

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

KATHERINE OLSEN,
Appellant

v.

**TOWN OF
MARSHFIELD,**
Respondent

Case No.: G1-14-223

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. No objections were received.

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

In bypass cases, the Appointing Authority is not required to prove that all of the reasons proffered are valid reasons to justify the bypass. Rather, if even one of reasons provides reasonable justification for the bypass, then the Commission must affirm the Appointing Authority's decision. See *Arlington v. Cronin*, Middlesex Sup. Crt. No. 09-0476-H (2009).

Here, the Town offered multiple reasons for bypass, including: 1) the Appellant's extensive negative driving history; 2) her poor performance during an interview, which included providing feedback regarding a short video. Further, the Town put forward numerous positive reasons associated with the appointed candidates. Based on those reasons alone, the City had reasonable justification to bypass the Appellant. Finally, the Magistrate appropriately drew an adverse inference to the fact that the Appellant failed to testify at her own hearing when making his findings and conclusions.

For this reason, there is no need to address whether the reasons related to Ms. Olsen's criminal history, in the context of this case, also provide a valid reason for bypass, or whether some of the Town's inquiries in this regard violated G.L. c. 151B, § 4(9). For example, according to Finding #28, Ms. Olsen was asked if she "ever knowingly committed a Misdemeanor Offense for which

[she] were not charged?” Even in the context of a hiring process for a law enforcement position, there would appear to be serious questions regarding whether such an inquiry is permissible under Massachusetts employment law. (See Henderson v. Civ. Serv. Comm’n and City of Lynn, Suffolk Sup. Ct. CA No. 2014-02638-G (2015).

The decision of the Town of Marshfield to bypass Ms. Olsen for appointment as a permanent intermittent police officer is affirmed and Ms. Olsen’s appeal under Docket No. G1-14-223 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on August 20, 2015.

Civil Service Commission

/s/ Christopher C. Bowman

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. 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:

Katherine Olsen (Appellant)

Jaime Kenny, Esq. (for Respondent)

Edward B. McGrath, Esq. (Chief Administrative Magistrate, DALA)

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Katherine Olsen,
Petitioner

v.

Docket No. G1-14-223
DALA No. CS-14-783

Town of Marshfield,
Respondent

Appearance for Petitioner:

Pro se

Appearance for Respondent:

Jaime Kenny, Esq.
Clifford & Kenny, LLP
171 Rockland Street
Hanover, MA 02399

Administrative Magistrate:

Kenneth J. Forton, Esq.

SUMMARY

The Town of Marshfield's decision to bypass the Appellant for original appointment to permanent intermittent police officer was reasonably justified based on the reasons cited in its bypass letter, including the Appellant's extensive negative driving record, her questionable character for truthfulness because of her failure to adequately disclose her criminal history to the interview board, and her poor performance in the interview process.

RECOMMENDED DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Katherine Olsen appeals from the decision of the Respondent, the Town of Marshfield, to bypass her for original appointment to the position of permanent intermittent police officer. Ms. Olsen requested an adjudicatory hearing to challenge the bypass decision.

A pre-hearing conference was held on October 7, 2014 at the Civil Service Commission, One Ashburton Place, Room 503, Boston, Massachusetts. A hearing was held on two days, December 12, 2014 and January 13, 2015, at the Division of Administrative Law Appeals, One Congress Street, Boston, Massachusetts. The hearing was digitally recorded.

Nineteen documents were entered into evidence. (Exs. 1-19.) Police Chief Phillip Tavares, Detective Todd Goodwin, Lieutenant William Sullivan, and Lieutenant Arthur Shaw testified on behalf of the Town of Marshfield. Ms. Olsen did not testify and did not call any witnesses.

The Appellant filed a post-hearing brief on March 12, 2015. The Respondent filed a post-hearing brief on March 13, 2015.

