

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MICHAEL MONAGLE,
Appellant

G1-07-78

CITY OF MEDFORD FIRE DEPARTMENT,
Respondent

Appellant's Attorney:

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229 Harvard Street
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Respondent's Attorney:

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Commissioner:

John E. Taylor

DECISION

Pursuant to the provisions of G.L. c. 31 §2(b) Appellant, Michael Monagle (hereafter "Monagle" or "Appellant"), is appealing his bypass for an initial firefighter's appointment with the City of Medford Fire Department (the "Department") based on reasons approved by the Human Resources Division ("HRD"). The appeal was timely filed. A full hearing was held on October 30, 2007

FINDINGS OF FACT:

Based upon the documents entered into evidence (Exhibits 1-5)¹ and the testimony of Chief Giliberti of the Medford Fire Department, Captain Barry Clemente of the Medford Police Department, Appellant and Appellant's father, Richard Monagle, I make the following findings of fact:

1. Appellant, a resident of Medford, Massachusetts, has been employed as a letter carrier for the United States Postal Service since May, 2006. Following his 2001 graduation from Suffolk University, Appellant entered the U.S. Coast Guard, serving in active duty until 2005, and received an Honorable Discharge. While in the Service, Appellant received training in and numerous commendations for firefighting, fire prevention, and Homeland Security training. Appellant testified that both his father and grandfather were firefighters with the City. (Ex. 5 and testimony)
2. Appellant applied for a firefighter's initial appointment with the Department on August 21, 2006. (Ex. 5)
3. On June 2, 2006, Appellant signed the list for certification 260552 for seven permanent full-time firefighters. (Ex. 2)
4. On July 4, 2006, Appellant was involved in a fight stemming from an incident at a family party and that the Medford Police responded to the incident. The incident was dismissed after being the subject of a Clerk's hearing at the

¹ Appellant offered his CORI record obtained in October, 2007, to supplement his CORI of December 14, 2005 which was contained in Ex. 5.

Somerville District Court. (Testimony of Appellant)

5. Appellant's CORI of October 2007 shows no charges relating to July 4, 2006.
6. The Department requested the Medford Police Department to do a background check of the candidates eligible for the firefighter position. Medford Police Department Captain Barry Clemente testified that routinely received names of candidates from the Fire Chief in order to do background checks of such candidates. The background investigation includes checks on employment history, CORI checks, police incident reports and Registry of Motor Vehicles (hereinafter "RVM") information. Clemente testified credibly that he did a police background check on Appellant and submitted the results to Fire Chief Frank Giliberti. The background investigation found that Appellant "possesses a driving record and a criminal record. He has had interaction with the Medford Police Department as well." (Ex. 2 and testimony of Clemente)
7. On the basis of the information obtained during the background check, the Department rejected Appellant's application due to an "unacceptable driving record" and that he has "multiple criminal charges and court appearances."
6. Appellant was not given a personal interview. Nine candidates were interviewed and eight of them were hired. Appellant was bypassed by at least three applicants with lower examination scores, all of whom had been interviewed. (Ex. 2)
7. A background investigation of a selected applicant revealed that he had appeared "before the Courts in the 1990's and any matters before those Courts resulted in dismissals." Clemente stated that this applicant had an assault and

battery charge as well as an assault and battery by means of a dangerous weapon charge and that both were continued without a finding, (Ex. 3 and testimony of Clemente)

8. Appellant filed a bypass appeal with the Commission on February 13, 2007.
9. On March 8, 2007 the Department hired eight permanent full time firefighters.(Ex. 2)
10. On March 9, 2007, the Department forwarded its final selection and reasons for bypass for certification number 260552 to HRD. That document stated:
“This candidate has an unacceptable driving record which indicates irresponsibility, poor judgment, and disregard for the law. He also has multiple criminal charges and court appearances. Based on the facts discovered during this background investigation, the Medford Fire Department recommends that Mr. Monagle is not a suitable candidate for a public safety position as a Medford firefighter.” (Ex. 2)
11. On April 20, 2007, HRD approved the Department’s reasons for bypassing Appellant and Appellant received notice of the bypass. (Ex. 2)
12. Appellant’s father, Richard, is an accidental disability retiree from Medford’s Fire Department who sought to return to his lieutenant’s position, failed the PAT test requirement and was denied a statutory PAT retest by Fire Chief Giliberti in January 2006. His Civil Service Appeal decision of April 5, 2007 required the Chief to allow a re-test, which he passed. The decision also ordered the City of Medford to reinstate the senior Monagle should he pass the PAT retest. During this time period, Appellant applied to be a firefighter.

(Ex. 4 and testimony of Richard Monagle)

CONCLUSION:

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 action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Id. at 304, quoting 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. 211, 214 (1971). "In making that analysis, the Commission must focus on the fundamental purposes of the civil service system-to guard against political considerations, favoritism and bias in governmental employment decisions...and to protect efficient public employees from political control. When there are, in connection with personnel decisions, 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. It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of

discretion based on merit or policy considerations by an appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997)

. 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).

In a bypass appeal, the question is “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the Appointing Authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification requires that the Appointing Authority’s actions be were based on adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). All applicants must be adequately and fairly considered.

In the present case, the Department failed to show that Appellant’s bypass was reasonably justified as he was bypassed based on his CORI, yet there are no convictions on Appellant’s record as all of the charges set forth have been dismissed or terminated in his favor. The Medford Police background check presented all past charges against

Appellant, both criminal and driving infractions, without any regard for what charges were substantiated and proven or admitted at Court or for which he was found responsible by the R.M.V. The Appellant's 2005 CORI shows that all charges were dismissed by the Court without admissions and without continuances without a finding and without probationary terms. The RMV report shows one moving violation only: speeding in Revere in 1999 for which the appellant was found to be "responsible." Respondent's contention that there exists here an "unacceptable driving record" is not reasonable based on this one minor infraction.

