

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200  
Boston MA 02114  
617-979-1900

**DANIEL NEENAN,**  
Appellant

**G1-22-089**

v.

**CITY OF QUINCY,**  
Respondent

Appearance for Appellant:

John J. Greene, Esq.  
15 Foster Street  
Quincy, MA 02169

Appearance for Respondent:

Janet S. Petkun, Esq.  
Assistant City Solicitor  
Quincy City Hall  
1305 Hancock Street  
Quincy, MA 02169

Commissioner:

Paul M. Stein

**Summary of Decision**

The Commission allowed an appeal from the Appellant’s bypass for appointment as a municipal police officer, concluding that none of the reasons stated by the Appointing Authority reasonably justified the bypass of this well-qualified and highly recommended criminal justice honors graduate, especially when numerous lower-ranked candidates with more serious flaws were appointed as police officers.

**DECISION**

On June 5, 2022, the Appellant, Daniel Neenan, acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from the decision of the Mayor of the City of Quincy (Quincy) to bypass him for appointment as a full-time permanent Police Officer for the Quincy Police Department (QPD).<sup>1</sup> A remote pre-hearing conference was held on July 12, 2022. A full hearing was held at the offices of the Commission in Boston on November 29, 2022 and via

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR § 1.01 (Formal Rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

videoconference (Webex) on December 21, 2022, which were recorded.<sup>2</sup> Each party filed Proposed Decisions on March 30, 2023. For the reasons set forth below, Mr. Neenan's appeal is allowed.

### **FINDINGS OF FACT**

Seventeen (17) exhibits were introduced into evidence (*Resp.Exhs.1 through 17*). Based on the documents submitted and the testimony of the following witnesses:

*Called by the City of Quincy:*

- Patricia McGowan, Quincy HR Director
- Christopher Walker, Quincy Mayor's Chief of Staff
- Paul Keenan, QPD Police Chief
- Michael Duran, QPD Sergeant
- Evan Sorgi, QPD Patrol Officer
- Officer A, QPD Patrol Officer

*Called by the Appellant:*

- Daniel Neenan, Appellant
- John Caron, Appellant's former employer

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:

1. The Appellant, Daniel Neenan, has lived in Quincy since 1995. He graduated from Quincy High School where he was Captain of the football team. (*Resp.Exhs.6, 7 & 11; Testimony of Appellant*)

2. Since 2018, the Appellant has been employed as a sales consultant for a software technology company. From 2008 to 2018, he worked full-time (six days a week) for a retail tire

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<sup>2</sup> 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.

store; originally hired as a technician, he moved into sales and eventually rose to become a sales manager. Prior to 2010, Mr. Neenan also worked a part-time security job for a Boston sports bar/restaurant near the TD Garden. He left that job in 2010 after a mix-up about taking off New Year's Eve. (*Resp.Exhs. 6, 7 & 11; Testimony of Appellant & Caron*)

3. Mr. Neenan was inspired at an early age to become a police officer by his grandfather who served with the Boston Police Department. He holds a Bachelor's Degree in Criminal Justice (with Honors) received in 2010. Beginning in 2011, he took and passed every entry-level civil service examination for municipal police officer administered every two years by the Massachusetts Human Resources Division (HRD) (*Resp.Exhs.7, 11 & 17; Testimony of Appellant; Administrative Notice {Appellant's Neogov Master Record attached to HRD letter to Commission dated 7/7/2022} Appellant's Prior (2020) Bypass and Commission Appeal*)

4. In October 2019, Quincy began a hiring process for entry-level QPD police officers pursuant to HRD Certification #06692, originally for 18 officers. The Appellant's name appeared within the so-called statutory 2N+1 formula of candidates then eligible for appointment. (*Administrative Notice [Neenan v. City of Quincy, 35 MCSR 21 (2022) [herein Neenan I]*)

5. The Appellant signed Certification #06692 as willing to accept appointment. On or about November 5, 2019, he duly submitted his employment application and was processed through the application process, including a background investigation performed by QPD Sergeant Michael Duran. (*Resp.Exh.11; Testimony of Lt. Duran<sup>3</sup>; Administrative Notice [Neenan I]*).

6. Sgt. Duran interviewed the Appellant's current and prior employers, neighbors and personal references, and a Massachusetts State Police (MSP) Trooper regarding the Appellant's

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<sup>3</sup> At the time of the Commission hearing of the present appeal, Sgt. Duran had been promoted to Police Lieutenant (*Testimony of Lt. Duran*)

MSP applications, and then he interviewed the Appellant on January 10, 2020 and, again, on January 15, 2020. Sgt. Duran summarized his conclusions as follows:

Positives:

- Longtime Quincy resident (since 1995)
- Strong work history
- Bachelors Degree from Curry College in 2010 (He majored in Criminal Justice and was a member of the Criminal Justice National Honor Society)
- Supervisors, co-workers, neighbors, personal references, and his past dating partner all have positive things to say about Mr. Neenan

Negatives:

- OUI/Chemical test refusal (2014)
- Driver history
- Inconsistencies on 2 MSP/1 Quincy Police application
- Failed to report 2010 termination [from Boston sports bar]