FINDINGS OF FACT

1. The Marshfield Board of Selectmen is the appointing authority for police positions in the town. (Ex. 1.)

2. On November 13, 2013, Police Chief Phillip Tavares received permission from the Marshfield Board of Selectmen to hire twelve permanent intermittent police officers. The Board of Selectmen authorized the Police Chief to start the process. In December 2013, the Board of Selectmen requisitioned the state Human Resources Division (HRD) for a list of eligible candidates. The eligibility list ranked candidates based on test scores from a statewide Civil Service exam. HRD instructed the Marshfield Board of Selectmen to select the first twelve of twenty-five highest ranked candidates willing to accept appointment. (Exs. 1, 3.)

3. Permanent intermittent police officers are used to supplement the full-time work force when needed. The position allows officers to receive police training while the department considers them for full-time employment. (Tavares Testimony; Ex. 3.)

4. HRD notified candidates of their consideration for the permanent intermittent police officer appointment via email on or around December 6, 2013. By December 16, 2013, candidates were required to sign the list at the Marshfield Police Station indicating their willingness to accept appointment. (Tavares Testimony; Ex. 3.)

5. Olsen did not sign the list on or before December 16, 2013. (Tavares Testimony.)

6. The Marshfield Police Department required the candidates to complete an employment application. The deadline to submit completed applications was January 24, 2014. (Exs. 3, 5.)

7. Chief Tavares allowed Olsen to submit her application after the January 24, 2014 deadline. (Tavares Testimony; Sullivan Testimony; Ex. 5.)

8. Olsen submitted her application on February 7, 2014. (Ex. 5)

9. The application stated that “False or misleading answers or withheld information may result in the rejection of your application, dismissal from employment and removal from the Civil Service eligibility list.” (Ex. 5)

10. The application directed:

If you have even been arrested, taken into physical custody, been issued a misdemeanor citation (exclude traffic citations), or convicted of any crime, please give the following information. (The fact that your record may have been affected by a sealing, an expungement, a release, or a pardon has specific legal implications as to how you answer this question.)

The corresponding table had four columns for the candidate to fill in with information regarding the date of the incident, the arresting agency and location, the charge, and the charge’s disposition. Olsen listed the following two incidents. (Ex. 5.)

11. Olsen wrote that, in June 2000, she was charged with the offense of a Minor in Possession of Liquor by the Marshfield Police Department. She listed the charge as “dismissed.” (Ex. 5.)

12. Olsen wrote that, in April 2002, she was charged with the offense of “DWI” by the Hull Police Department. She listed the disposition as “discontinued without a finding.” (Ex. 5.)

13. The application asked candidates to give details of any court-assigned probation. Olsen wrote that she received one year of probation because of the April 2002 charge in Hull, Massachusetts. (Ex. 5.)

14. The application asked candidates to give information regarding driver’s license suspensions, revocations, or probation. Olsen wrote “2002, MA – DWI charges resulted in a license suspension due to my age at the time.” Olsen did not list any other suspensions or revocations of her driver’s license. (Ex. 5.)

15. The application asked candidates to list all traffic citations received since turning eighteen years old. Olsen listed four traffic citations as follows. (Ex. 5.)

16. Olsen wrote that, on April 28, 2002, she was issued a citation for driving while intoxicated in Hull. She listed the disposition as “discontinued without finding.” (Ex. 5.)

17. Olsen wrote that, on August 7, 2008, she was issued a citation for speeding in Lowell, Massachusetts. She listed the disposition as “fine waived and lowered.” (Ex. 5.)

18. Olsen wrote that, on October 10, 2010, she was issued a citation for right-of-way violation in Dorchester, Massachusetts. She listed the disposition as “fine paid, citation dropped.” (Ex. 5.)

19. Olsen wrote that, on February 4, 2014, she was issued a citation for cell phone use in Kingston, Massachusetts. She listed the disposition as “GPS use–warning received.” (Ex. 5.)

20. The application asked candidates to list all motor vehicle accidents in which the candidate was involved as a driver within the past seven years. Olsen listed three motor vehicle accidents as follows.

