

# Commonwealth of Massachusetts

## **CIVIL SERVICE COMMISSION**

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

**ANDRES NAVARRO,**

*Appellant*

v.

**BOSTON POLICE DEPARTMENT,**

*Respondent*

Docket Number:

G1-25-037

Appearance for Appellant:

James W. Gilden, Esq.

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Sharon, MA 02067

Appearance for Respondent:

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Office of Legal Advisor

Boston Police Department

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Commissioner:

Shawn C. Dooley

## **SUMMARY OF DECISION**

The Commission allowed the bypass appeal of a candidate seeking appointment as a Boston police officer as the Boston Police Department failed to show that the candidate's immature behavior, including as a teenager, provided reasonable justification to bypass him for appointment.

## DECISION

On February 5, 2025, the Appellant, Andres Navarro, acting pursuant to G.L. c. 31, § 2(b), filed a timely appeal with the Civil Service Commission (Commission), challenging the decision of the Boston Police Department (BPD) to bypass him for appointment as a police officer. The Commission held a remote pre-hearing conference on March 18, 2025. On June 3, 2025, I conducted an in-person full hearing at the offices of the Commission in Boston. The hearing was recorded via Webex.<sup>1</sup> Both parties filed proposed decisions. For the reasons set forth below, Mr. Navarro's appeal is allowed.

## FINDINGS OF FACT

BPD entered five exhibits (Resp. Exhs. 1-5) into evidence and the Appellant did not enter any exhibits. Based on the documents entered into evidence and the testimony of the following witnesses:

### *Called by the BPD:*

- Detective Bruce Thomas Finn, Recruit Investigation Unit, Boston Police Department
- Natasha Levarity, Director of Human Resources, Boston Police Department

### *Called by the Appellant:*

- Andres Navarro, Appellant
- Lieutenant Walter Alves, Securitas (assigned to Boston Children's Hospital)
- Joseph Bobbitt, Supervisor of Behavioral Health, Boston Children's Hospital

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<sup>1</sup> The Commission sent the parties a copy of the recording. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to use the recording to supply the court with a written transcript of the 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.

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 the following facts:

***Background of Appellant***

1. The Appellant is a 25-year-old, Mexican-American resident of Boston and a graduate of a Boston high school. *(Testimony of Appellant)*
2. The Appellant served as captain of his high school soccer team for both his junior and senior years. *(Testimony of Appellant)*
3. The Appellant has been employed for four years as a security officer at a Boston hospital, currently holding a supervisory position as corporal. *(Testimony of Appellant)*

***Civil Service Process***

4. On March 16, 2024, the Appellant took the civil service examination for police officer. *(Stipulated Fact)*
5. On June 1, 2024, the Appellant was added to the eligible list for Boston Police Officer. *(Stipulated Fact)*
6. On June 28, 2024, the state's Human Resources Division (HRD) issued Certification Number 09999 to the BPD. *(Stipulated Fact)*
7. The Appellant was ranked 64<sup>th</sup> on the Certification. *(Stipulated Fact)*
8. The Appellant was not appointed as a police officer, while 62 candidates ranked below him on the Certification were appointed. *(Stipulated Fact)*
9. A bypass letter dated January 13, 2025, was mailed to the Appellant, citing concerns about the Appellant's judgment and conduct. The letter made specific references to his

high school disciplinary record as well as two instances where the Appellant was referenced in a police report, one of which involved the Appellant used a homophobic slur. (*Resp. Ex. 5*)

### ***Background Investigation***

10. Detective Thomas Finn (Det. Finn) was assigned to perform the background investigation of the Appellant. Det. Finn has been a police officer since 2007 and is assigned as a detective in the Auto Theft Unit. He has been detailed to the Recruit Investigation Unit (RIU) for each Academy class since 2020. (*Testimony of Det. Finn*)

11. Det. Finn met with the Appellant and reviewed the application and Peace Officer Standards and Training (POST) questionnaire that the Appellant had completed. He then did an extensive computer search of criminal records, driving records, educational records, contacted former and current employers, neighbors, professional and personal references and made a home visit. (*Testimony of Det. Finn*)

12. Det. Finn compiled a report of the results of his investigation into a document called a Privileged and Confidential Memorandum (PCM). The PCM was given to the detective's supervisor for approval and then presented to a "roundtable" of BPD officials who were responsible for making appointment decisions. (*Res. Ex. 1; Testimony of Det. Finn*)

13. Natasha Levarity, the Director of Human Resources, was not present for this specific roundtable, but her designee, Deputy Director of HR Teori Shaw-Boyce, was present. Ms. Levarity reviewed all the information presented to her by the roundtable. Ms. Levarity reviews each bypass decision herself. (*Testimony of Ms. Levarity*)

14. Det. Finn did not take part in the decision whether to make an offer to the Appellant. If the roundtable had any questions regarding any information in the PCM, the detective would have been requested to do a discretionary interview to get clarification from the candidate. In the case of the Appellant, a discretionary interview was not requested by members of the roundtable.

