reviewed the residency-related documents submitted by the candidates and told them whether additional documents were needed. Multiple candidates, including Mr. Mitchell, were told that the documents submitted were not sufficient, and to submit additional information by 12:00 Midnight that day (February 10, 2015). (Testimony of Ms. Floyd and Mr. Mitchell)
22. Candidates were told that a letter from a homeowner, landlord or parent stating that the candidate resided at their Springfield home would be sufficient. (Testimony of Ms. Floyd)
23. Mr. Mitchell was not told that a letter from his parent, who he lives with, would be sufficient to verify his Springfield residency from April 2013 to April 2014. (Testimony of Mr. Mitchell)
24. The only residency documentation submitted by three (3) of the appointed candidates to verify residency was a one or two sentence letter from a parent, other relative or landlord stating that the applicant lived in their Springfield home during the period in question. None of the letters were signed under the pains and penalties of perjury and only one of letters contained a notarized signature. (Exhibits 1, 19, 24)
25. The only residency documentation submitted by one (1) of the appointed candidates was: a) a “Quitclaim Deed” dated March 5, 2007 regarding property in Springfield³; and b) a utility bill for the period covering August 22, 2004 to September 11, 2004 (approximately four (4) months *outside* the April 2013 to April 2014 window. (Exhibit 10)

³ An online search of the Springfield Assessors office’s website lists a “current owner” of the property in question as someone whose name does not appear on Certification No. 02567.

26. The only residency documentation submitted by one (1) of the appointed candidates was an “Agreement to Sublease / Sublet” from March 2013 to May 2014. (Exhibit 7)
27. The only residency documentation submitted by three (3) of the appointed candidates was a “billing history” or “usage history” including the time period in question for an address in Springfield, as opposed to individual bills sent to the applicant for each month in question. (Exhibits 6, 12 and 21)
28. Unaware that he could submit a letter from his mother stating that he had resided at the family home in Springfield for the past twenty-one (21) years, including April 2013 to April 2014, Mr. Mitchell attempted to obtain as many relevant documents for this time period prior to 12:00 Midnight on February 10th. (Testimony of Mr. Mitchell)
29. At 6:02 PM on February 10, 2015, Mr. Mitchell faxed thirteen (13) pages to the SFD in an attempt to verify that he resided in Springfield from April 2013 to April 2014. (Exhibit 31 Fax Cover Sheet from Staples)
30. The exhibit Mr. Mitchell submitted regarding the documents attached to the February 10, 2015 fax contained far more than thirteen (13) pages. He was unable to state with certainty which of the documents were actually included in the fax communication. (Testimony of Mr. Mitchell and Exhibit 31)
31. I have inferred that at least the following documents were attached to the fax cover sheet: a) a bank statement covering the period January 28, 2014 to February 17, 2014; b) a promotional letter from a bank dated October 5, 2013; c) an auto insurance cover summary covering the period February 15, 2014 to August 15, 2014; d) a bank statement covering the time period January 1, 2013 through March 31, 2013; d) a bank statement covering the time

period July 18, 2013 to August 17, 2013; e) an explanation of benefits statement from a health insurance provider dated April 2, 2014. (Exhibit 31)

32. On May 26, 2015, the SFD provided HRD with reasons for bypassing Mr. Mitchell. The letter, signed by Commissioner Conant, stated in relevant part:

“On February 10, 2015, the Springfield Fire Department had a scheduled interview for the position of firefighter with Jeris Mitchell. All candidates were required to submit proof of residency in the City of Springfield for the period of April 2013 through April 2014. Jeris Mitchell failed to provide adequate documentation for proof of residency for that entire period. It is for this reason that I am bypassing Jeris Mitchell for this particular hiring process.” (Exhibit 30)

33. On June 9, 2015, HRD reviewed the reason for bypassing Mr. Mitchell and determined it to be satisfactory and notified him of such. (HRD Information Packet dated June 24, 2015)

This timely appeal followed.