21. Olsen wrote than, on January 27, 2008, she was the driver in a “non-injury” motor vehicle accident in Dorchester, Massachusetts. (Ex. 5.)

22. Olsen wrote that, on May 7, 2009, she was the driver in a “non-injury” motor vehicle accident in Boston, Massachusetts. (Ex. 5.)

23. Olsen wrote that, on October 10, 2010, she was the driver in a “non-injury” motor vehicle accident in Dorchester, Massachusetts. (Ex. 5.)

24. The Marshfield Detective Division conducted background interviews of each candidate. The detectives asked the same questions to all candidates based on a “Candidate Questionnaire” form. The detectives also used this form to record brief summaries of candidate responses. (Goodwin Testimony; Ex. 6.)

25. The questionnaire form was the same for all candidates. It included questions regarding each candidate’s criminal record and driving history. (Goodwin Testimony; Ex. 6.)

26. Detective Kim Jones and Detective Todd Goodwin were present during Olsen’s background interview. (Goodwin Testimony.)

27. The detectives asked Olsen if she had “ever been involved in a motor vehicle accident or received a speeding [or] parking ticket?” Olsen answered affirmatively, and the detectives summarized Olsen’s explanation on the questionnaire form as “[t]he two she can remember happened back in 2008 and 2010 she thought.” (Goodwin Testimony; Ex. 6.)

28. The detectives asked Olsen if she had “ever knowingly committed a Misdemeanor Offense for which [she] were not charged?” Olsen answered affirmatively, and the detectives summarized Olsen’s explanation on the questionnaire form as “underage drinking, drank before she was 21 YOA.” (Goodwin Testimony; Ex. 6.)

29. The detectives compiled background information on each candidate. The background information included criminal record and driver history. The background information would also indicate education history or familial ties to the police force. (Goodwin Testimony.)

30. Olsen’s driving record included four surchargeable accidents as follows. (Ex. 19.)

31. On November 16, 2001, Olsen was the driver in a surchargeable motor vehicle accident in Quincy, Massachusetts. (Ex. 19.)

32. On August 16, 2006, Olsen was the driver in a surchargeable motor vehicle accident in Hanover, Massachusetts. (Ex. 19.)

33. On January 27, 2008, Olsen was the driver in a surchargeable motor vehicle accident in Boston, Massachusetts. (Ex. 19.)

34. On May 7, 2009, Olsen was the driver in a surchargeable motor vehicle accident in Boston, Massachusetts. (Ex. 19.)

35. Olsen’s driving record included multiple citations as follows.

36. On December 5, 2000, Olsen was issued a citation for speeding and driving without a license in Marshfield, Massachusetts. (Ex. 19.)

37. On June 12, 2001, Olsen was issued a citation for speeding in Marshfield, Massachusetts. (Ex. 19.)

38. On June 1, 2001, Olsen was issued a citation for speeding and driving without an inspection sticker in Marshfield, Massachusetts. (Ex. 19.)

39. On June 7, 2001, Olsen was issued a citation for driving without a license and reckless driving. She was also charged with being a minor in possession. The incident occurred in Marshfield, Massachusetts. The charges were ultimately dismissed. (Ex. 19.)

40. On April 18, 2002, Olsen was issued a citation for failing to keep in the right lane in Hull, Massachusetts. (Ex. 19.)

41. On December 1, 2006, Olsen was issued a citation for driving without an inspection sticker in Dorchester, Massachusetts. (Ex. 19.)

42. On June 25, 2007, Olsen was issued a citation for failing to yield to a pedestrian and impeding operation of a motor vehicle in West Roxbury, Massachusetts. She was found not responsible for both citations. (Ex. 19.)

43. On August 7, 2008, Olsen was issued a citation for speeding in Lowell, Massachusetts. (Ex. 19.)

44. On October 10, 2010, Olsen was issued a citation for violating the right of way of an intersection in Dorchester, Massachusetts. (Ex. 19.)

