

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

KEVIN A. O'LEARY,
Appellant

v.

Case No.: G1-12-40

CITY OF BROCKTON,
Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission.

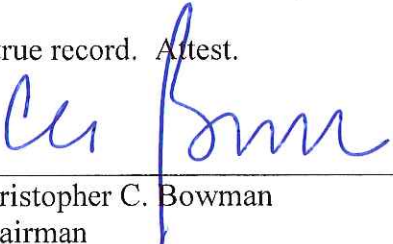
The Commission received and reviewed the Tentative Decision of the Magistrate dated September 19, 2013. No written objections were received by either party.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Appointing Authority to bypass the Appellant is affirmed and the Appellant's appeal is *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on November 14, 2013.

A true record. Attest.



Christopher C. Bowman
Chairman

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.

Notice to:

Gerard S. McAuliffe, Esq. (for Appellant)

Caitlin E. Leach, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

John Marra, Esq. (HRD)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals
One Congress Street, 11th Floor
Boston, MA 02114
(617) 626-7200
Fax: (617) 626-7220
www.mass.gov/dala
Docket Nos.: G1-12-40
CS-12-40

KEVIN A. O'LEARY,
Petitioner

v.

CITY OF BROCKTON,
Respondent

Appearance for the Appellant:

Gerard S. McAuliffe, Esq.
Law Office of Gerard S. McAuliffe
43 Quincy Avenue
Quincy, MA 02169

Appearance for Respondent:

Caitlin E. Leach, Esq.
Assistant City Solicitor
City of Brockton
45 School Street – City Hall
Brockton, MA 02301

Administrative Magistrate:

Angela McConney Scheepers, Esq.

RECEIVED
2013 SEP 19 P 12:21
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

SUMMARY OF DECISION

The City of Brockton had reasonable justification to bypass the Appellant for the position of permanent full time firefighter based on his failure to disclose to a past employer that he had failed a drug screening test administered by a previous employer, his history of excessive use of alcohol, his driving history and poor judgment due to alcohol use. I therefore recommend that the Civil Service Commission dismiss the appeal.

DECISION

INTRODUCTION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Kevin A. O'Leary (Appellant), seeks review of the City of Brockton's (Appointing Authority or City) decision to

bypass him for original appointment to the position of permanent full-time firefighter in the Brockton Fire Department (Department). A prehearing was held on March 6, 2012 at the offices of the Civil Service Commission (Commission). A full hearing was held on June 25, 2012 at the offices of the Division of Administrative Law Appeals (DALA), then located at 98 North Washington Street, Boston, Massachusetts. The hearing was digitally recorded.

The Appellant testified on his own behalf. The Respondent called two witnesses: Chief Richard C. Francis and Deputy Chief Brian F. Nardelli. The witnesses were sequestered. The hearing was digitally recorded.

I admitted six (6) exhibits into evidence. I admitted the parties' Bypass Stipulated Facts: Original Appointment/Delegated Appointing Authority form (signed by the parties at the prehearing conference) as Exhibit 7 and the Appellant's Bypass Appeal Form as Exhibit 8. I marked the Respondent's prehearing memorandum "A" for identification. On September 7, 2012, both parties submitted post-hearing briefs, whereupon the record closed.

FINDINGS OF FACT

Based on the documents entered into evidence and the testimony of the witnesses, I make the following findings of fact:

A. Appellant's Background

1. The Appellant, Kevin A. O'Leary, is a resident of Brockton and a disabled veteran. He is 38 years old. He has been employed as a special police officer at a Boston hospital for the last nine years, where he has no record of discipline. (Testimony of Appellant.)
2. The Appellant entered the Massachusetts Bay Transportation Authority (MBTA) Police academy as a recruit in January 2005. After thirteen weeks when he was dismissed in

when the MBTA discovered that he had omitted important information from his application form. (Exhibit 1; Testimony of Appellant, Testimony of Chief Francis.)

3. The Appellant is also a certified Emergency Medical Technician. He worked part-time at Cataldo Ambulance Services from June 2010 until January 2011 and at Fallon Ambulance services from November 2011 until November 2003. (Testimony of Appellant.)

4. He worked previously in security at Gillette Corporation from July 1997 until he was laid off in August 1999. He also worked at Pinkerton Security from March until September 1997. (Exhibit 1.)

5. The Appellant received an Associate's Degree in Criminal Justice in 1999, a Bachelor's Degree in 2001 in Criminal Justice and a Master's degree in Criminal Justice in 2011. He is currently pursuing an Associate's Degree in Science and Nursing/R.N. Program at Labouré College. (Exhibit 1; Testimony of Appellant.)

