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COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2013-03743

RECEIVED

OCT - 9 2015

MA Off. of Attorney General  
Administrative Law Division

CHRISTOPHER O'ROURKE

vs.

BOSTON POLICE DEPARTMENT & another<sup>1</sup>

MEMORANDUM OF DECISION AND ORDER ON  
THE PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

The Plaintiff, Christopher O'Rourke ("O'Rourke"), filed this action, pursuant to G. L. c. 30A, § 14 and G. L. c. 31, § 44, appealing a decision issued by the Massachusetts Civil Service Commission (the "Commission"), which affirmed the Boston Police Department's (the "BPD") decision to bypass him for appointment as a police officer. This matter is now before the court on the parties' Cross-Motions for Judgment on the Pleadings. For the reasons set forth below, O'Rourke's Motion for Judgment on the Pleadings will be DENIED, the BPD's Cross-Motion for Judgment on the Pleadings will be ALLOWED, and the Commission's decision will be AFFIRMED.<sup>2</sup>

<sup>1</sup> Massachusetts Civil Service Commission

<sup>2</sup> The Commission's role in this matter was to adjudicate the dispute between O'Rourke and the BPD. It is a nominal party and thus, in response to the Cross-Motions for Judgment on the Pleadings, it relies on its decision and the administrative record.

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## BACKGROUND

O'Rourke took the Civil Service Exam on April 30, 2011. Based on his performance on that exam, O'Rourke was ranked twenty-seventh among those eligible to accept employment. After receiving notification of his eligibility, on June 2, 2012, O'Rourke completed a Boston Police Department Student Officer Application.

Pursuant to the next phase of the hiring process, the BPD assigned Detective Wayne Williams ("Williams") to conduct a candidate background investigation on O'Rourke. During the course of this investigation, Detective Williams reviewed records related to O'Rourke's criminal history, employment history, and driving history. In addition, Detective Williams conducted interviewed O'Rourke.

On June 22, 2012, Detective Williams submitted a summary of his background investigation to the BPD's hiring committee (the "Hiring Committee"). This summary included portions of O'Rourke's Board of Parole ("BOP") history as well as his driving record. O'Rourke's BOP record contained eleven entries and there were twenty-eight entries listed on his driving record.

The eleven entries on O'Rourke's BOP record included: trespassing, minor transporting alcohol (2 entries), true name violation, assault and battery (2 entries), operating negligently, affray, compulsory insurance violation, operating after suspended license, and operating under the influence of liquor.<sup>3</sup> All of these charges were dismissed, except the operating under the

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<sup>3</sup> On July 16, 1995, O'Rourke was arrested for disorderly conduct after a loud party. He was charged with trespassing and minor transporting alcohol. After he completed community service, these charges were dismissed. On October 14, 1997, O'Rourke was arraigned for a true name violation and minor transporting alcohol. He was ordered to attend weekly AA meetings and given pre-trial probation. On October 24, 1998, O'Rourke was arrested after he and a group of other individuals engaged in a violent altercation with three other individuals. On June 2, 1999, O'Rourke was stopped after making an illegal left turn and, then, arrested, when it was discovered that he was operating with an expired license. He was found responsible and ordered to pay a fine. On August 12, 2001, O'Rourke was arrested after a violent altercation outside of a night club in Boston. The victim in this incident stated that O'Rourke and others punched, kicked, and bit him. On September 18, 2003, O'Rourke was arraigned for a

influence charge. That charge arose from an incident, which occurred on March 26, 2007, when a police officer stopped O'Rourke for failing to stop at a red light. During the stop, the officer detected a strong odor of "an intoxicating beverage" on O'Rourke's breath. In addition, the officer noted that O'Rourke's eyes were bloodshot and he was unable to recite the alphabet. He was arrested based upon his failure to properly complete field sobriety tests. After booking, O'Rourke refused a breathalyzer and his license was suspended. Ultimately, O'Rourke was found not guilty with respect to this charge.