*(Resp.Exh.11; Testimony of Lt. Duran)*

7. The first negative item reflected the fact that the Appellant was arrested and charged with OUI in October 2014 and his license was suspended when he refused a breathalyzer test. According to the QPD police report, the Appellant was driving erratically when stopped. He was compliant and, when asked if he had been drinking, he said: “Officer, I am not going to lie, I have been” and stated he consumed two vodka cocktails. The charges were dismissed in April 2015. The Appellant disclosed this infraction on his employment application and expressed remorse for his behavior. He called it his “greatest failure” and stated “I was ashamed of myself. I lost weight and I couldn’t believe I was that foolish. I learned from that experience.” He has incurred no other criminal infraction. *(Resp.Exhs.6, 7, 9, 11 & 17)*

8. The second negative item was based on the Appellant’s RMV record, which showed he was held responsible for motor vehicle violations on four occasions over a two-year period from 2008 to 2010 [one seat belt violation (11/2008)<sup>4</sup>, two speeding citations (10/2010 & 11/2010) and

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<sup>4</sup> There is also an entry on the same date for speeding, with the notation “NP”, the significance of which was not explained.

one miscellaneous equipment violation (10/2010)] and on one occasion in 2014 [number plate violation]). He was stopped on one other occasion in 2009 and twice in 2010 but was held not responsible for any alleged infractions. He was held responsible for a surchargable accident in 2011. Following his OUI arrest in 2014, he was stopped once again, in 2019, and given a warning for a speeding/lane violation. (*Resp.Exhs.7 & 8*)

9. The third negative item reflected Sgt. Duran's conversation with a Massachusetts State Police (MSP) Trooper and review of the Appellant's MSP application file. (*Resp.Exh.11; Testimony of Lt. Duran*)

10. The QPD application asks if the applicant "ever applied for any police officer or dispatch position in any state or territory of the United States of America?", to which the Appellant, accurately, checked "YES" and listed the MSP and the QPD. (*Resp.Exh.11*)

11. The Appellant applied to the MSP in 2017 and in 2019. During his background interview on January 10, 2020, the Appellant told Sgt. Duran about his rejection<sup>5</sup> by the MSP in 2017, which he attributed to his 2014 OUI. The Appellant also brought up the fact that he had just been reconsidered and, again, rejected by the MSP in December 2019. He provided Sgt. Duran copies of both the 2017 and 2019 rejection letters. (*Resp.Exh.11; Testimony of Appellant & Lt. Duran*)<sup>6</sup>

12. The MSP rejection letters were not introduced into evidence. According to Sgt. Duran's report, the 2017 rejection letter stated two reasons: (a) the 2014 OUI and (b) "Medical Standard

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<sup>5</sup> For clarity, except for certain disciplinary matters, MSP Troopers are not civil service employees governed by G.L. c. 31, and the Appellant's non-selection by the MSP is not technically a "bypass" within the meaning of G.L. c. 31 and cannot be appealed to the Commission. For that reason, I have used the term "rejection" rather than "bypass" to describe the Appellant's non-selection by the MSP. See generally, G.L. c. 22C.

<sup>6</sup> Lt. Duran placed his receipt of the information from the Appellant about the 2019 MSP rejection to have been after the January 10, 2020 interview, rather than at that interview, as the Appellant recalled. Both witnesses were certain, however, that, it was the Appellant who first brought the 2019 rejection to Sgt. Duran's attention. (*Resp.Exh.11; Testimony of Appellant & Lt. Duran*)

2-34a(6)” [not otherwise explained] and the 2019 MSP rejection letter stated four reasons: (a) Omissions/Untruthfulness on application – terminated from employment, driving without proper registration; (b) Criminal History – 2014 OUI/Refusal; (c) Driver History – driver’s license suspended; and (d) Terminated from Employment 2010 [Boston sports bar]). (*Resp.Exh.11*)

13. The fourth negative related to the Appellant’s non-disclosure of his alleged employment termination at the Boston sports bar in 2010, although it had been disclosed to the MSP. The Appellant told Sgt. Duran that he did not mention his part-time employment (one night a week) at the Boston sports bar because the QPD application only asked for employment history for the past seven years and, in addition, he disputed that he was fired, explaining that he left after a misunderstanding about whether he had been required to work on New Year’s Eve. (*Resp.Exh.11*)<sup>7</sup>

14. By letter dated March 20, 2020, Quincy HR Director Patricia McGowan, informed the Appellant that he had been bypassed for appointment for the following reasons:

- You were dishonest in your responses on your application regarding termination of employment.
- You were bypassed by the Massachusetts State Police in 2019 for being untruthful.
- You did not disclose the termination or 2019 bypass despite being notified on the application and verbally that “knowingly withholding information or making false statements on my application will be the basis for rejection of my application. . . .”.

The 2020 bypass letter did not mention the Appellant’s OUI or his driver’s record as reasons for the 2020 bypass. (*Resp.Exh.12*)

15. On April 1, 2020, Quincy appointed 21 new police officers from Certification #06692, four of whom ranked below the Appellant on the certification, including a candidate who was the son of the Quincy Mayor and nephew of the Quincy Police Chief. (*Administrative Notice [Neenan I]*)

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<sup>7</sup> At the Commission hearing, the Appellant called the owner of the sports bar as a witness. He corroborated the Appellant’s explanation for his separation from employment and confirmed that he was a good employee, that he was not fired, and that he was eligible for rehire. The owner was never contacted by the QPD or the MSP. (*Testimony of Caron*)

16. The Mayor's son/Police Chief's nephew was the 19<sup>th</sup> ranked candidate hired. Had the initial number of candidates not been extended beyond the original 18 authorized by the certification, the son could not have been hired. (*Administrative Notice [Neenan I]*)

17. The Appellant duly appealed to the Commission from Quincy's March 12, 2020 decision to bypass him. By Decision dated February 24, 2022, the Commission unanimously voted to allow the Appellant's appeal in Neenan I, finding that procedural flaws in the 2019-2020 hiring process made it difficult to determine whether Mr. Neenan's background and answers regarding his alleged termination from the Boston sports bar/restaurant and allegedly failure to disclose his second (2019) rejection by the MSP would have been viewed by Quincy in a different light if the Mayor's son, a lower ranked candidate, were not competing for the same position.

