

Notify

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

CIVIL ACTION No. 2009-1987-D

Notice Sent

05.14.10

NIT

COBLD

PMR

RLQJN

AAG

(md)

BOSTON POLICE DEPARTMENT

vs.

DANIEL MORIARTY and  
MASSACHUSETTS CIVIL SERVICE COMMISSION

**MEMORANDUM OF DECISION AND ORDER ON CROSS MOTIONS FOR  
JUDGMENT ON THE PLEADINGS**

This matter is before the court for review pursuant to G. L. c. 30A, § 14, (7), of a decision of the Civil Service Commission allowing Daniel Moriarty's (Moriarty) appeal of the Boston Police Department's (Department) decision to withdraw a conditional offer of employment as a police officer. The Department withdrew its offer because Mr. Moriarty failed the psychological screening. The Commission ruled that the Department was not justified in bypassing Mr. Moriarty and ordered the Department to reinstate his name to the eligibility list with the option to conduct a new psychological screening with different examiners. After reviewing the administrative record, the relevant law, and the parties' submissions, the plaintiff's Motion for Judgment on the Pleadings is **ALLOWED** and the defendant's Motion for Judgment on the Pleadings is **DENIED**.

**BACKGROUND**

In June 2005, Daniel Moriarty was eligible for appointment to the Boston Police Department, subject to medical and psychological examinations. As part of the psychological examination, Mr. Moriarty was administered two psychological tests, the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and the Personality Assessment Inventory (PAI). Phase II of

the psychological screening involved a clinical interview by a psychiatrist, Dr. Marcia Scott. Dr. Scott reviewed the test results and relied on her clinical interview in determining that Mr. Moriarty was “moderately depressed with slow thinking, high anxiety and inability to think clearly under stress.” This finding, along with other relevant factors, led her to conclude that Mr. Moriarty was psychologically unfit for the job. Because of Dr. Scott’s finding, Mr. Moriarty was entitled to a second examination by an independent psychiatrist, Dr. Julia Reade. Dr. Reade’s clinical examination focused on Mr. Moriarty’s life experience, problem solving skills, interest in police work, communication skills, interpersonal relationships and community involvement. She also considered Mr. Moriarty’s work history and the test results but relied more heavily on the clinical interview. During the interview, Dr. Reade emphasized to Mr. Moriarty that “it is not in the bag and that everybody gets a fresh look.” He was tense throughout the interview and consistently unforthcoming with answers to her questions. Of particular concern was Mr. Moriarty’s refusal to explain being rejected by the Los Angeles Police Department for “untruthfulness” about a theft from a former employer. Dr. Reade concurred that Mr. Moriarty was psychologically unfit to be a Boston police officer, noting, as did Dr. Scott, that he appeared “moderately depressed and anxious.” She opined that he would have “difficulty managing the stresses inherent in police work, and would have problems exercising good judgment under pressure.” Both Dr. Scott and Dr. Reade attributed importance to Mr. Moriarty’s good work references from his present employer, the Boston College police department. These references, however, did not negate the results of their examinations.

At the hearing before the Commission, Mr. Moriarty offered opinion testimony from Dr. James Beck to rebut the findings of Dr. Scott and Dr. Reade. Dr. Beck evaluated Mr. Moriarty

some two years later, electing not to conduct the testing required by the Human Resources Division protocol. Rather, he relied solely on his clinical interview which focused on Mr. Moriarty's background and personal history. Dr. Beck opined that there was no evidence of any psychological condition which would significantly interfere with Mr. Moriarty's successful performance of the essential functions and duties of a Boston police officer. In addition, he criticized Dr. Scott and Dr. Reade for their conclusions, particularly for failing to give due weight to Mr. Moriarty's job performance as a Boston College police officer.

### **DISCUSSION**

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 the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-304 (1997). General Laws c. 31, § 2(b) provides "no administrator . . . shall be reversed by the commissioner except upon a finding that such decision was not based upon a preponderance of evidence in the record." The Commission's role is not to "make a de novo determination of the facts or draw different inferences from the [appointing authority]" or to substitute its judgment for that of the appointing authority. See Vaspourakan, Ltd. v. Alcoholic Beverages Comm'n, 401 Mass. 347, 351 (1987); Southern Worcester Reg'l Vocational Sch. Dist. v. Labor Relations Comm'n, 386 Mass. 414, 420-421 (1982). Rather, its role is fairly narrow. The Commission asks only whether the facts support the appointing authority's decision. It does not consider whether the facts would also support a different result.

As the party challenging the Commission's decision, the plaintiff bears the burden of establishing the decision's invalidity. Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Haverhill Mun. Hosp. v. Commissioner of Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998); Faith Assembly of God v. State Bldg. Code Comm'n, 11 Mass. App. Ct. 333, 334 (1981). The plaintiff has met that burden.

The Commission's decision cannot be sustained because the Department's retraction of its employment offer was reasonably justified. Two qualified psychiatrists evaluated Mr. Moriarty in accordance with the applicable policy and concluded that he was psychologically unfit for the position of Boston police officer. While Mr. Moriarty has gone to great lengths to marshal evidence to support his claim that he is psychologically fit to be a Boston police officer, this cannot carry the day for him. The issue is not whether he can come forward with evidence to show that he would succeed as a Boston police officer. Rather, the inquiry is whether the Department has justified its decision. The reasoning underlying the Department's decision is not undermined by Dr. Beck's opinion testimony. The Department's psychiatrists followed the HRD protocol, using approved psychological tests that Dr. Beck declined to administer. These tests informed but did not dictate their clinical judgments. Mr. Moriarty offered no contrary test results, only Dr. Beck's contrary opinion, to rebut the results of the tests required by the HRD protocol. In my judgment, the Commission reaches too far in relying on Dr. Beck's non-conforming evaluation to invalidate the Department's retraction of its offer to Mr. Moriarty. In addition, Dr. Beck relied principally on Mr. Moriarty's work record as proof of his fitness to be a Boston police officer. If the work record were dispositive of the issue of Mr. Moriarty's fitness, no testing or clinical interview would be necessary. The work history, however stellar, cannot

displace the results of the psychological testing and clinical interviews of Dr. Scott and Dr.

Reade. The Commission erred in concluding otherwise.

**CONCLUSION AND ORDER**

For the reasons summarized above and for the reasons set out in more detail in the plaintiff's memorandum, the plaintiff's motion for judgment on the pleadings is **ALLOWED**.

Defendant's motion for summary judgment is **DENIED**. Judgment shall enter vacating the decision of the Commission.

5/12/10  
DATE

Geraldine S. Hines  
Geraldine S. Hines  
Justice of the Superior Court

Notice sent  
05.14.10  
(md)