*(Testimony of Ms. Levarity and Det. Finn)*

15. The three issues cited in the Appellant's bypass letter were his high school disciplinary record, a police report from 2019 naming the Appellant in an incident at a YMCA, and a 2020 report of a verbal altercation and use of a homophobic slur outside a liquor store. *(Resp. Ex. 5)*

### ***The Appellant's School Conduct History***

16. The Appellant's high school conduct history report documents 11 separate entries involving the Appellant during his freshman and sophomore years, at which time the Appellant would have been approximately 14 or 15 years of age. Most of these were for missing a class, being tardy, or poor behavior in class. In one reported instance he called his teacher a b\*\*ch and was required to apologize and serve detention. In another instance, a substitute teacher who happened to be Caucasian, heard the Appellant tell his partner, "This nigga is always on my dick" after the teacher admonished him for talking/interrupting others during a group project. *(Resp. Ex. 2; Testimony of Det. Finn)*

17. None of the incidents in the report resulted in suspension or expulsion. The last incident listed is from March of the Appellant's sophomore year. *(Resp. Ex. 2)*

18. The Appellant did not contest the incidents, and recalled using the language quoted in the report, but stated that he was young and immature at the time. (*Resp. Ex. 2; Testimony of Det. Finn, Testimony of Appellant*)

### ***YMCA Incident***

19. On April 19, 2019, the Massachusetts State Police responded to a call reporting an alleged assault which occurred at the East Boston YMCA. At the scene, officers spoke with two male individuals who reported that they were working out at the gym and were laughing and talking with one another. The Appellant was exercising nearby and allegedly approached them and started yelling, “You yelling at me? C’mon let’s go outside and settle this.” (*Resp. Ex. 3*)

20. One individual stated that the Appellant pushed him causing the victim to fall backwards into a weight machine. The other individual corroborated this story and stated that the Appellant then grabbed his belongings and left the gym. (*Resp. Ex. 3*)

21. The Appellant was never questioned or charged by the police concerning this matter and there is no record of anything being done regarding this instance beyond taking the initial report. (*Testimony of Det. Finn; Resp. Ex. 3*).

22. The Appellant’s version of the event is that, as a teenager, he was working out at the YMCA when three middle aged men began teasing him for making grunting sounds when lifting heavy weights. This resulted in a verbal altercation that escalated when the three men approached him and surrounded him. He admitted to shoving one of them

so he could get away and then immediately left the gym to avoid further confrontation.

*(Testimony of Appellant)*

### ***Liquor Store Incident***

23. A September 21, 2020, Boston Police Department report states that officers met with a victim who reported that, as he was walking into a liquor store, he was randomly antagonized by the Appellant. He stated that the Appellant had called him a “f\*\*\*\*t” (a homophobic slur) and told him “I’ll f\*\*king kill you f\*\*\*\*t”. (*Resp. Ex. 4*)

24. Officers then went to the location of the liquor store and met with the Appellant who was at his vehicle. The Appellant stated that the individual gave him a “weird, uncomfortable look” calling him over and acting like “he was trying to get [the Appellant] to do something with him.” He thought the person was drunk as he was slurring his words. The Appellant stated that this caused a verbal dispute where he called the individual a “f\*\*\*\*t.” The Appellant denies making any threats toward the other person. (*Testimony of Appellant; Resp. Ex. 4*)

25. The report states that the Appellant told officers that after this verbal altercation, while he was sitting in his car, he felt the car shake, heard a loud noise, and then heard a vehicle leave at a fast rate of speed. He stated that he then exited the vehicle (owned by his girlfriend) to try and get the license plate of the vehicle but was unable to. He then saw a dent and paint removed on the passenger side door. There was a brick or piece of concrete on the ground nearby that appeared to be the projectile that hit the car. He told the officers that he suspected it was thrown at his car by the individual with whom he had just had the verbal altercation. (*Resp. Ex. 4*).