45. Olsen's driver history included four driver's license suspensions as follows. (Ex. 19.)

46. Olsen's license was suspended from June 10, 2002 to July 7, 2003 due to a DWI charge. Her license was reinstated after the suspension period expired. (Ex. 19.)

47. Olsen's license was suspended indefinitely on January 21, 2009 for failure to pay the fees associated with the August 7, 2008 speeding citation. Her license was reinstated on January 30, 2009 after she paid the citation fees. (Ex. 19.)

48. Olsen's license was suspended indefinitely on June 25, 2009 due to the previous five surchargeable events on her record. Her license was reinstated on September 14, 2009. (Ex. 19.)

49. Olsen's license was suspended indefinitely on January 25, 2011 for failure to pay fees associated with the October 10, 2010 right of way violation. Her license was reinstated on February 1, 2011 after she paid the citation fees. (Ex. 19.)

50. The detectives pulled information regarding Olsen's criminal record through a Board of Probations request ("BOP"). (Ex. 12.)

51. The BOP indicated that Olsen was charged with other offenses in both the 2002 OUI incident and the 2001 minor in possession of alcohol incident. The detectives then pulled the arrest records involving both of those incidents. The arrest records and BOP describe the extent of Olsen's criminal history as follows. (Exs. 12-14.)

52. On July 7, 2001, Olsen was arrested by the Marshfield Police Department. She was charged with driving recklessly and driving without a license. She was also charged with being a minor in possession of alcohol. The three charges were dismissed on July 23, 2001. (Shaw Testimony; Exs. 12, 14.)

53. On April 28, 2002, Olsen was arrested by the Hull Police Department. She was charged with driving on a suspended license, operating a motor vehicle while under the influence of alcohol, and failing to keep the driver's view unobstructed. The OUI and driving on a suspended license charges were continued without a finding and then dismissed after completion of one year of probation and a DWI program. (Ex. 12; Ex. 13.)

54. The next stage of the hiring process included a second round interview with members of the Marshfield Police Command Staff. The screening board for the permanent

intermittent police officer position consisted of Lt. Paul Taber, Lt. Christopher Jones, Lt. Arthur Shaw, and Lt. William Sullivan. (Ex. 3.)

55. The screening board rated each candidate based on ten areas, such as appearance, professionalism, and interpersonal skills. The candidates were graded based on responses to ten interview questions. The candidates were also asked to watch a short one to two minute video, and then write a narrative describing the video in ten minutes. The screening board also reviewed the background investigations conducted by the Marshfield Detective Division. (Shaw Testimony; Ex. 3.)

56. The screening board asked the same ten questions to all candidates. If the candidate had a criminal record, the screening board asked additional follow-up questions regarding the record and the disposition of the charges. (Shaw Testimony.)

57. During the second round interview, the interview board asked Olsen to explain the 2002 operating a motor vehicle under the influence of alcohol charge in Hull. Olsen stated that she had one or two drinks and that the charges were dismissed. Olsen denied any responsibility for the incident. Olsen did not explain to the interview board that she was unlicensed at the time of the incident, or that she attempted to switch seats with another passenger before she was pulled over. Olsen told the interview board that the charge was dismissed, when in fact she had admitted to sufficient facts and the charge was continued without a finding. (Shaw Testimony; Sullivan Testimony; Ex. 13.)

58. The interview board asked Olsen about the 2001 minor in possession charge in Marshfield, MA. Olsen did not admit to the additional charge of operating a motor vehicle recklessly. (Shaw Testimony; Sullivan Testimony; Ex. 12.)

59. The written narrative exercise was meant to evaluate a candidate's ability to observe the incident depicted in the video and accurately report the details, timing, and events of the incident. The screening board also evaluated the narrative for proper grammar, punctuation, and clarity. (Shaw Testimony; Sullivan Testimony; Ex. 3.)