For example, would the Round Table members have given more weight to Mr. Neenan's explanation that he mistakenly thought that the question on the application about termination from an employer had a seven (7) year look back window, like the question about prior employment did? Would they have asked investigators to contact the owner of the restaurant and hear directly from him that the Appellant's separation from employment was associated with a communication problem – and that he would personally re-hire the Appellant at his restaurant? Would the Roundtable have accepted Mr. Neenan's explanation that he did not list the 2019 application to the State Police on his Quincy application because he was still in the process of applying to the MSP and had not received a decision from them, so he did not include it on the current Quincy application?

Years of prior Commission and judicial decisions show that appointing authorities are given significant discretion, and deference, when it comes to making the types of subjective judgment calls raised here. That deference, however, has its limits, particularly when the appointment process has been compromised, at least by the appearance that the scales may have been tipped to ensure the consideration of one candidate and by the fact that the Mayor's most senior staff, who report directly to him, had such a prominent role in an appointment process involving the Mayor's son."

Accordingly, the Commission ordered that the Appellant be placed at the top of the current and future certifications for appointment of QPD Police Officers and ordered that Quincy "take all steps necessary to ensure that the Appellant receives a fair, impartial, de novo review for appointment as a Quincy Police Officer." (*Administrative Notice [Neenan I]*)

## The Present Bypass and Commission Appeal

18. On September 28, 2021, while the Appellant's appeal to the Commission in *Neenan I* was under advisement, HRD issued Certification #08154 to Quincy for the appointment of 25 additional QPD Police Officers (later increased to a total of 31 officers). The Appellant's name appeared tied in in 23<sup>rd</sup> place on the Certification. (*Resp.Exhs.1, 2 through 4; Administrative Notice [HRD Letter to the Commission dated 7/7/2022]*)

19. The Appellant signed Certification #08154 as willing to accept appointment and completed a new employment application on or about October 29, 2021. (*Resp.Exhs.1, 6 through 8 & 17*)

20. On January 14, 2022, Quincy requested that HRD extend the expiration of Certification #08154 so that it could complete the vetting of candidates on the certification. (*Resp.Exh.2*)

21. On January 20, 2022, a round table meeting headed by Quincy Mayor Koch convened to discuss 24 of the candidates. Also present were Mayoral Chief of Staff Walker, HR Director McGowan, QPD Chief Paul Keenan, Sgts. Duran and Sorgi, as well as several other QPD officers and the Quincy Director of Operations. The Appellant was not one of the candidates discussed at this roundtable. (*Testimony of McGowan*).

22. On or about February 9, 2022, Quincy began processing the Appellant's 2021 application, pulling his driver's history and criminal history and assigning QPD Officer Evan Sorgi to conduct a new background investigation on the Appellant. (*Resp.Exhs.7 thorough 9; Testimony of Sorgi*)

23. On February 17, 2022, Officer Sorgi conducted a personal interview with the Appellant, noting that the Appellant "struggled to recall exact dates and violations for several of his motor vehicle infractions (many occurred over a decade ago)" but he found "no discrepancies between Mr. Neenan's personal declaration supplement and his initial application for employment." (*Resp.Exh.7; Testimony of Sorgi*)



24. When asked what his “greatest failure” had been and “what did you learn from it”, as he had in his 2020 interview, the Appellant stated: “[M]y 2014 OUI was the biggest mistake I’ve made in my life” and reinforced his commitment to avoid such behavior if he wanted to achieve his goal of becoming a police officer. (*Resp.Exhs.11 & 17; Testimony of Appellant*)

25. On or about February 25, 2022, following the Commission’s Decision in *Neenan I*, HRD moved the Appellant’s name from the 23<sup>rd</sup> tie group to the top (ranked #1) on Certification #08154. (*Resp.Exhs.4; Administrative Notice [HRD Letter to the Commission dated 7/7/2022]*)

26. After the personal interview with the Appellant, Officer Sorgi spoke to the Appellant’s neighbors, former dating partner and supervisors and co-workers at the Appellant’s current software company employer and his prior tire store employer, all of whom gave positive reports. For example, Officer Sorgi reported:

