

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street: Suite 200

Boston, MA 02114

(617) 979-1900

CHAVEZ MOORE,

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

Docket Number:

G1-23-198

Appearance for Appellant:

Nini Sprinkle, Esq.

P.O. Box 582

Swampscott, MA 01907

Appearance for Respondent:

Jennifer Cipolletti, Esq.

Boston Police Department

Office of the Legal Advisor

One Schroeder Plaza

Boston, MA 02120

Commissioner:

Shawn C. Dooley

SUMMARY OF DECISION

The Commission affirmed the decision of the Boston Police Department to bypass the Appellant as a candidate for appointment as a permanent, full-time police officer due to his lengthy driving record including numerous moving violations, driving infractions, and warnings.

DECISION

On September 23, 2023, the Appellant, Chavez Moore (Appellant), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Police Department (BPD) to bypass him for original appointment to the position of

permanent, full-time police officer.¹ On November 7, 2023, a remote pre-hearing conference was held via Webex. On February 20, 2024, I conducted a full in-person full evidentiary hearing at the offices of the Commission in Boston. The hearing was recorded via Webex.² On March 15, 2024, the parties filed proposed decisions. For the reasons set forth below, Mr. Moore's appeal is denied.

FINDINGS OF FACT

The Appellant entered ten exhibits (Appellant Exhibits 1-10) and the Respondent entered three exhibits (Respondent Exhibits 1-3) into evidence. Based upon the documents submitted and the testimony of the following witnesses:

Called by the BPD:

- Teori Shaw-Boyce (Director Shaw-Boyce), Deputy Director of Human Resources, Boston Police Department
- Carlton Williamson (Detective Williamson), Detective, Recruit Investigations Unit (RIU), Boston Police Department

Called by the Appellant:

- Chavez Moore, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² A link to the audio/video recording was provided to the parties. 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 they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

1. The Appellant is a 32-year-old Black male who is a lifelong resident of the City of Boston. (*Testimony of the Appellant*)
2. The Appellant graduated from a Boston public high school in 2010. (*Testimony of the Appellant*)
3. The Appellant shares legal guardianship of his four minor children, successfully co-parenting. (*App. Exhibit 8, Resp. Exhibits 2 & 3*)
4. The Appellant currently works for a Boston hospital in the Police, Security and Outside Services Department as a Security Guard. His job duties consist of issuing citations for traffic violations, driving for the Mobile Patrol Unit, managing access control throughout the facility, assisting with the care and wellbeing of elderly, psychiatric, and newborn patients, as well as collaborating with the Boston Police Department on investigations, to ensure safety throughout the hospital. (*Testimony of Appellant*)
5. The Appellant currently holds a license to carry (LTC) a firearm, which was issued by the BPD. (*App. Exhibit. 5 & Resp. Exhibit 3*)
6. On March 16, 2022, the Appellant took and passed the civil service examination for police officer, administered by the state's Human Resources Division (HRD). (*Resp. Exhibit 3*)
7. On May 24, 2022, HRD established the eligible list for Boston Police Officer. (Stipulated Fact)
8. Between September 2022 and January 2023, HRD issued Certification No. 08848 to the BPD, upon which the Appellant was ranked 62nd among those willing to accept appointment. (Stipulated Facts)

9. The BPD appointed 180 candidates for appointment, 118 of whom were ranked below the Appellant. (Stipulated Facts)
10. The Appellant completed and signed the Boston Police Recruit Application on October 2, 2022. (*Resp. Exhibit 2*)
11. Detective Carlton A. Williamson, who at the time was assigned to the Recruit Investigations Unit, was assigned to do a background check on the Appellant. (*Testimony of Detective Williamson*)
12. Det. Williamson has been a detective for 18 years and employed by the BPD for 35 years. This was Det. Williamson's first time being assigned to the Recruit Investigation Unit. (*App. Exhibit 5 & Exhibit 3; Testimony of Det. Williamson*)
13. During this process, Detective Williamson interviewed 3 personal references, all of whom gave positive remarks regarding the Appellant. (*App. Exhibit.5*)
14. Detective Williamson interviewed the Appellant's current work supervisor who stated that the Appellant, "is a very reliable and hard worker, with a positive attitude." (*App. Exhibit 5 & Resp. Exhibit 3*)
15. In June of 2014, the Appellant filed a restraining order against the mother of two of his children who in turn took out a restraining order against him. The restraining order against the Appellant was not continued after the initial ex-parte filing. Further, the mother of his children later recanted her original statement. She further went on to state that they have a very good co-parenting relationship and she feels that the Appellant would make a great police officer and BPD would benefit from hiring him. (*App. Exhibits 5 & 8*)