60. The screening board ranked twelve candidates for appointment based on candidate interviews and written narratives. The screening board also considered the background investigations of each candidate in establishing the rankings. (Ex. 3.)

61. On June 9, 2014, the screening board submitted the ranked list to Chief Tavares and recommended the twelve candidates for appointment. (Ex. 3.)

62. On June 9, 2013, Chief Tavares made his final recommendation to the Marshfield Board of Selectmen. Chief Tavares supported the recommendations of the screening board. (Ex. 3.)

63. On June 16, 2014, The Marshfield Board of Selectmen voted to approve Chief Tavares's recommendations and hire the twelve candidates. (Ex. 2.)

64. Three candidates, including Olsen, were bypassed for appointment. (Ex. 3.)

65. On July 8, 2014, the Marshfield Board of Selectmen sent a letter to Olsen regarding the selection reasons related to her bypass. (Ex. 6.)

66. The letter explained that Olsen was bypassed because of her "extensive" driving history dating from 2000 to 2011. The letter explained that the interview board questioned Olsen's character for truthfulness: according to the interview board, Olsen did not admit to all of the charges on her criminal record and driving history. The letter also stated Olsen lacked interpersonal skills because she "rambled" during her interview and gave confusing answers to the questions. The letter described Olsen as "unable to answer any of the questions

satisfactorily.” The letter described Olsen’s written narrative as “poor” because it “showed no concept of time,” failed to identify the number of officers in the video, and was not written with proper grammar or punctuation. The letter stated that Olsen was given the same ten minutes to write the narrative as every other candidate, but submitted the narrative after only seven minutes. The letter stated that the Marshfield detectives found Olsen to be “uncooperative with the process.” The letter concluded:

Ms. Olsen’s credibility is highly questionable giving [*sic*] her description of her arrest in Hull. A police officer’s credibility and honesty are vital to their performance. Once these attributes are compromised it is impossible to perform the job of police officer. Her driving record . . . is terrible. Her Interpersonal Communication skills are severely lacking. Her time management skills are unacceptable. She is not prepared to work as a Police Officer and it would be a disservice to the town and the department to hire her at this time.

(Ex. 4.)

67. Olsen received a Bachelor of Science in Management at the University of Massachusetts. Olsen’s work experience includes a number of years of experience in sales, specifically medical device sales for companies such as Aspen Medical Products and Biomet Spine & Bone Healing. (Ex. 5; Ex. 16.)

68. Ms. Olsen was bypassed by [REDACTED]. [REDACTED]’s driving record included two citations. He was issued a citation on February 17, 2012 for a minor traffic violation in Fitchburg, Massachusetts. [REDACTED] was issued a citation on April 6, 2013 for a speeding violation in Merrimac, Massachusetts. Additionally, [REDACTED]’s license was suspended between October 4, 2013 and December 4, 2013. (Ex. 18.)

69. [REDACTED] does not have a criminal record. (Ex. 18.)

70. The bypass letter described [REDACTED] as having “a strong interview” and presenting himself well during questioning. The letter stated that [REDACTED] was pursuing a

degree in Criminal Justice from the University of Massachusetts in Boston. The letter explained that [REDACTED] gave a “thorough answer” to the question on teamwork, which included “pertinent examples of his time as a member of numerous teams.” The letter stated that [REDACTED] had a “clear understanding” of the interview question regarding ethics. According to the letter, [REDACTED] also had excellent personal and professional references. (Ex. 4.)

71. [REDACTED]’s driving record included two traffic accidents as follows. On February 8, 2001, [REDACTED] was the driver in a surchargeable accident in Marshfield, Massachusetts. On October 26, 2002, [REDACTED] was the driver in a surchargeable accident in Rhode Island. (Ex. 18.)

72. [REDACTED] does not have a criminal record. (Ex. 18.)