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. at 304. “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification

for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

G.L. c. 31, § 58 states in relevant part:

“If any person who has resided in a city or town for one year immediately prior to the date of examination for original appointment to the police force or fire force of said city or town has the same standing on the eligible list established as the result of such examination as another person who has not so resided in said city or town, the administrator, when certifying names to the appointing authority for the police force or the fire force of said city or town, shall place the name of the person who has so resided ahead of the name of the person who has not so resided”

Analysis

The sole issue for bypassing Mr. Mitchell for appointment as a firefighter was the SFD’s conclusion that he failed to provide adequate documentation for proof of residency for the time

period April 2013 to April 2014. The process used to verify a candidate's residency here was arbitrary and capricious.

First, all candidates were not given the same instructions regarding what documents would be accepted to verify their residency. Nothing in the written documentation provided to all candidates states that a letter from a parent, other relative or landlord stating that the candidate resided at a Springfield address would be sufficient. Yet, that is the sole documentation submitted by three (3) of the appointed candidates and accepted by the SFD. Setting aside the reliability of this documentation, I accept the credible testimony of Mr. Mitchell that he, unlike other candidates, was not told (verbally) that such a letter would suffice. Mr. Mitchell testified plausibly that, had he been given such information, he never would have scurried around on February 10th to submit the documentation that he eventually faxed to the SFD prior to 12:00 Midnight. Rather, he would have simply had his mother write a one sentence letter verifying his residency and promptly delivered it to the SFD. This lack of uniformity in the review and selection of candidates is troubling, particularly for a community still subject to a consent decree.

Second, the SFD accepted documentation from another candidate that simply does not show that he resided in Springfield during any of the months from April 2013 to April 2014. Rather, this candidate submitted a "quitclaim deed" related to a real estate transaction in 2007 related to a property in Springfield and one (1) utility bill for one (1) month that does not fall within the April 2013 to April 2014 window. Again, setting aside the reliability of the documentation, *property ownership* in Springfield does not establish that the applicant "resided in [Springfield] for one year immediately prior to the date of examination for original appointment ..." as required by Section 58 of the civil service law. Nothing in the civil service law stands for the

antiquated – and offensive – premise that property owners should be given a preference over non-property owners in the hiring process.

Third, many of the documents accepted by the SFD regarding other applicants either do not appear to sufficiently establish that the applicant actually resided in Springfield from April 2013 to April 2014 or were worthy of further inquiry. A “usage history” from a utility company related to a certain address, standing alone, does little to establish that the applicant actually resided at that address and a sublet agreement falling almost exactly within the months required to establish residency would appear to warrant at least some further inquiry, which it did not.

In sharp contrast, the SFD, perhaps inadvertently, set a different, and higher, bar when it came to verifying the residency of Mr. Mitchell. First, as noted above, the SFD did not inform Mr. Mitchell that he could simply submit a letter from his mother to vouch for his residency. Further, despite submitting some of the same types of documents that other candidates submitted (i.e. – bank statements, auto insurance policy, etc.) that included his name and Springfield address for certain months that fell before, during and after the April 2013 to April 2014 time period, the SFD deemed these documents insufficient to meet the requirements of Section 58 of the civil service law. This lack of uniformity is particularly glaring considering that Mr. Mitchell, a resident of Springfield since age 11, has been employed for years as a dispatcher for the Springfield Police Department, a City agency that sent him a letter upon his appointment telling him that he needed to maintain residency in Springfield as a condition of employment.

In short, Mr. Mitchell was entitled to a fair, impartial review process, including a residency verification process that should have been conducted in a uniform manner, with the same

standards equally applied to all candidates. That did not occur here. As such, intervention by the Commission is warranted.

Conclusion

Mr. Mitchell's appeal under Docket No. G1-15-120 is hereby ***allowed***. Pursuant to its authority under Chapter 310 of the Acts of the 1993, the Commission hereby orders HRD and the SFD to take the following actions:

- Place the name of Jeris Mitchell at the top of any current or future Certifications for the position of permanent, full-time firefighter until such time as he is appointed or bypassed;
- If and when Mr. Mitchell is appointed, he shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 02567. This retroactive civil service seniority date is not intended to provide Mr. Mitchell with any additional or retroactive compensation and/or creditable service toward retirement.

Civil Service Commission

/s/ Christopher Bowman
Christopher Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on August 6, 2015.

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.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 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:

Jeris Mitchell (Appellant)

Maite Aponte Parsi, Esq. (for Respondent)

Patrick Bulter, Esq. (HRD)