The twenty-eight entries on O'Rourke's driving record between 2002 and 2012 include a series of suspensions and warrants. More specifically, during that period, O'Rourke's license was suspended on seven occasions and warrants issued on two occasions.

Once the BPD completes its candidate investigations, the Hiring Committee conducts a "round table" discussion to determine which candidates should move on to the next phase of the hiring process. During this "round table" discussion, to assist in making its decisions, the Hiring Committee relies on reports submitted by the individuals assigned to conduct the candidate background investigations. In this case, based on Detective Williams' findings, the Hiring Committee decided to bypass O'Rourke. The BPD notified him of this decision by letter (the "Bypass Letter") dated January 14, 2013.

In the Bypass Letter, the BPD explained that it had concerns about O'Rourke's BOP record as well as his driving history. In particular, the Bypass Letter states that, "[d]espite some charges being dismissed and some not [being] recent, the volume of incidents and demonstrated pattern of troubling behaviors—multiple alcohol related incidents and multiple [motor vehicle] . . . incidents—raise significant concerns over your judgment and overall suitability to become a

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compulsory vehicle insurance violation. After he paid a fine, this charge was dismissed. On July 15, 2005, O'Rourke was found responsible for driving with a suspended license and speeding. The charges were dismissed upon payment of court costs and restitution.

police officer.” The BPD selected sixty-eight candidates for appointment; amongst those candidates, seventeen were ranked below O’Rourke based on their civil service exam scores.

O’Rourke filed a timely appeal with the Commission on March 12, 2013. The Commission held a full hearing on July 17, 2013. On September 19, 2013, after review, the Commission denied O’Rourke’s appeal. The Commission found O’Rourke’s pattern of alcohol-related incidents and his lengthy driving record were legitimate concerns and concluded that the BPD had “met its burden to establish reasonable justification for its decision to bypass [O’Rourke].”

## DISCUSSION

O’Rourke seeks judicial review of the Commission’s decision and requests that the court order the BPD to appoint him a police officer. In support, O’Rourke argues that the Commission’s decision, which affirmed the BPD’s decision to bypass him, was not supported by supported by substantial evidence because there was not reasonable justification for the BPD’s bypass decision. Below, the court addresses O’Rourke’s claims.

### I. Standard of Review

An appointing authority may bypass a candidate only if it has a “reasonable justification” for doing so. Brackett v. Civil Serv. Comm’n, 447 Mass. 233, 241 (2006). Upon a candidate’s appeal to the Commission, the appointing authority bears the burden of establishing by a preponderance of the evidence that it had such a reason. Id., citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 260 (2011), and Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 303 (1997). This means that the appointing authority must demonstrate that its decision was “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.” *Id.* (internal citations omitted).

In reviewing an appointing authority’s decision, the Commission is to find the facts anew, *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727 (2003); however, this task “is not to be accomplished on a wholly blank slate.” *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006). The Commission’s role is to “decide[] whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision.’” *Id.* at 824, quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). In reaching its conclusion, the Commission owes “substantial deference” to the appointing authority’s determination that there was “‘reasonable justification[.]’” *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187-188 (2010).

A court reviewing a decision issued by the Commission, must apply the above principles in accordance with the well-established framework applicable to judicial review of administrative decisions under G. L. c. 30A, § 14. G. L. c. 31, § 44. Pursuant to this provision, the court may affirm, remand, set aside or modify a decision, if it determines that the substantial rights of any party have been prejudiced because the decision was: (1) based upon an error of law; (2) unsupported by substantial evidence; (3) unwarranted by facts found by the court on the record submitted; or (4) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. G. L. c. 30A, § 14(7).

In applying this standard, the court is required to give due weight to the Commission’s experience, technical competence, specialized knowledge, and the discretionary authority conferred upon it by statute. See *Flint v. Commissioner of Pub. Welfare*, 412 Mass. 416, 420 (1992). The reviewing court may not substitute its judgment for that of the Commission. See

Southern Worcester County Reg'l Vocational Sch. Dist. v. Labor Relations Comm'n, 386 Mass. 414, 420-421 (1982). In fact, the court is "bound to accept" the Commission's findings, "if supported by substantial evidence," Stratton, 58 Mass. App. Ct. at 728, which is only "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1(6).

## II. Analysis

In this case, as the appointing authority, the BPD bypassed O'Rourke for appointment as a police officer as a result of concerns it had about his BOP record and driving history. Upon review, the Commission concluded the BPD had met its burden to establish there was reasonable justification for the bypass. O'Rourke disagrees, claiming the Commission's decision to affirm his bypass was not supported by substantial evidence because: first, all but one of the criminal charges on his BOP record had been dismissed and, he was found not guilty with respect to the one remaining 2007 driving under the influence charge; and second, although his driving record is lengthy, in addition to not being recent, most of the entries contained therein were the result of civil infractions. In reply, the BPD argues that O'Rourke's BOP record and driving history displayed a pattern of disregard for the law that adequately justified the decision to bypass him for appointment as a police officer. After consideration, the court concludes the BPD's bypass decision was reasonably justified and, thus, properly upheld by the Commission.

O'Rourke's arguments are, largely, without merit. First, O'Rourke's assertion that all but one of the charges had been dismissed is disingenuous. While the statement is technically true, it does not mean, as it seems O'Rourke would have the court infer, that he did not commit the underlying misconduct that originally supported the charges. In fact, according to the record before the court, many of the charges were only dismissed after O'Rourke completed court-

ordered actions such as completing community service, attending AA meetings, serving a term of pre-trial probation, or paying some type of fine.

Even accepting that many of the charges included in O'Rourke's criminal history were dismissed, his claim that, neither his BOP record nor his driving history provided reasonable justification for his bypass, is unpersuasive. In making its bypass decision, the BPD was free to rely on the dismissed charges, the 2007 driving under the influence charge, for which he was found not guilty, and O'Rourke's driving history. It is well-established that an acquittal or a dismissal, in a criminal matter, does not preclude an administrative body from considering the facts that supported the criminal action, in a civil context, since criminal convictions require a higher burden of proof. See Krochta v. Commonwealth, 429 Mass 711, 718 (1999).

Any contention that the BPD could not look at the underlying circumstances surrounding the original assertion of the charges identified on O'Rourke's BOP record or listed in his driving history is, likewise, meritless. In an administrative proceeding, a hearing officer "may admit and give probative effect to evidence 'if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.'" See Doe No. 10800 v. Sex Offender Registry Bd., 459 Mass. 603, 638 (2011) (discussing sex offender registry board classification proceedings). O'Rourke's BOP record and his driving history, as well as any related police reports, are certainly the kind of evidence on which reasonable persons would rely. Thus, the BPD (and, later, the Commission) was entitled to consider this evidence make reasonable inferences based thereon.

The Commission is charged with determining whether there was reasonable justification to support an appointing authority's bypass decision. Falmouth, 447 Mass. at 824. In making that determination, the Commission owes "substantial deference" to the appointing authority.

Beverly, 78 Mass. App. Ct. 187-188. This deference is “especially appropriate” in cases such as this, which involve the hiring of police officers. Id. at 188. Because of the “high standards” applicable to police officers, “appointing authorities are given significant latitude in screening candidates, and ‘[p]rior misconduct has frequently been ground for not hiring or retaining a police officer.’” Id. at 188, quoting Cambridge, 43 Mass. App. Ct. at 305, and cases cited.

In this case, the court will not displace the Commission’s decision. The record before the court provides ample evidence to support the BPD’s conclusion that O’Rourke was not suitable to become a police officer, especially, given the deferential lens through which the court must review this decision. Since the record provides substantial evidence to support the Commission’s conclusion that there was reasonable justification for the BPD’s decision to bypass O’Rourke, the Commission’s decision must be affirmed.

#### ORDER

For the reasons stated above, the O’Rourke’s Motion for Judgment on the Pleadings is DENIED, the BPD’s Cross-Motion for Judgment on the Pleadings is ALLOWED, and the Commission’s decision is AFFIRMED.



Mary K. Ames  
Justice of the Superior Court

Dated: October 6, 2015