6. The Appellant served in the United States Marine Corps, achieving the rank of Sergeant, until he was honorably discharged in June 1996. (Exhibit 1.)

7. After basic training, the Appellant completed a six-week program at motor vehicle operation school where he studied mechanics, learning preventative care and maintenance of motor vehicles. He trained as a truck driver, operating heavy vehicles weighing 5 tons. (Testimony of Appellant.)

8. The Appellant also served in the United States Marine Reserves from April 1997 until he was honorably discharged in May 2000. (Testimony of Appellant.)

B. The Bypass

9. The Mayor is the appointing authority for the City of Brockton. (Exhibit 6.)

10. On September 9, 2010, the Appellant took the civil service exam for the position of permanent full-time firefighter. He received a score of 88. He claimed a disabled veteran's preference due to a lumbosacral strain he suffered in 1998. (Exhibits 1 and 7; Testimony of Appellant.)

11. On July 26, 2011, the City of Brockton sought a certified list of candidates from the state Human Resources Division (HRD) in order to appoint six permanent full-time firefighters. (Exhibit 7; Testimony of Chief Francis.)

12. On August 5, 2011, the City received Certified Civil Service List No. 202033 from HRD, containing the names of fourteen candidates. The Appellant ranked second on the list; the two highest candidates were tied. (Exhibit 7; Testimony of Chief Francis.)

13. On August 30, 2011, Deputy Chief Brian F. Nardelli was assigned to conduct the Appellant's background investigation. The background investigation also included a Criminal Offender Record Information (CORI) check and a Registry of Motor Vehicles (RMV) check. (Exhibits 5 and 7.)

14. Nardelli submitted an investigative report to Chief Francis to use during the Appellant's forthcoming interview and in the decision whether or not to hire the Appellant. Nardelli's report advised that the Appellant's references, employment and neighbors "check[ed] out good." However, when Nardelli contacted the MBTA, he discovered that O'Leary had been dismissed after thirteen weeks for failing to disclose that he had failed a drug test as a condition of employment for the Quincy Police Department. Nardelli also noted that the Appellant had a medical history of lumbosacral sprain; was hospitalized for one week in 2008 for alcohol-induced depression; had two operating under the influence offenses in 1996 and three surchargeable accidents in 2007, 2008 and 2009. (Exhibits 1- 5; Testimony of Nardelli.)

15. In his application packet, the Appellant admitted to experimental use of marijuana in high school, the two OUI incidents in 1996, recreational drug use in 2003, and the alcohol-induced depression and hospitalization in 2008. He admitted that he had been dismissed from the MBTA for omitting information on the MBTA's application packet. However, the Appellant did not disclose that the withheld information was a failed drug test for another police department. (Exhibits 1 and 2; Testimony of Nardelli, Testimony of Chief Francis.)

16. The City decided to increase the number of appointments from six to thirteen. On September 26, 2011, the City received supplemental Certified Civil Service List No. 202033 from HRD, which contained fifteen additional names of candidates. (Exhibit 7; Testimony of Chief Francis.)

17. On or about October 18, 2011, the Appellant was interviewed by the five-member Recruit Selection Committee ("Selection Committee"), which included Chief Francis and Nardelli. (Testimony of Chief Francis, Testimony of Nardelli.)

18. After an evaluation of the Appellant's background investigation and interview, the Mayor, as appointing authority, found that the Appellant was unsuitable for the position of firefighter. Mayor Linda M. Balzotti sent a letter to the Appellant on January 3, 2012, giving the following negative reasons:

1. You were terminated for cause from the MBTA Police for failing to disclose a failed drug test in the hiring process for the Quincy Police Department.
2. You have a history of excessive use of alcohol. ... an OUI in Boston in 1996, and a DWI in Jacksonville, NC in 1996. You had three (3) accidents resulting in a surcharge, one each in 2007, 2008 and 2009. You were hospitalized in February 2008 for seven (7) days for alcohol induced depression. Your history of excessive use of alcohol falls within the Appointing Authority's policy of reasons to reject applicants.
3. As a result of the previously stated reasons, we find that you have exhibited a pattern of conduct as to his [sic] poor choices both in the use of alcohol and actions taking during said use.

(Exhibit 6.)

C. First Negative Reason: Termination from the MBTA Police

19. In his application packet for the City, the Appellant admitted that he engaged in recreational cocaine use two or three times in 2003. (Exhibit 1.)

20. Also in 2003, the Appellant failed a Quincy Police Department pre-employment drug screening and was not selected for employment. (Exhibit 1; Testimony of Appellant.)

21. While Nardelli was conducting the background investigation, he met with a representative of the MBTA to discuss the Appellant's employment and dismissal. During this interview, Nardelli discovered that the MBTA had dismissed the Appellant for omitting from his MBTA application packet the fact the he had failed a pre-employment drug screening with the Quincy Police Department in 2003. (Exhibits 2 and 5; Testimony of Nardelli.)

22. Although the Appellant had admitted in the Brockton application packet both the dismissal from the MBTA Police for omission of information on his employment application and the failure of a pre-employment drug screening during the hiring process for the Quincy Police Department, it was only after the interview with the MBTA Police that Nardelli learned that these instances were linked. (Testimony of Nardelli.)

23. The Appellant testified that he deliberately omitted the failed the failed drug test from his MBTA packet because he had a second child on the way, and was looking for higher income through employment with the MBTA. (Testimony of Appellant.)

24. It is the Appointing Authority's policy to reject applicants for the Department for false statements, answers or omissions in completing the Background Investigation Forms. (Exhibit 1.)

D. Second Negative Reason: Appellant's History of Alcohol Abuse, Poor Driving History

I shall not address any criminal incidents that occurred while the Appellant was a juvenile.

25. In January 1996 while he was still in the military, the Appellant pled guilty to Driving While Intoxicated in Jacksonville, North Carolina. He attended a civilian alcohol education program for five days. The Appellant's driver's license was revoked. (Exhibits 1, 4 and 6.)

26. On August 11, 1996, Sergeant Paul McCarthy of the Massachusetts State Police pulled over the Appellant for operating the wrong way on Kneeland Street in Boston. After detecting a strong odor of alcohol and observing the Appellant's glassy eyes, the sergeant asked the Appellant to step out of his vehicle. After the Appellant failed field sobriety tests, Sgt. McCarthy arrested the Appellant. The Appellant refused the breath test. Upon prosecution, the Appellant was found not guilty. (Exhibits 1 and 3.)

27. In February 2008, Appellant was hospitalized at Arbor Fuller Hospital for seven (7) days for alcohol-induced depression. (Exhibit 1; Testimony of O'Leary.)

28. When the Selection Committee questioned the Appellant about his current alcohol use, he replied that he was "sober today." The Appellant was unable to assure the Selection Committee that his days of alcohol abuse were behind him, and were not ongoing. The Selection Committee saw the 1996 criminal alcohol incidents as part of an old pattern of behavior and a history of excessive alcohol use. (Testimony of Nardelli.)

29. When he reviewed the Background Investigation Report before the interview, Chief Francis was most concerned with the Appellant's 2008 hospitalization for alcohol-induced depression. When the Selection Committee questioned the Appellant about the hospitalization,

the Appellant was not forthcoming except to say that the hospitalization was voluntary and had taken place after a drinking binge of several days. From this answer, the Appellant yet again was unable to assure the Selection Committee that his days of alcohol abuse were behind him.

(Testimony of Chief Francis.)

30. It is the Appointing Authority's policy to reject applicants to the Department for a history of excessive use of alcohol. (Exhibit 1.)

31. As part of the background investigation process, Nardelli reviewed the Appellant's RMV history. The Appellant had three surchargeable accidents in Massachusetts in the preceding five years: in 2007, 2008 and 2009. (Exhibit 4.)

32. The March 22, 2007 accident took place on the Southeast Expressway in Dorchester, when the Appellant rear-ended a vehicle due to heavy traffic. The Appellant was also involved in an accident in Quincy on December 19, 2008, which he is unable to recall. The May 24, 2009 accident took place in an Abington parking lot when the Appellant reversed and hit the door of a parked vehicle. (Testimony of the Appellant.)

33. Nardelli testified that public safety personnel in the Fire Department operate very expensive fire truck apparatus and are responsible for the safety of those they are transporting and the general public in the area. The City is also responsible for insuring those employees driving the fire truck apparatus. Therefore, it is incumbent on the Selection Committee to examine recent accidents and moving violations, especially in the past five years. (Testimony of Nardelli.)

34. It is the Appointing Authority's policy to reject applicants for the Department due to excessive moving traffic violations. (Exhibit 1.)

E. Third Negative Reason: Appellant's Poor Judgment

35. Based on the Appellant's omission of important information on his MBTA application packet, his history of excessive use of alcohol and his poor driving history, the Selection Committee concluded that the Appellant would pose a safety and liability risk to the City. The Appointing Authority found that the Appellant had "exhibited a pattern of conduct as to ... poor choices ..." and was an unsuitable candidate for a public safety position. (Exhibit 6; Testimony of Nardelli.)

36. On February 8, 2012, the Appellant filed a timely appeal with the Commission. (Exhibit 8.)

CONCLUSION AND ORDER

A. Applicable Legal Standards

When a candidate for appointment appeals from a bypass, the Civil Service Commission's role is not to determine whether that candidate should have been bypassed. The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 187 (2010). The commission determines, "on the basis of the evidence before it, whether the appointing authority [has] sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification" for the decision to bypass the candidate.

Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 241 (2006), citing G.L. c. 31, § 2 (b).

"Reasonable justification in this context 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 Serv. Comm'n*, *supra*, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928). *See also*

Beverly v. Civil Serv. Comm'n, 78 Mass. App. Ct. 182, 189, 190-91 (2010) citing *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 824-826 (2006). See also *Methuen v. Solomon*, No. 10-01813-D, Essex Sup. Ct. (July 26, 2012); *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012).

A “preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Serv. Comm'n*, 31 Mass. App. Ct. 315 (1991). In determining whether the department has shown a reasonable justification for a bypass, the commission's primary concern is to ensure that the department's action comports with “[b]asic merit principles,” as defined in G.L. c. 31, § 1. See *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001). The commission “finds the facts afresh” in conducting this inquiry, and is not limited to the evidence that was before the Department. *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 187 (2010).

The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. *Id.* “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, at 259 (2001) citing *School Comm'n of Salem v. Civil Serv. Comm'n*, 348 Mass. 696, 698-99 (1965); *Debnam v. Belmont*, 388 Mass. 632, 635 (1983); *Commissioner of Health and Hospitals of Boston v. Civil Serv. Comm'n*, 23 Mass.App.Ct. 410, 413 (1987)). Cities and towns have wide discretion in selecting public employees, and absent proof that they acted unreasonably, may not be forced to take the

risk of hiring unsuitable candidates. *Tewksbury v. Massachusetts Civ. Serv. Comm'n*, No. 10-657-G, Suff. Sup. Ct. (August 30, 2012) (Superior Court found that the town acted reasonably; Commission erred when it reversed DALA Recommended Decision and improperly substituted its judgment).¹ An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone as a new ... officer than in disciplining an existing tenured one.”

Attleboro v. Massachusetts Civ. Serv. Comm'n et al.,² No. 2011-734, Bristol Sup. Ct. (November 5, 2012), citing *Beverly* at 191.

B. Reasonable Justification for Bypassing the Appellant

On August 26, 2011, the Appellant submitted his Recruit Background Investigation Form (application packet) to the Department. The application packet stated on page 3:

It shall be the policy of the Appointing Authority to reject applicants for any of the following positions in the City of Brockton Fire Department for the following reasons:

1. Felony convictions or a number of misdemeanors
2. Excessive moving violations
3. False statements, answers or omissions in completing the Background Investigation Forms
4. Dishonorable discharge
5. Unequivocal poor past employment record ...
8. History of excessive use of alcohol ...

(Exhibit 1.)

The City was reasonably justified in bypassing the Appellant for the position of permanent full time firefighter in the City of Brockton for the reasons as stated in the January 3, 2012 bypass letter and pursuant to City policy as outlined in the application packet above:

¹ *Cyrus v. Tewksbury*, Docket Nos. G1-08-107, CS-08-539, Recommended Decision, (June 5, 2009), *rev'd by Final Decision* 23 MCSR 58 (2010).

² William Dunn.

omissions in the Appellant's application packet, his history of excessive use of alcohol, and his excessive moving violations.

The City was reasonably justified in bypassing the Appellant for the position of permanent full time firefighter in the City of Brockton because he was not forthright about the reasons for his dismissal from the MBTA Police Department. Untruthfulness in a candidate is a serious concern, and the Department is justly concerned with candidates' ability to tell the truth consistently. *See Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 189-190 (2010); *Modig v. Worcester Police Dep't*, 21 MCSR 78, 82 (2008) (police officer candidate's failure to respond accurately to a question about his prior employment on a personal history questionnaire was grounds for bypass); *Escobar v. Boston*, 21 MCSR 168 (2008) (candidate's untruthfulness in another police department's application is grounds for bypass); *Moran v. Auburn*, Docket Nos. G1-08-42, CS-08-317, Recommended Decision, (June 5, 2009), *adopted by Final Decision* 23 MCSR 233 (2010) (Town justified in bypassing the Appellant for multiple reasons including misrepresentations about his extensive driving history and past criminal behavior, including assault and battery and OUI); *Konamah v. Lowell*, Docket Nos. G1-10-131, CS-11-34, Recommended Decision, (January 12, 2012) *adopted by Final Decision* 25 MCSR 73 (2012) (candidate's failure to complete application truthfully and to disclose actual role in business gave appointing authority reason for bypass).

It is true that on his Brockton application packet the Appellant admitted that he had failed a Quincy Police Department prescreening drug test and that he had been dismissed by the MBTA. Until Nardelli contacted the MBTA, however, he was unaware that the two incidents were related. Both Chief Francis and Nardelli testified that they believed this omission was purposeful, reflected negatively on Appellant's character, and brought his truthfulness into

question. The Appellant first testified that the Deputy Superintendent offered that if he resigned, as long as he did not apply to another police department, the omission on his MBTA application packet would not have to be disclosed to another employer. Later in his testimony, the Appellant admitted that he intentionally omitted the failed drug test so that he would get the job. The City has proved by a preponderance of the evidence that the Appellant omitted important information from his MBTA application packet. This negative reason alone would have been sufficient to bypass the Appellant. I find that the Appellant's omission was deliberate.

The City was reasonably justified in bypassing the Appellant because of his history of alcohol abuse. The Appellant was prosecuted for two drunk driving offenses in 1996, failed a 2003 pre-employment drug screening, and was hospitalized for one week in 2008 for alcohol-induced depression. This hospitalization is very recent in time, and the Appellant could not give the Selection Committee the reassurance that they needed, namely that his life was on track. Because of the hospitalization, the Selection Committee thought that the Appellant's drinking was far beyond social drinking. The Appellant testified that his hospitalization was "voluntary" and that he was "sober today." He said that he did not give the Selection Committee more information about his hospitalization because he was "trying to preserve his anonymity" in the program. By his own admission, the Appellant attends Alcoholics Anonymous and has not had a drink since July 3, 2009.

The Appellant's driving record was far from stellar. He had three surchargeable accidents in the preceding five years: one each in the consecutive years from 2007 to 2009. The Appellant's intertwined criminal and alcohol woes stretch from 1996 until 2009, and he has given no indication that he has improved his health. To put him on the road in expensive fire apparatus would be foolhardy on the part of the City. The Appellant may have proved a danger

to himself, his coworkers and the general public. Firefighters operate vehicles; they respond to emergencies. They must be reliable, have sound judgment and preserve the public trust. At this point in his life, the Appellant is not public safety personnel material, and the Commission cannot ask the City to assume that liability.

The City found that the Appellant made poor choices due to his use of alcohol. This is evidenced by his two drunk driving offenses in 1996 and behavior that led to his hospitalization for alcohol-induced depression in February of 2008. The Appellant could not convince the Selection Committee, which included Chief Francis and Nardelli, that he had taken concrete steps to progress beyond alcohol abuse and that he was now capable of mature judgment. Although the Appellant has a record of military service and exceptional educational qualifications, the City can ill afford to have the Appellant “grow up” on the job. The City has proved by a preponderance of the evidence that the Appellant exhibits bad judgment. This negative reason alone would have been sufficient to bypass the Appellant.

The City has proved by a preponderance of the evidence that the Appellant has a history of excessive use of alcohol, excessive moving traffic violations and poor judgment due to alcohol use. Each of these negative reasons would have been enough to bypass the Appellant.

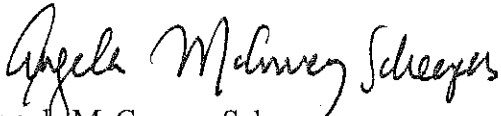
The bypass was based upon a clearly stated City policy, which is strictly, uniformly and consistently enforced. Based on testimony given and evidence presented, the City had reasonable grounds to bypass the Appellant and has stated sound and sufficient grounds for doing so.

There is no evidence that the City's decision was based on political considerations, favoritism or bias. Thus the City's decision to bypass the Appellant is “not subject to correction by the Commission.” *Cambridge*, 43 Mass. App. Ct. at 305.

Based on the preponderance of credible evidence presented at the hearing, I conclude that the City was reasonably justified in bypassing the Appellant Kevin A. O'Leary. Accordingly, I recommend that the appeal be dismissed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

A handwritten signature in cursive script, reading "Angela McConney Scheepers".

Angela McConney Scheepers
Administrative Magistrate

DATED: **SEP 19 2013**