- The Appellant’s current supervisor rated the Appellant “five out of five for enthusiasm, common sense, cooperativeness, co-worker relations, appearance, dependability, tardiness, attendance, supervisor relations, and overall job performance . . . [he] had not been the subject of any disciplinary actions. . . / does not use tobacco products, consume illicit drugs, gamble, or engage in domestic violence. . . [and] *“does tremendous under stress . . . he’s always open to listening and being coachable.”* He would rehire the Appellant *“in a heartbeat”* . He could not think of any way that the Appellant could be a better employee. *“[H]e’s one of the most trustworthy and dependable people I know”*. When asked how he would feel if there was an emergency in his home and the Appellant was the responding officer he replied *“I would love it. He’s calm, cool, and collected. He’s always good at listening”*.
- The Appellant’s former supervisor at the tire store stated that the Appellant “still occasionally visits the store to catch up.” The supervisor’s views and opinions concerning the Appellant had not changed since he was interviewed by (then) Sgt. Duran in 2020 and he “strongly supports” the Appellant’s desire to become a police officer. [In 2020, the supervisor had rated the Appellant 5 out of 5 for leadership ability, common sense, cooperativeness, coworker relations, appearance, dependability, tardiness, attendance, supervisor relations and overall performance. He noted the Appellant was disciplined once and that he would rehire the Appellant. He said that he would be “very comfortable” if the Appellant came to his home to respond to an emergency and *“I would trust him.”*]
- The Appellant’s former dating partner stated that, during their relationship they always resolved conflict *“very well . . . we had great communications . . . he’s very level-headed”* and, although they have broken up, they remain in touch as friends. She supported the

Appellant's desire to become a police officer because "*he really wants it and has stayed persistent*". She recommended the Appellant for the job because "*I served in the military police in the army . . . he stays fit and has the right mentality.*"

- The Appellant received similarly positive reports from neighbors and personal references (including an "overwhelmingly favorable" recommendation from a current QPD Police Lieutenant).

*(Resp.Exh.7; Testimony of Sorgi) (emphasis in original)*

27. Upon review of then-Sgt. Duran's prior investigation report, Officer Sorgi came to learn that the Appellant had two encounters with the QPD (involving a dispute with a former neighbor) that had come up in the 2019 hiring cycle. The first encounter occurred in March 2007, when the Appellant was a victim of an assault by the neighbor for which the neighbor was criminally charged. The second incident occurred in July 2008 when the same person appeared at QPD headquarters to "put it on the record" that the Appellant had harassed him, but he did not file a complaint. The Appellant explained to Sgt. Duran that it was he (the Appellant) who was being repeatedly "egged on" by the neighbor. These incidents were not further investigated by Sgt. Duran after he heard the Appellant's version of the encounters and were not included as reasons for the 2020 bypass. *(Resp.Exhs.6, 7 & 11; Testimony of Appellant, Duran & Sorgi)*

28. On March 8, 2022, a QPD officer (Officer A) contacted Officer Sorgi by telephone and explained that had recently seen a newspaper article that led him to believe that the Appellant was about to be appointed as a QPD police officer. Officer A explained that it was his father who had been involved in the 2007 and 2008 encounters with the Appellant. Officer A said he was 11 years old at the time. He was 15 when he last saw the Appellant. He did not believe the Appellant knew who he was or that he was a QPD police officer. *(Resp.Exh.7; Testimony of Sorgi & Officer A)*

29. Officer A expressed concern, based on his father's belief, that, if the Appellant were to become a police officer, among other acts of retaliation, the Appellant would intentionally let him (Officer A) "get hurt" during a call for service. *(Resp.Exh.7; Testimony of Sorgi & Officer A)*

30. After the conversation with Officer A, Officer Sorgi spoke by telephone with Officer A's father who, at first, said he didn't remember "the kid's name" and didn't "want to get in the way of achieving his dream of becoming a police officer". Eventually, the father recounted his version of the 2007 and 2008 incidents, as well as an alleged threat that the Appellant purportedly made in 2011 at the tire store where the Appellant worked. The final encounter he recalled occurred in 2012 or 2013 at a fast-food restaurant where they exchanged "hostile glances". He said the Appellant "was unable to let go of a grudge" and "was capable of writing a ticket" to "get revenge" or "even allow his son to get hurt during a call for service to settle the score." (*Resp.Exh.7; Testimony of Sorgi*)

31. On March 10, 2022, Officer Sorgi again met with the Appellant at QPD police headquarters, this time with another officer present. Mr. Neenan recalled the 2007 and 2008 incident as well as the incident at the tire store. He reiterated the statements made to (then) Sgt. Duran that it was the father who was the aggressor and "catalyst for conflict" on every occasion, including the time the father "sucker punched" him in the face (2007) to the 2008 incident in which the father yelled out his car window as he passed the Appellant traveling in the opposite direction. At the tire store, the Appellant was dealing with another customer when the father came in, started yelling and challenged the Appellant to "step outside to fight". The Appellant had not seen the father for at least five years. (*Resp.Exh.7; Testimony of Appellant & Sorgi*)

32. Officer Sorgi told the Appellant that the father's son was now a QPD police officer and asked if his past encounters with Officer A's father could affect his ability to work alongside his son. The Appellant said: "Absolutely not." Officer Sorgi then said that the Appellant and Officer A could be paired as sector partners and he needed to make sure the Appellant would not "hold a

grudge”. The Appellant was adamant that these incidents were in the past and he would be able to work with Officer A without any problems. (*Resp.Exh.7; Testimony of Appellant & Sorgi*)

33. Officer Sorgi also reviewed (then) Sgt. Duran’s background report and noted that his own report “refer[s] to Sgt. Duran’s report when it is relevant.” (*Resp.Exh.7; Testimony of Sorgi*)

34. Officer Sorgi did not investigate the Boston sports bar employment situation or address the purported discrepancies between the Appellant’s 2019 QPD application and his two MSP applications. Officer Sorgi’s report does not mention any of the alleged discrepancies in those applications as relevant. (*Resp.Exh.7; Testimony of Sorgi*)