73. The bypass letter described [REDACTED] as an “honest hard working family man eager to work in law enforcement.” The letter stated that [REDACTED] was enrolled at Roger Williams University for three years. The letter explained that [REDACTED] answered the question regarding racial comments “without hesitation” and that his answer “hit every pertinent point.” The letter also stated that [REDACTED] was scheduled to graduate from the Permanent Intermittent Academy in July of 2014, which he did while working a full-time job. (Ex. 4.)

74. [REDACTED]’s driving record included one traffic accident. On December 21, 2011, [REDACTED] was the driver in a surchargeable accident in Whitman, Massachusetts. [REDACTED] was issued a citation on April 30, 2011 for not displaying an inspection sticker in Webster, Massachusetts. (Ex. 18.)

75. [REDACTED] does not have a criminal record. (Ex. 18.)

76. The bypass letter described [REDACTED] as “sincere and eager to work as a police officer.” The letter stated that [REDACTED] had completed the Permanent Intermittent Police Academy, was certified in CPR, and was certified as a First Responder. The letter stated that [REDACTED] received a Bachelor’s Degree in Criminal Justice from (coincidentally) [REDACTED] College in Dudley, Massachusetts. When [REDACTED] responded to an interview question involving a racial scenario, the letter explained that [REDACTED] “hit every pertinent point” and “handled the scenario as one would expect a seasoned officer to.” (Ex. 4.)

77. [REDACTED]’s driving record included two traffic accidents. On October 13, 2007, he was the driver in a surchargeable accident in Marshfield, Massachusetts. On May 11, 2010, [REDACTED] was the driver in a surchargeable accident in Weymouth, Massachusetts. [REDACTED] was issued one speeding citation on March 17, 2001 in Newbury, Massachusetts. (Ex. 18.)

78. [REDACTED] has one charge on her criminal record. [REDACTED] was charged on March 22, 2011 with assault and battery. The charge was dismissed on April 13, 2011. (Ex. 18.)

79. The bypass letter described [REDACTED] as having a “very strong interview” and that she was an “outstanding communicator and team player.” The letter stated that [REDACTED] completed both the Permanent Intermittent Police Academy and the Corrections Officer Academy. The letter described [REDACTED]’s responses to the interview questions as “thorough, detailed, and extremely well thought out.” (Ex. 18.)

80. Olsen filed a timely bypass appeal on September 12, 2014.

CONCLUSION AND ORDER

After reviewing the testimony and documents presented in this matter, I conclude that the Town of Marshfield has proven by a preponderance of the evidence that there was a reasonable justification to bypass Katherine Olsen.

An appointing authority is permitted to bypass a candidate for appointment under G.L. c. 31, § 27. If an appointing authority bypasses a candidate according to this provision, it must file a written statement of the reasons for the bypass with the administrator. G.L. c. 31, § 27; *see also* HRD Personnel Administration Rules 08(4) (2010) (requiring an appointing authority to submit “in writing, a full and complete statement of the reason or reasons for bypassing a person”). A person may appeal a bypass to the Civil Service Commission, which is authorized by G.L. c. 31, § 2(b) to hear and decide bypass appeals.

In a bypass appeal, an appointing authority must prove by a preponderance of the evidence that there was “reasonable justification” for the bypass. *Brackett v. Civil Serv. Comm’n*, 447 Mass. 233, 241 (2006). The Commission applies *de novo* review and determines “whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). Reasonable justification is established when such action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” *See Comm’rs of Civil Service v. Municipal Ct.*, 359 Mass. 211, 214 (1971), citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928).