In Halliday v. Boston Police Department, G-3282, January 22, 1997, Mass. Civil Service Reporter, the Commission allowed Appellant's appeal as "all criminal charges against the Appellant were resolved in favor of the Appellant by either dismissal or not-guilty findings. Most of the motor vehicle violations occurred while Appellant was a teenager or in his early 20s. In any event, only one violation exists within the last 5 years, and Appellant had a credible explanation of the incident." This case is similar as no charges have been filed against the appellant since 1999, a period going back more than six and a half years.

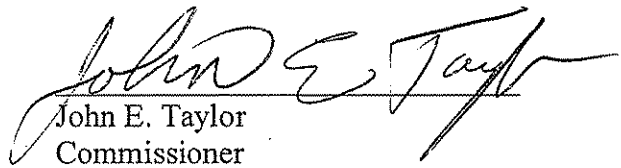
Although the Department contended that Appellant was bypassed based on the totality of the circumstances, the Department limited its scope in judging his "unworthiness" by not granting him an interview. Simply relying on the Appellant's CORI in this circumstance to make a decision regarding his fitness and character to be a fire fighter is not adequate. Without an interview, Appellant was unable to present his

viewpoint, especially in regard to his U. S. Coast Guard service. It appears some animus from the Appellant's father's ongoing action with the City may have influenced the decisions made in this instant matter. This is contrary to the standards of merit and neutrally applied public policy as promulgated by this Commission. Finally, a selected applicant had a CORI similar to the Appellant's was interviewed and chosen from the certification list. This discrepancy implies that the information from the Appellant and that selected candidate may have been examined differently.

In light of the foregoing reasons, the explanation submitted by the Department and approved by HRD was not sufficient based on a preponderance of the evidence as presented. Accordingly, the Appointing Authority did not have a reasonable justification for bypassing Appellant for a firefighter appointment. Therefore, the appeal under Docket No. D1-07-78 is hereby *allowed*.

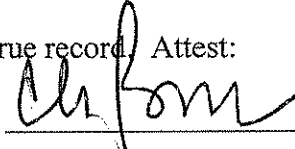
Pursuant to Chapter 534 of the Acts of 1976, as amended by Chapter 310 of the Acts and Resolves of 1993, the Commission hereby grants equitable relief to the Appellant and orders HRD to place the Appellant's name at the top of the next certification list for the position of firefighter, until such time as the Appellant receives at least one consideration for the position of firefighter in the Medford Fire Department.

Civil Service Commission


John E. Taylor
Commissioner

By vote of the Civil Service Commission (Taylor, Henderson, Stein [yes] Bowman, Chairman, and Marquis, [no] Commissioners) on August 7, 2008.

A true record Attest:



Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceeding for judicial review under section 14 of chapter 30A 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 commission's order or decision.

Notice to:

F. Robert Houlihan, Esq. (for Appellant)

Mark E. Rumley, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)

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CITY OF MEDFORD,
Respondent

DISSENT OF CHRISTOPHER BOWMAN

I respectfully dissent.

The instant appeal involves an original appointment to the position of firefighter in the City of Medford (hereinafter "City"). The City bypassed the Appellant in 2007 for: 1) multiple criminal charges and court appearances, including charges of OUI, a minor transporting alcohol, and three separate charges (on different dates) of assault and battery; 2) a poor driving history; and 3) negative interactions with the Medford Police Department, including yelling obscenities at police officers as part of a 1999 OUI arrest and another disturbing incident in 2006.

In regard to the criminal charges, the Commission decision discounts them because all of the charges in question were "dismissed or terminated in his (the Appellant's) favor." This is an error. The Commission has long held that an applicant's arrest record, even in the absence of a conviction, is entitled to some weight by the Appointing Authority in making its decision.

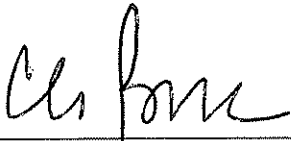
Frangie v. Boston Police Department, 7 MCSR 252 (1994). Brooks v. Boston Police Department, 12 MCSR 19 (1999). Soares v. Brockton Police Department, 14 MCSR 168 (2001); Thames v. Boston Police Department, 17 MCSR 125, 127 (2004).

The Commission decision also discounts the Appellant's poor driving history since he was only found "responsible" for one infraction of speeding. As discussed above, the Appellant's entire driving record is entitled to some weight by the Appointing Authority, even if the Appellant were found not found guilty or responsible for some or all of the violations.

Finally, the Commission fails to address the third reason for bypass: the negative interactions with the Medford Police Department, including the July 4, 2006 incident. In this incident, the Appellant allegedly grabbed a chair and smashed the hood and window of a motor vehicle, after its driver had jumped into a nearby river to flee in order to flee from the Appellant and his friends. The City was warranted in raising this incident as a reason for bypass. The Commission had an obligation to address the issue, regardless of the outcome in criminal court.

With these three reasons, the Appointing Authority presented sound and sufficient reasons to bypass the Appellant for the position of firefighter in the City of Medford.

For all of the above reasons, I respectfully dissent.

A handwritten signature in black ink, appearing to read "Chris Bowman", written over a horizontal line.

Christopher C. Bowman
Chairman
August 7, 2008