35. Officer Sorgi’s background investigation report concluded:

Positives:

- Lifelong Quincy resident
- All neighbors, supervisors, co-workers, personal references and dating partners had overwhelmingly positive comments regarding Mr. Neenan
- Bachelor’s degree in Criminal Justice from Curry College and was a member of the Criminal Justice National Honor Society

Negatives:

- O.U.I/Chemical test refusal (breath) in 2014
- Substantial driving record<sup>8</sup>

(*Resp.Exh.7*)

36. On March 29, 2022, a second roundtable was convened to discuss the remaining candidates, including the Appellant. In deference to the Commission’s decision in Neenan I, Mayor Koch removed himself from the roundtable discussion. The Mayor’s Chief of Staff, Christopher Walker chaired the meeting. After the roundtable decided who to recommend for hiring and who should be bypassed, Mr. Walker, Ms. McGowan and the Director of Operations reported the conclusion to the Mayor who responded: “Okay”. (*Testimony of McGowan & Walker*)

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<sup>8</sup> The Appellant’s 2022 driving record had no new entries after 2019. (*Resp.Exh.8*)

37. After hearing the Appellant's explanation about the circumstances of the Appellant's separation from employment from the sports bar, the roundtable concluded that the sports bar issue was "off the table" and no longer considered it a reason to bypass him. (*Testimony of McGowan*)

38. By letter dated May 11, 2022 from Ms. McGowan, the Appellant was notified that he had been bypassed. The four reasons for the bypass decision were:

- The 2014 OUI arrest and refusal to submit to a breathalyzer test
- "[M]ultiple past disorders with a Quincy resident" involving "allegations of harassment, threatening gestures, yelling obscenities and overall negative interactions" from 2007 through 2013 which made the resident concerned that "if you were hired as a Police Officer, you would do something to get revenge" against him.
- Motor vehicle history of "fifteen combined violations between 2008 and 2019."
- Omissions and untruthfulness in the QPD application process in 2020 and in his MSP applications cited in the 2020 bypass which "continues to be a basis of your bypass . . ."

(*Resp.Exh.10*)

39. At the Commission hearing, both Police Chief Keenan and HR Director McGowan, described that bypass decisions are dependent on a "totality of the issues". In particular, Chief Keenan agreed that the Appellant's OUI, alone, was not an automatic disqualifier, nor was every act of dishonesty necessarily an automatic disqualifier. They both agreed that recent criminal or motor vehicle infractions must be weighed more heavily than older ones. Ms. McGowan agreed that the Appellant was honest and forthcoming about his 2014 OUI incident. She did not believe that the Appellant's incomplete recollection about every detail of his driver's record was due to any dishonesty on his part. (*Testimony of McGowan & Chief Keenan*)

40. Effective July 15, 2022, Quincy appointed 25 QPD police officers from Certification #08154, all of whom were ranked below the Appellant on the certification. (*Resp.Exhs.5 & 13A-13FF*)

41. Among the candidates who bypassed the Appellant and received offers of employment:

CANDIDATE C – Attended three colleges but obtained no degree. Arrested for Minor Transporting Alcohol in 2008 (age 20) when driving a car in which police found open cans of alcoholic beverages, some of which he admitted drinking, purchased by a passenger whom candidate drove to the liquor store. Three surchargable accidents (2006, 2010, 2011).

CANDIDATE D – Stopped after police chase in New Hampshire for speeding in 2013 (101 mph in a 40-mph zone). Failed sobriety test (0.17 BAC) and arrested for “aggravated” DUI. Charges reduced to a misdemeanor DUI after candidate attended an “Impaired Driver Care Management Program.” A subsequent speeding violation in 2017. Currently employed as a university public safety operations manager.

CANDIDATE G – Two speeding infractions (2017 [citation] & 2021[warning]).

CANDIDATE I – Placed on probation during freshman year of college for fighting. Arrested in April 2014 for Minor Transporting/Carrying Alcohol on Person. Arrested in 2017 for Disorderly Conduct and Disturbing the Peace during an off-campus party at which he admitted to being intoxicated and taunted police to “f---ing arrest me.”

CANDIDATE J – 2009 high school graduate. Attended college for two years from 2017–2019. Summoned to court on charge of Assault & Battery in 2009 for fighting a former classmate; charges dismissed but he admitted to fighting. Joined the military because “he knew if he stayed in Quincy he would end up getting in trouble for stupid things.” In 2017 hiring cycle for QPD Police Officer, after testing positive for cocaine, he repeatedly denied using illegal drugs. During the 2022 hiring cycle, however, he admitted that he did, in fact, use cocaine in 2017.

CANDIDATE K – 2015 high school graduate. Currently a police officer in another community. Placed in protective custody in 2019 after “drinking heavily” at a party. No charges filed. Allegations of two sexual assaults that allegedly occurred in or about 2014, filed in 2019 by family with “clear concerns” for candidate becoming a police officer, but the case did not move forward due to passage of time and lack of victim cooperation.

CANDIDATE L – 2014 high school graduate. Discharged from military in 2017 for failure to meet “Physical Standards”. Three warnings for speeding (2016, 2018 & 2020)

CANDIDATE N – 2015 high school graduate (1.57 GPA). Fired in 2018 from job as laborer for attendance issues. (Background investigator spoke with employer who said he would rehire candidate).