16. The Appellant's Massachusetts Registry of Motor Vehicles driving history shows that he has not been cited for a moving violation in the past eight years. In or prior to 2016, including when he was in high school, he received various citations for speeding, failing to wear a seatbelt and failure to stop/yield. (*App. Exhibits 5 & 7, Resp. Exhibit 3; Testimony of Det. Williamson*)
17. The Appellant was involved in four surchargeable accidents between 2008 and 2016 in 2008, 2012, 2015 and 2016. These accidents are reported by the insurance company, and there are no further details to determine the severity of an accident that is reported. There were no citations issued surrounding any of these accidents. (*App. Exhibits 5 & 7, Resp. Exhibit 3; Testimony of Det. Williamson*)
18. Massachusetts motorists are required to complete a National Safety Council (NSC) driver re-training program if they are found to be responsible for three or more surchargeable events in a two-year period. (Administrative Notice)
19. The Appellant was required to take two NSC courses in 2015 & 2017. (*App. Exhibit 5 & Resp. Exhibit 3; Testimony of Det. Williamson; Testimony of Appellant*)
20. In addition to the above citations and surchargeable accidents, the Appellant has 12 motor vehicle non-appealable *warnings* listed on his driving record since 2018, with the last warning issued on 05/28/2022. (*App. Exhibit 5 & Resp. Exhibit 3*)
21. Detective Williamson completed the Appellant's background investigation and compiled the pertinent information into the Privileged and Confidential Memorandum (PCM) dated October 25, 2022 (*Resp. Exhibit 3*)
22. The Appellant was offered a discretionary interview by Det. Williamson on December 2, 2022, related to the Appellant's driving history, namely, to address the numerous motor

vehicle warnings that the Appellant received. The Appellant was contrite and took responsibility but also explained that “he grew up in Roxbury, a neighborhood of Boston, which has been plagued by a high rate of violent crimes, and that while driving around the Roxbury neighborhood, where he lived, he was stopped by the Police and “checked out.” The Appellant stated that he was always respectful and cooperative during these encounters, and always received a written warning.” (*App. Exhibit 5 & Resp. Exhibit 3; Testimony of Appellant*)

23. The PCM was updated thereafter to include a summary of the December 2, 2022 discretionary interview that was conducted by Detective Williamson regarding the Appellant’s driving history. (*Resp. Exhibit 3*)
24. Det. Williamson commented in the PCM addendum that he found the Appellant to be “honest and forthright” and that the Appellant further stated that “he has learned from his youthful driving mistakes and has taken responsibility for his actions.” (*App. Exhibit 5*)
25. The Department convened a roundtable to discuss the background investigation with a senior member of BPD (Deputy Superintendent Owens) and representatives from the Human Resources and Legal Departments of BPD. (*Testimony of Director Shaw-Boyce*).
26. A letter dated July 27, 2023 was mailed to the Appellant informing him that he had been bypassed. (*Resp. Exhibit 1*)³

³ Regrettably, the BPD, due to administrative oversights, listed other reasons in the Appellant’s bypass letter that were incorrect. They subsequently issued a corrected letter to him, clarifying that the only reason for bypass was his driving record.

APPLICABLE LAW

The role of the Civil Service Commission is to determine whether “on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by 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) (“*Arria*”); *McIsaac v. Civil Service Commission*, 38 Mass. App. Ct. 411 (2000); *Police Department of Boston v. Collins*, 48 Mass. App. Ct. 411 (2000); *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). The Commission has held in numerous decisions that its function is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it had “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 Serv. Comm’n*, 483 Mass. 461, 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

An action to bypass a candidate 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.” *City of Cambridge*, 43 Mass. App. Ct. at 304, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Court of the City of Boston*, 359 Mass. 211, 214 (1971). *City of Cambridge* further states, “[i]n the task of selecting employees of skill and integrity, appointing authorities are invested with broad discretion.” *Id* at 304. The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and

reasonableness of the appointing authority's actions. *Falmouth v. Civil Service Commission*, 447 Mass. 814, 824-826 (2006). In doing so, the Commission owes substantial deference to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. *City of Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 188 (2010). That "deference is especially appropriate with respect to the hiring of police officers." *Id.* 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." *Arria*, 16 Mass. App. Ct. at 334. *See Commissioners of Civil Service v. Municipal Ct. of Boston*, 369 Mass. 84, 86 (1975) and *Leominster v. Stratton*, 58 Mass. App. Ct. at 727-728.