26. The Appellant sought a complaint against the person he suspected threw the brick at his vehicle. This was dismissed for lack of probable cause as the Appellant was unable to identify the perpetrator. No further action was taken on this matter and the Appellant was not cited or arrested. The person who made the original report said he was satisfied with the outcome and did not want to pursue any further action. (*Resp. Ex. 2*)

***Relevant Work Experience***

27. Lt. Walter Alves has worked with a private security company contracted to provide security for a Boston hospital for over 17 years and is currently the Appellant's direct supervisor. Mr. Joseph Bobbitt was employed by the same company for over 20 years and served as a Lieutenant, previously supervising the Appellant. He has recently been brought in-house by the hospital as the Supervisor of Behavioral Health and has managerial authority over the private security company. (*Testimony of Lt. Alves; Testimony of Mr. Bobbitt*)

28. Lt. Alves and Mr. Bobbitt have known and supervised the Appellant in his current position for over four years. (*Testimony of Lt. Alves; Testimony of Mr. Bobbitt*)

29. Both supervisors have found the Appellant to be responsible and knowledgeable about how to handle stressful situations during his employment. (*Testimony of Lt. Alves; Testimony of Mr. Bobbitt*)

30. The role of security at the hospital often involves stressful and confrontational situations with patients, visitors, and family members who are understandably anxious. Lt. Alves and Mr. Bobbit have observed the Appellant handling these situations with professionalism and compassion. (*Testimony of Lt. Alves; Testimony of Mr. Bobbitt*)



31. The security company takes the use of racial and homophobic language very seriously, and discipline is imposed against employees who violate the related policies. The Appellant has never been disciplined while employed at the security company. Further, neither Lt. Alves or Mr. Bobbitt have ever seen or heard the Appellant be disrespectful to any person, regardless of the way the individual may be acting or speaking toward him.

*(Testimony of Lt. Alves; Testimony of Mr. Bobbitt)*

32. Both men found the Appellant to be an excellent officer and, based on his abilities, behavior, and work ethic, they made the decision to promote the Appellant to the supervisory position of corporal. *(Testimony of Lt. Alves; Testimony of Mr. Bobbitt)*

33. The Appellant's duties as corporal include training and supervising other officers as well as being a first responder. *(Testimony of Lt. Alves; Testimony of Mr. Bobbitt)*

## **LEGAL STANDARD**

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, 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); see also *Brookline v. Alston*, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law). The civil service system is designed to guard against political considerations, favoritism, and bias in governmental hiring and promotion.

Original appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 3n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. To deviate from the rank order of preferred hiring and appoint a person “other than the qualified person whose name appears highest,” an appointing authority must provide written reasons – positive, negative, or both – consistent with basic merit principles. See G.L. c. 31, § 27; PAR.08(4). This is commonly referred to as a bypass. “In addition to bypassing a candidate for appropriate negative reasons, an appointing authority may bypass a candidate for positive reasons, as when one police candidate obtains specialty training and assumes specialty responsibilities that another candidate has not.” *Carnes v. Norwell*, 34 MCSR 91 (2021).

The Commission’s role is to determine whether the appointing authority has 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 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). Reasonable justification means that the appointing authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928). See also *Commissioners*

of *Civil Serv. v. Mun. Ct. of the City of Boston*, 359 Mass. 214 (1971). “The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions.” *Beverly*, 78 Mass. App. Ct. at 187 (citing *Falmouth v. Civil Serv. Comm’n.*, 447 Mass. 814, 824-26 (2006)). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was reasonable justification shown. *Beverly*, 78 Mass. App. Ct. at 188.

## **ANALYSIS**

As a preliminary matter, an appointing authority, including the BPD, faces a high hurdle to show that immature actions or remarks of a young teenager during their freshman and sophomore years of high school have any bearing on a candidate’s **present** fitness to perform the duties of a police officer. Further, the potential disparities related to how, and even if, immature statements or actions of students are reported or documented from one school district to the next, raises the real possibility that certain police officer candidates may be treated differently based simply on what school district they attended. In short, absent evidence that a candidate engaged in heinous or unconscionable behavior during their teenage years (i.e. – 14 or 15 years old as is the case here), I don’t believe that adolescent misjudgment, including errant, albeit ill-advised, remarks can justify bypassing a candidate for appointment. For those reasons, I have concluded that the alleged statements made by the Appellant while in high school do not provide justification to bypass him for appointment. That is particularly true here where this was no further

discipline in the Appellant's junior or senior year and he went on to become captain of a varsity sports team.

A far better indicator of whether the Appellant can perform the duties of a police officer is his performance over the most recent four years as a security officer for a Boston hospital. Two of the Appellant's supervisors, who I found highly credible, spoke glowingly about the Appellant's performance on all levels, including his ability to work with others under stressful circumstances. The Appellant has not faced any discipline during his tenure and has been promoted to the title of corporal at the young age of 25.

That leaves the issue of two peculiar incidents that occurred when the Appellant was 18 and 20 years old respectively. The first occurred at an East Boston YMCA. The relevant evidence regarding that incident is: 1) the hearsay evidence of statements made to a police officer who captured the citizen statements in a police report submitted as a Respondent Exhibit; and 2) the live testimony of the Appellant. I credit the testimony of the Appellant and conclude that the Appellant, after being mocked by three older males, shoved one of the males as he was seeking to remove himself from the situation. I simply don't believe that an isolated, seconds-long incident is a proper or realistic indicator of the Appellant's ability to perform the duties of a police officer, and I find that it is not a valid reason to bypass him for appointment.

The incident at the liquor store is a much closer call. The Appellant, when he was 20 years old, acknowledged that he hurled a homophobic slur at a male sitting outside the store based solely on the Appellant's belief that the person was looking at him the wrong

way. The Commission has no tolerance for any hate or derogatory speech, and I credit the BPD for raising this instance as an area of concern. While his use of that term is most regrettable, it appears that it was more of a moment of indiscretion as opposed to hatred or animosity to a particular group or class of people. While the Appellant admits that he used the word as a slur in a moment of anger, he did not know the person or his sexuality and did not verbally attack this person because of his lifestyle. Further, the person who was called this term did not want to pursue any action against the Appellant. While regrettable, it appears that this was more the case of an immature young person saying something stupid during a confrontation than that of a person holding any deep seeded bias or disdain toward members of the LGBTQ+ community. And while this instance is regrettable, it does not show a pattern of homophobia and the Appellant states that he understands how hateful this word is, and regrets using it.

Regarding both of these instances, the Appellant stated that since maturing and being trained in de-escalation tactics at his job, he would have handled these interactions very differently. He stated that if he were confronted with these situations today he would have simply chosen to ignore the other person(s) and would have extracted himself from the situation by, in the YMCA instance, leaving and going to another area of the gym, or in the liquor store scenario, simply by rolling up his window.

The BPD did not appear to consider that the Appellant has matured since these incidents and has held a position in security at a major Boston hospital for four years without any negative reports. As referenced above, I credit the testimony of his supervisors, Lt. Alves and Mr. Bobbitt, that the Appellant is an exceptional employee and

they have never witnessed any instances of poor behavior in the four plus years he has been employed there. They both testified credibly that they have never heard him be disrespectful toward anyone despite facing some very tense situations with difficult people. They also testified that they do not feel that he has any animosity or dislike of anyone and while working in the hospital you must deal with the full spectrum of society. Both supervisors testified that given their experience supervising him in a security position over the past four years that they believe the Appellant would make an exceptional police officer.

I believe the clearest indications of whether the Appellant can be a good police officer are to be found by examining his performance in the position he has held as a security officer for the past four years. The day-to-day interactions the Appellant had with people in various stages of distress, anxiety, and grief, all in a challenging hospital environment are much more telling than any fleeting, albeit regrettable, reactions the Appellant displayed in connection with a handful of isolated incidents, some of which occurred almost a decade ago before he reached the age of majority.

## **CONCLUSION**

Accordingly, the appeal of Andres Navarro filed under Docket No. G1-25-037 is hereby **allowed**. Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- The state's Human Resources Division shall place the name of the Appellant at the top of any current or future certification for the position of Police Officer with the Boston Police Department until the Appellant has been appointed or bypassed.

Once the Boston Police Department has provided the above-referenced relief, it shall notify the Commission, copying the Appellant, so the Commission can determine whether the Appellant's name shall no longer be placed at the top of certifications issued to the Boston Police Department for the position of Police Officer.

#### CIVIL SERVICE COMMISSION

/s/ Shawn C. Dooley

Shawn C. Dooley

Commissioner

By a vote of the Civil Service Commission (Bowman, Chair; Dooley and McConney, Commissioners [Stein, Markey – Absent]) on October 2, 2025.

Either party may file a motion for reconsideration within ten days of 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:

James Gilden, Esq. (for Appellant)

Omar Bennani, Esq. (for Respondent)

Michael Owens, Esq. (HRD)

Regina Caggiano (HRD)