CANDIDATE P – 2014 high school graduate. Two speeding infractions (2018 [citation] & 2019 [warning]). In October 2020, candidate was found by QPD to be heavily intoxicated, “convulsing” and “coming in and out of consciousness”, “aggressive towards paramedics” and “not able to stand on his own.” He explained he “snapped” when a friend mentioned his late mother who had passed away a year earlier. Transported to hospital. Previous romantic partner was interviewed and stated the episode was “100% an isolated incident.”

CANDIDATE Q – 2018 high school graduate. Currently unemployed. Four motor vehicle infractions (2016 [warning for lane violation and failure to yield]; 2018 [warning for

equipment violation]; 2020 [warning for lane violation]; 2020 [warning for speeding]) and one surchargable accident (2020).

CANDIDATE V – 2018 high school graduate, now in his senior year at college. Received warning for plagiarism in his sophomore year. One warning for speeding (2021) and one surchargable accident (2018).

CANDIDATE X – 2003 high school graduate. Two juvenile arrests (1998 & 2000) and one adult arrest (2003 – Receiving Stolen Property [dirt bikes]). Candidate was “uncomfortable” when asked by friend to help sell the bikes but said he didn’t know the bikes were stolen.

CANDIDATE BB – 2008 high school graduate. CWOFF in 2004 as a juvenile for making harassing and threatening phone calls. History of drug use (last used in 2008). Four motor vehicle infractions, most recently a 2019 warning for speeding)

CANDIDATE EE – Currently employed as a campus police officer. Driver’s history shows six infractions from 2005 through 2008, including three for speeding, and one surchargable accident in 2011.

*(Resp.Exhs.13A through 13FF)*

### **APPLICABLE CIVIL SERVICE LAW**

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).

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 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. 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 Service Comm'n, 483 Mass. 461, 474-78 (2019); Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

"Reasonable justification . . . means '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'". Brackett v. Civil Service Comm'n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons "more probably than not sound and sufficient").

The governing statute, G.L. c. 31, gives the Commission's de novo review "broad scope to evaluate the legal basis of the appointing authority's action" and it is not necessary that the Commission find that the appointing authority acted "arbitrarily and capriciously." City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). The commission ". . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority" but, when there are "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." Id. (emphasis added). See



also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

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 Service Comm’n, 61 Mass. App. Ct. 796, 801 (2004), citing City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997); Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

An Appointing Authority is well within its rights to bypass an individual for fudging the truth as part of an application for a civil service position. It is reasonable to infer that a person who does so in order to get a job will be inclined to lie on the job. See O’Brien v. Somerville, 25 MCSR 292 (2012). See also, Minoie v. Town of Braintree, 27 MCSR 216 (2014); Polin v. Randolph, 23 MCSR 229 (2011).

However, providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” Kerr v. Boston Police Dep’t, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016). Moreover, a bypass letter is available for public inspection upon request, so the consequences to an applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L. c. 31, § 27, ¶ 2. Thus, the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness require that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest

mistakes or good faith mutual misunderstandings. See, e.g., Boyd v. City of New Bedford, 29 MCSR 471 (2016); Morley v. Boston Police Dep't, 29 MCSR 456 (2016); Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history).

### **ANALYSIS**

Quincy did not meet its burden to establish by a preponderance of the evidence that the reasons it offered for bypassing the Appellant for a second time in 2022 were reasonably justified. Two of the reasons—(a) the Appellant's OUI and (b) driving record—were not included in Quincy's 2020 bypass decision and the Appellant had no new criminal or driving infractions in the two years since that bypass. Quincy offered no credible explanation why the OUI or the driving record has now become a reason for bypassing him, especially when Quincy has appointed other candidates with equally, or more troubling, recent criminal and driving records. In regard to the other two reasons—(c) that the Appellant's appointment as a QPD police officer would risk harm to another Quincy police officer or to that officer's father and (d) that the Appellant was allegedly untruthful and inconsistent in his prior 2020 QPD application and/or his 2017 and 2019 applications to the Massachusetts State Police—the City has not, by a preponderance of the evidence, established that these are valid reasons for bypass. The Appellant deserves a further opportunity for an impartial consideration of his suitability to serve as QPD police officer, untainted by the history of his two prior bypasses, in which none of these unsubstantiated reasons are used as a basis to disqualify him.

#### **The Appellant's 2014 OUI**

The Appellant's 2014 OUI arrest is the only charge of criminal misconduct on his record. He did not resist arrest and acknowledged that he had been drinking. He admitted to the QPD in both 2020 and 2022 that he had been "foolish" and was "ashamed" for his behavior.

I observed the Appellant during the two days of the Commission hearing before me on his bypass appeal. He presented as a poised, sincere, articulate individual, who testified honestly and from a solid memory of events. I am persuaded that his remorse over his 2014 OUI is genuine and, coupled with his clean record since, he has shown that, indeed, he did learn from what he called the “biggest mistake” of his life. Quincy did not use the 2014 OUI as a reason for bypass in 2020, and offered no explanation why, after two more years of a clean record, it now found it to be a concern that justified a bypass.