Therefore, the issue before the Commission is whether the Department had reasonable justification for bypassing the Appellant on the basis of the totality of his driving history. Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. *See, e.g., Falmouth v. Civil Serv. Comm'n.*, 61 Mass. App. Ct. 796, 801 (2004), citing *Cambridge, supra*, 43 Mass. App. Ct. at 303-305; *Police Comm'r v. Civil Serv. Comm'n.*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986). "Since police officers operate cruisers as part of their duties, an appointing authority is entitled to weigh the driving records of applicants when making appointments." *Kelly v. Town of Wakefield*, 22 MCSR (2011). In the past, the Commission has expressly found that a poor driving record is a reasonable justification for a bypass of a candidate. *See McGrath v. Lowell*, 22 MCSR 560 (2009); *Torres v. Lowell*, 22 MCSR 558 (2009); *Campbell v. Boston Fire Dep't*, 22 MCSR 489 (2009); *Jones v. Boston Police Dep't*, 22 MCSR (2008).

ANALYSIS

The BPD argues that the Appellant's poor driving history is a valid reason to bypass him for appointment as a police officer. The Appellant argues that most of the infractions are either stale, the result of over enforcement or, in the case of recent warnings, not worthy of any weight as he had no right to appeal those warnings.

These are not new issues for the Commission. There is no denying the appropriateness of diligently investigating a candidate's driving record, as police officers are often called upon to operate a police cruiser, sometimes at high speeds in stressful situations. As the commission has previously ruled, however, an appointing authority must conduct a reasonably thorough review of the candidate's driving record *and* consider the applicant's driving history in the proper context in order to determine whether there is a nexus between the prior misconduct and the candidate's current ability to perform the duties of the position to which they seek appointment.

"An appointing authority, as part of a reasonably thorough review, should at least afford the applicant with the opportunity to address the underlying issues, either with the background investigator or an interview panel." *Wine v. City of Holyoke*, 31 MCSR 19, 24 (2018). By affording a candidate the opportunity to address driving infractions head-on, an appointing authority will have an adequate basis on which to decide whether the infractions have any bearing on the candidate's fitness to perform the responsibilities of the position.

To evaluate driving histories in the proper context, the Commission has ruled that appointing authorities must consider such factors as:

- The recency of any infractions;
- Whether the candidate is required to drive more frequently because of their occupation, particularly in high traffic areas;

- Whether any of the violations such as nonpayment of fines for inspection stickers may be attributable to socioeconomic factors, and, accordingly, may have no bearing on whether an appellant can effectively serve in a public safety position;

See, e.g., Stylien v. Boston Police Department, 31 MCSR 209, 210 (2018); *Stylien v. Boston Police Dep’t*, 31 MCSR 154 (2018); *Gibbons v. City of Woburn*, 32 MCSR 14 (2019). *Kodhimaj v. DOC*, 32 MCSR 377 (2019). *Dorn v. Boston Police Department*, 31 MCSR 375, 376 (2018).

More broadly, when the bypass, as here, involves a person of color, appointing authorities must consider public policy concerns related to the racial disparity in traffic stops. *See Commonwealth v. Gonsalves*, 429 Mass. 658, 670 (1999) (Ireland, J., concurring) (“The widespread public concerns about police profiling, commonly referred to as ‘DWB—driving while black,’ has been the subject of much discussion and debate both across the country and within the Commonwealth”).

Applied here, I find that the BPD did conduct a reasonably thorough review of the Appellant’s driving record. They reviewed information lawfully available to them through CJIS related to the Appellant’s driving record. A background investigator then provided the Appellant with an opportunity to address each of the entries on the report. As part of that interview, the Appellant specifically raised as an issue his belief that, as a resident of a Boston neighborhood with a high police presence, he was more likely to be stopped by police. As part of his report to the roundtable, the background investigator provided an itemized list of the Appellant’s driving history and noted his opinion that the Appellant was “honest and forthright” and that the Appellant stated that he had “learned from his youthful driving mistakes and has taken responsibility for his actions.”

In short, the BPD did not rely simply on a paper review of the Appellant’s driving record,

but, rather, they took the additional step of speaking directly to him to gauge whether his record impacted his ability to serve as a Boston police officer. In concluding that the BPD conducted a reasonably thorough review, I have not overlooked the fact that the BPD's Director of Human Resources, who is a member of the roundtable and testified before the Commission, mistook certain entries on the report and seemed somewhat unaware of the BPD's longstanding practice of giving less weight to infractions that occurred many years ago. Overall, I believe she had a sufficient understanding of the Appellant's driving record in order to make an informed decision here.

I now turn to the Appellant's driving record itself. It is undisputed that the Appellant, prior to 2017, when he was approximately 25 years old, had accumulated a problematic driving history, including four surchargeable accidents between 2008 and 2016 – one in 2008; one in 2011; one in 2015; and one in 2016. During that same period, he was found responsible for three speeding violations – one in 2008; one in 2014 and one in 2016. He was also found responsible for multiple other violations during this period including failure to wear a seat belt (twice) and failure to stop / yield (twice). As a result, the Appellant was required to take two National Safety Council re-training courses to maintain his license.

In the five-year period between 2017 and 2022, after he had completed the driving re-training courses, the Appellant received twelve written warnings, including three for speeding, two for failure to stop, one red/blue light violation and one unsafe operation of a motor vehicle.

Citing *Kogut vs. Tildon*, Mass. Dist. Ct., No. 19-ADCV-118WE (2020), the Appellant argues that traffic warnings “are much like a police officer's expression of an opinion or a conclusion in a written report as to whether a motorist is guilty of a motor vehicle offense [and as such] is inadmissible hearsay.” As a general matter, administrative agencies are not bound by the

formal rules of evidence that pertain in court. Rather, evidence may be admitted and given probative effect if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Just because evidence is admissible, however, does not automatically make it reliable or credible. The reliability and credibility of the evidence introduced at hearing is a determination that must be made based on the circumstances giving rise to that evidence. *Costa v. Fall River Housing Authority*, 453 Mass. 616, 625 n.16 (2009).

Applied here, I admitted the written warnings as evidence while reserving judgment on the weight I would give to them in deciding this appeal. I do not believe that the 2018 – 2022 warnings, standing alone, permit a conclusion that the Appellant has a poor driving history justifying his bypass. But when viewed in combination with his driving record during the several years preceding 2018, those warnings contributed to my decision that the BPD was justified in bypassing him for appointment. Importantly, these are not a few stray warnings. Rather, there are twelve warnings, including violations similar to those violations for which the Appellant was found responsible between 2008 and 2016, including speeding.

I also considered that the Appellant was required, occasionally, to drive a vehicle as part of his current security job. While that may demonstrate some degree of driving proficiency, none of the above citations were issued to him while working. In short, the fact that the Appellant drives as part of his job did not contribute to the long list of citations issued against him. The Appellant's argument that his poor driving record may have been attributable to so-called over-enforcement based on the neighborhood where he lives or his race would have been more convincing had he not been involved in four surchargeable accidents, which are simply attributable to poor driving skills.

Finally, I reviewed the driving histories of other candidates selected for appointment,

including those cited in the Appellant's post-hearing review. To me, not one of them is comparable to the Appellant's long and problematic driving history.

After thoroughly reviewing the entire record, including the Appellant's testimony and that of one member of the roundtable that made the decision, I conclude that the BPD had reasonable justification to bypass the Appellant for appointment at this time. The Appellant's driving record, currently, is sufficiently problematic to give the BPD legitimate concerns about his ability to safely operate a cruiser in the City of Boston. Should the Appellant's driving record improve over time, however, nothing should prevent him from being reconsidered for appointment.

To ensure clarity, the BPD should not view this decision as a ringing endorsement of its review process, particularly when it pertains to reviewing a candidate's driving history. While sufficient in this appeal, it would behoove the BPD to establish a more robust review process that explicitly outlines what steps are taken to ensure that a candidate's race, residence, or other socioeconomic factors do not result in impermissible barriers to entry or an unfair comparison of candidates for appointment.

CONCLUSION

For all of the above reasons, the Department's decision to bypass Chavez Moore for the position of police officer is affirmed. The appeal filed under Docket No. G1-23-198 is hereby *denied*.

Civil Service Commission

/s/ Shawn C. Dooley
Shawn C. Dooley
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey and McConney, Commissioners [Stein – Absent]) on July 25, 2024.

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 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 to:

Nini Sprinkle, Esq. (for Appellant)

Jennifer Cipolletti, Esq. (for Respondent)