The Commission’s role is relatively narrow in scope and is limited to “reviewing the legitimacy and reasonableness of the appointing authority’s actions.” *City of Beverly v. Civil Service*

Comm'n, 78 Mass. App. Ct. 182, 187 (2010). The Commission should give substantial deference “to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown.” *Id.* at 188. Such deference is especially appropriate when it comes to the hiring of police officers, given the sensitive nature of their position and the high standards of skill and integrity to which they are held. *Id.* Considering these high standards, an appointing authority is granted broad discretion when making appointment or promotion determinations. *City of Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 304 (1997). In determining whether an appointing authority had reasonable justification for an action “...the commission must focus on the fundamental purposes of the civil service system—to guard against political considerations, favoritism, and bias in governmental employment decisions . . . and to protect efficient public employees from political control.” *City of Cambridge*, 43 Mass. App. Ct. at 304, citing *Murray v. Second Dist. Court of East. Middlesex*, 389 Mass. 508, 514 (1983); *Kelleher v. Personnel Adm’r of the Dept. of Personnel Admin.*, 421 Mass. 382, 387 (1995); *Police Comm’r of Boston v. Civil Service Comm’n*, 22 Mass. App. Ct. 364, 370 (1986). The Commission may intervene if personnel decisions involve “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy.” *City of Cambridge*, 43 Mass. App. Ct. at 304, citing *School Comm. of Salem v. Civil Serv. Comm’n*, 348 Mass. 696, 698-99 (1965); *Debnam v. Belmont*, 388 Mass. 632, 635 (1983); *Comm’r of Health & Hosps. v. Civil Service Comm’n*, 23 Mass. App. Ct. 410, 413 (1987).

In this case, Chief Tavares and Lt. Shaw recommended bypassing Ms. Olsen because of her driving record, her questionable character for truthfulness, and her poor interpersonal and time management skills. Appellant’s poor driving record alone is reasonable justification for her bypass. The Town of Marshfield’s decision is further justified when considering Appellant’s

failure to admit to the charges on her criminal record, as well as her poor performance during the second round interview process.

Appellant's driving record alone is a sound and sufficient reason for her bypass.¹ Since 2006, Appellant has been in three surchargeable traffic accidents. She was also found responsible for three traffic citations in that same period of time. Appellant's driver's license has also been suspended a number of times, either for failure to pay the fines associated with the citations, or because of the accrual of surchargeable accidents or citations on her record. Chief Tavares expressed the importance of responsible and safe driving, as police officers spend up to eight hours a shift patrolling the town and responding to calls for service. The need for responsible driving is amplified when calls for service come in that require exceeding speed limits or disregarding traffic laws in emergency situations. To Chief Tavares and the other officers on the interview board, Appellant's record was unacceptable for a police officer. The Board of Selectmen was therefore reasonably justified in bypassing Appellant because of her extensive driving record.

¹ Multiple versions of Appellant's driving record were submitted as exhibits at the hearing. Exhibit 11, submitted by the Town of Marshfield at the first day of the hearing, is the "KQ" record pulled by the Marshfield Detective Division during the background investigation. Appellant submitted a certified copy of her driving record from the Massachusetts Department of Transportation (MassDOT); it was marked Exhibit 16 at the first day of hearing. On the second day of hearing, the Town of Marshfield submitted Exhibit 19, another different MassDOT-certified copy of the Appellant's driving record that included attached copies of notices of license suspension or revocation. It included offenses that were not listed in Exhibit 16.

I find Exhibit 19 is the more reliable version of her driving record. Exhibit 16 appears to be limited to accidents or citations that occurred after Appellant turned eighteen years old. For example, Exhibit 16 does not list the July 7, 2001 reckless driving or driving without a license charges. Moreover, Exhibit 19 is consistent with the full driving record, or KQ, that the Department used in the selection process. The Department is entitled to review and assess a candidate's entire driving record. The Marshfield detectives pulled a KQ for every candidate, and the interview board relied on those KQ's in making their hiring recommendations.

The Town of Marshfield was also reasonably justified because Appellant was not truthful during the hiring process about her criminal history or driving record. Appellant's listed only one instance where her driver's license was suspended; however, her official driver's record indicates three other license suspensions in the last seven years. Appellant also did not explain the extent of her charges in either the June 2001 MIP incident or the April 2002 OUI incident. Appellant had an opportunity to explain both of those charges in the second round interview, but failed to adequately explain and take responsibility for those charges. When asked about the 2002 OUI, Appellant did not admit to the second charge associated with that incident for driving on a suspended license. When asked about the 2001 MIP, Appellant likewise did not admit to the second charge associated with that incident for reckless driving.