I also note that Quincy agreed that an OUI, alone, was not considered a disqualifier. In fact, Quincy appointed at least five other lower-ranked candidates with serious alcohol infractions on their records: (a) Candidate C (2008 - arrest for minor operating a motor vehicle while drinking); (b) Candidate D (2013 arrest for “aggravated” DUI for traveling 101 mph in 40 mph zone and testing 0.17 BAC); (c) Candidate I (2017 - arrest for Disorderly Conduct and Disturbing the Peace, admitted to being intoxicated and taunting police to “f----ing arrest me); (d) Candidate K (2019 - placed in protective custody after “drinking heavily” at a party); (e) Candidate P (2020 - found by QPD to be heavily intoxicated, “convulsing” and “coming in and out of consciousness”, “aggressive towards paramedics” and “not able to stand on his own”).

In sum, I conclude that the preponderance of the evidence fails to justify Quincy’s reliance on the Appellant’s 2014 OUI as reasonable justification to bypass him in 2022.

#### Appellant’s Driving Record

Quincy’s 2022 bypass letter misrepresents the extent of the Appellant’s driving infractions, claiming that he was responsible for “fifteen combined violations between 2008 and 2019.” This characterization includes citations for which the Appellant was found “NP” or “NR” (i.e., not responsible) and double counts entries for the same infractions. In fact, the RMV record shows

that the Appellant was stopped (a) once in 2008 for which he was found responsible for not wearing his seat belt; (b) three times in 2010 (twice for speeding and once for a “miscellaneous” equipment violation); (c) once in 2014 for the OUI; and (d) once in 2019, receiving a warning for speeding and two other infractions. The Appellant also has one 2011 surchargable accident on his record.

In particular, the Appellant’s 2022 RMV Record contains no new infractions from his record as of the prior 2020 bypass, the most recent entry being the warning issued in 2019 and, apart from the 2014 OUI, the most recent prior driving incident for which the Appellant was held responsible was his one surchargable accident in 2011.

By comparison, the driving record of several other candidates ranked lower than the Appellant who were appointed have comparably and, in some cases, more recent and problematic entries: (a) Candidate L (three warnings for speeding – 2016, 2018 & 2020); (b) Candidate P (two speeding infractions (2018 [citation] & 2019 [warning])); (c) Candidate Q [Four motor vehicle infractions: 2016 (warning for lane violation and failure to yield); 2018 (warning for equipment violation); 2020 (warning for lane violation); 2020 (warning for speeding & one surchargable accident)]; (d) Candidate V (2018 – surchargable accident; 2021 - warning for speeding); and € Candidate BB – (four motor vehicle infractions, most recently a 2019 warning for speeding); Candidate EE (six infractions from 2005 through 2008, including three for speeding; 20–1 - surchargable accident).

The Appellant’s RMV record was not used as a reason for the 2020 bypass and Quincy did not persuade me why, especially after two more years of clean driving history, that record provided a reasonable justification for the current bypass.

#### Risk to QPD Officer and Officer’s Father

Quincy’s claim that the Appellant would abuse a future position as a QPD police officer to harm a fellow officer (Officer A) or retaliate against a private citizen (Officer A’s father) has no

merit and can be addressed briefly. This issue was not flagged by (then) Sgt. Duran as a matter of concern in his 2020 background investigation. It was not raised as a reason for the Appellant's 2020 bypass. When the matter was raised by Officer Sorgi in the 2022 background investigation, the Appellant made it clear that he would have no problem partnering with Officer A and harbored no continuing animosity toward Officer A or his father. As I have previously indicated, I found the Appellant to be a credible witness with a good memory of significant events. In particular, I found nothing in the Appellant's demeanor or testimony to doubt his veracity on this point.

I give no weight to the hearsay account of the father's statements to Officer Sorgi. I heard testimony from Officer A (a juvenile at the time of the incidents) who asserted that he believed his father's concerns about the Appellant, but that testimony did not persuade me that the Appellant's affirmation that he would do no harm to Officer A or his father was not credible. Nor do I believe that the information contained in Officer Sorgi's report or in Officer A's testimony could have led the Quincy appointing authority (or any reasonable person) to believe that the Appellant presented a risk that he might commit such harm. The documentary evidence corroborated the Appellant's percipient testimony that both (then) Sgt. Duran and Officer Sorgi knew that the citizen, not the Appellant, was the aggressor in all of the incidents, most of which had occurred more than ten years ago.

#### Untruthfulness in Prior Applications

The final reason for bypassing the Appellant is stated in a lengthy paragraph of the 2022 bypass letter as follows:

“Your background investigation shows that you were bypassed in 2017 and 2019 for employment with the Massachusetts State Police. Your 2017 bypass letter states that you were deemed to be unsuitable for hire due to your driver history as well as your Medical Standard. Your 2019 Massachusetts State Police bypass letter attributes your bypass to omissions/untruthfulness on application, criminal history including the 2014 OUI, driver history and a termination from employment. During your original interview with the

Quincy Police Department on January 10, 2020 (Hiring under certification 06692) you omitted that you were bypassed by the Massachusetts State Police in 2019. Your bypass letter had been issued to you on December 4, 2019, well before your interview on January 10, 2020. When questioned, you later admitted that you neglected to inform the Quincy Police Department of your 2019 bypass for being untruthful. Omission of the truth and dishonesty were reasons for your bypass from the Quincy Police Department in 2020 and continues to be a basis of your bypass under certification #08154.”

After careful consideration, I find none of these matters meets the standards of reasonable justification under the merit principles of civil service law. I address below, in turn, each of the assertions in the paragraph quoted above.

- “Your 2017 [MSP] bypass letter states that you were deemed to be unsuitable for hire due to your driver history as well as your Medical Standard.”

According to Sgt. Duran’s 2020 report, the “driver history” referenced in the MSP’s 2017 rejection letter was the 2014 OUI. As noted above, the Appellant disclosed this incident in his QPD application and Quincy did not use this incident as a basis for the 2020 bypass. No witness was able to explain what was meant by the reference to a “Medical Standard.” There was no credible claim that the Appellant had been untruthful about the 2017 MSP application.

- “Your 2019 Massachusetts State Police bypass letter attributes your bypass to omissions/untruthfulness on application, criminal history including the 2014 OUI, driver history and a termination from employment.”

According to Sgt. Duran’s 2020 report, the omissions/untruthfulness related to the Appellant’s alleged 2010 termination from his one-day-a-week security job at the Boston sports bar and the alleged non-disclosure of the offense of “driving without proper registration”. There is now no dispute that the Appellant was NOT terminated from his job at the sports bar and Quincy agreed that issue was “off the table” and was not a reason for the Appellant’s 2022 bypass. As far as the driving record was concerned, I find nothing in the Appellant’s RMV Driver’s History to establish that the Appellant had ever been held responsible for “driving without proper registration” or (save for the OUI which he disclosed) that his driver’s license had ever been “suspended.” The Appellant’s only recollection on that

subject that he may also once have been found driving with an “expired” license”, but nothing in the RMV record indicates he was ever cited for such a violation.

- During your original interview with the Quincy Police Department on January 10, 2020 (Hiring under certification 06692) you omitted that you were bypassed by the Massachusetts State Police in 2019. Your bypass letter had been issued to you on December 4, 2019, well before your interview on January 10, 2020. When questioned, you later admitted that you neglected to inform the Quincy Police Department of your 2019 bypass for being untruthful.

The preponderance of the credible evidence at the Commission hearing established that these statements were not accurate. The Appellant DID disclose his 2019 MSP rejection to Sgt. Duran and DID provide copies of the 2019 MSP rejection letter. Moreover, as noted above, the Appellant’s underlying alleged “untruthfulness” in the MPS application process (alleged termination from the sports bar and driving without registration and/or a valid license) were refuted by credible evidence to the contrary presented at the Commission hearing.

Finally, Quincy made no claim that the Appellant had been untruthful in his 2022 QPD application or interview process but only that the Appellant’s 2020 untruthfulness was so “egregious” that it carried over into the 2022 process. Apart from the lack of any evidence of untruthfulness, I also find it troubling that Quincy would persist in trying to hold the Appellant to a different standard of continuing untruthfulness than it applied to other lower ranked candidates who were selected for appointment in 2022.

For example, Candidate J said he joined the military because “he knew if he stayed in Quincy he would end up getting in trouble for stupid things.” Then, in the 2017 hiring cycle for QPD Police Officer, after he tested positive for cocaine, he repeatedly lied about his use of illegal drugs. During the 2022 hiring cycle, however, he admitted that he had lied and did, in fact, use cocaine in 2017. He received an offer of employment in 2022. Candidate V, a 2018 high school graduate, who also receive an offer of employment, was found guilty of plagiarism

in his sophomore year. Candidate X was arrested in 2003 for helping a friend sell some stolen dirt bikes but said that, although he was “uncomfortable” doing so, he didn’t know the bikes were stolen, a story that Quincy apparently believed and offered him an appointment.

The Commission has been clear that giving one candidate a pass on prior misconduct does not, necessarily, preclude an appointing authority from deciding not to excuse untruthfulness by another candidate. Here, however, the Appellant was not untruthful and, yet, he was unfairly held to a higher standard than other admittedly or likely dishonest other candidates.

### **CONCLUSION**

For all of the above-stated reasons, the appeal of Daniel Neenan, under Docket No. G1-22-089 is **allowed**. Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS that HRD and/or Quincy, in its delegated capacity, shall:

- A. Place the name of the Appellant, Daniel Neenan at the top of any current or future Certification for original appointment to the position of Quincy Police Officer until he is appointed or bypassed after further consideration consistent with this Decision.
- B. Quincy is prohibited from bypassing the Appellant for original appointment to permanent police officer based on any reasons deemed invalid in this decision or for any reasons for which Quincy was aware of at the time of the 2022 bypass.
- C. Should Quincy appoint any candidate(s) other than the Appellant, the appointment of the lowest-ranked candidate on the certification shall be deemed temporary until such time as the Appellant has exhausted all due process rights before the Commission, including, but not limited to, a decision by the Commission on any future bypass appeal by the Appellant.
- D. If the Appellant is appointed as a Quincy Police Officer, he shall receive, retroactively, the same civil service seniority date as the first candidate ranked below Mr. Neenan who was appointed from Certification No. 08154. This retroactive civil service seniority date is not intended to provide Mr. Neenan with any additional pay or benefits including, without limitation, creditable service toward retirement.
- E. Once the Appellant has been provided with the relief ordered above, Quincy shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant’s name should no longer appear at the top of future certifications



Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein & Tivnan, Commissioners) on May 18, 2023.

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)(1), 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:

John J. Greene, Esq. (for Appellant)

Janet S. Petkun, Esq. (for Respondent)

Jennifer Kelly, Esq. (for HRD)

Regina Caggiano, HRD