Appellant argues that the Town of Marshfield bypassed her because the Marshfield Police Department was biased. Appellant further argues that the Marshfield Police Department did not fairly apply their justifications for bypass to all other candidates. For example, Appellant claims that candidates with similarly lengthy driving history, or similar charges on their criminal record, bypassed her for appointment. Finally, Appellant argues that her driving record is so extensive because of her career in sales, which required her to drive more than the average candidate and thus increased the probability that she would receive a citation or be involved in a traffic accident.

I find the Town's witnesses credible. Olsen did not testify at the hearing, even though she was present at the hearing to do so. I have drawn an adverse inference from Olsen's failure to testify. *See McGinnis v. Aetna Life & Casualty*, 398 Mass. 37, 39 (1986). I have considered this adverse inference as a credibility factor in addition to the normal criteria (demeanor, logic and consistency of testimony, etc.) for assessing the Town's witnesses' credibility. That is, the

credibility of the Town's witnesses' testimony has been enhanced by the adverse inference I have drawn against Olsen for her failure to testify.

Appellant claims that she was subject to bias in the interview and decision making process.

Chief Tavares arrested Appellant in July 2001 for the OUI, but any claim of bias on his part is unconvincing because he allowed Appellant to submit her application past the January 24, 2014 deadline. Additionally, some of the other candidates had familial ties to the police. Those connections would have been uncovered during the background investigation, so both the detectives in the background interview, and the second round interview board, would have been aware of these familial connections during the hiring process. There is no evidence, however, proving that the Marshfield Police Department was biased because of these ties, or even took them into consideration during the decision making process.

Appellant claims that she did not receive the same treatment as other candidates throughout the interview process; however, there is no compelling evidence to prove that the Marshfield Police Department treated Appellant differently than the other candidates. Appellant had more time to complete the application relative to other candidates because Chief Tavares allowed her to submit the application, even after missing the deadline. The background investigation and interview process was the same for all candidates. The detectives pulled each candidate's criminal record and driving history, and the screening board included this background information in making their recommendations to the Board of Selectmen. The candidates were asked the same questions in the background interview, as the interviewers all used the same questionnaire form. The candidates were given the same ten questions during the second round interview, which were weighted and scored on identical interview forms. Some candidates were asked follow-up questions if they had indicated any criminal charges on their employment

application, but this procedure was applied the same to every candidate with a criminal record. Under this policy, the interview board properly asked Appellant about the charges she listed on her application. Finally, the candidates all watched the same video, and each candidate had the same amount of time to write the descriptive narrative. Appellant did not provide sufficient evidence to prove that her experience in the hiring process was significantly different than any other candidate.

Appellant argued that her driving record was extensive because her job in sales required significant time on the road. Appellant's exhibits showed the territory she covered as a salesperson. The only exhibit indicating the amount of miles driven or territory covered by the Appellant is an informal reference letter from a supervisor, dated December 4, 2014. There was no testimony to further explain this document.

Appellant claims that candidates with similar driving records, or comparable charges on their criminal record, bypassed her for appointment. In comparing driving records, no candidate matches or exceeds Appellant's history of poor driving and disregard for following basic traffic laws. Only one candidate had a criminal record, but her record shows one charge for assault and battery which was dismissed in 2011. In comparison, the Appellant's record indicates four separate criminal charges. Not only was Appellant's record more lengthy than the other candidates, but she failed to disclose some of the charges and incidents to the interview board. With these comparisons in mind, the Town of Marshfield acted within its discretion in deciding to bypass Appellant for appointment.

Considering all of the evidence, the Town of Marshfield was reasonably justified in bypassing Ms. Olsen based on the reasons cited in its bypass letter. Accordingly, I recommend the dismissal of Ms. Olsen's appeal.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth J. Forton
Administrative Magistrate

DATED: