

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

ARMANDO ORTIZ, JR.,
Appellant

v.

G1-22-055

DEPARTMENT
OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Armando Ortiz, Jr.

Appearance for Respondent:

Joseph S. Santoro
Labor Relations Advisor
Department of Correction
50 Maple Street, 1st Floor
Milford, MA 01757

Commissioner:

Paul M. Stein¹

Summary of Decision

The Civil Service Commission affirmed the Appellant's bypass for original appointment as a Correction Officer I (CO I). While the Appellant had received a number of favorable performance reviews from his current employer, the Department of Correction had reasonable justification to bypass him on the basis of an extensive history of discipline and his ineligibility to obtain a license to carry a firearm.

DECISION

On March 31, 2022, pursuant to G.L. c. 31, § 2(b), the Appellant, Armando Ortiz, Jr. (Appellant), appealed to the Civil Service Commission (Commission) contesting his bypass for appointment by the Department of Correction (DOC) as a Correction Officer I (CO I). The

¹ The Commission acknowledges the assistance of Law Clerk Daniel Taylor in the drafting of this decision.

Commission held a remote pre-hearing conference on May 24, 2022 and a held a remote full hearing on July 12, 2022.² The hearing was recorded, and a copy of the recording was provided to both parties.³ Neither party chose to submit a post-hearing proposed decision. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Sixteen exhibits were offered into evidence at and following the hearing, four by the Appellant and twelve by the Respondent. Based on these exhibits, the testimony of the following witnesses:

Called by the Respondent:

- Eugene Jalette, Deputy Chief of Investigative Services, Department of Correction

Called by the Appellant:

- Armando Ortiz, Jr., Appellant

and taking administrative notice of all pleadings filed in the case, pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence,

I make the following findings of fact:

Appellant's Background

1. The Appellant is a 1999 high school graduate who resides in Fitchburg, MA. He took and passed the civil service examination for CO I on March 19, 2021. (Testimony of the Appellant; Resp. Ex 3; Resp. Ex. 12)
2. On August 20, 2021, the Massachusetts Human Resources Division (HRD) issued

² 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.

³ 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 he/it wishes 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.

Certification #08017 to DOC. The Appellant ranked 36th on this certification. (Resp. Ex. 2)

3. Upon receiving the Appellant's application for employment, DOC assigned Correctional Officer Thomas Henrickson to conduct a background investigation. This investigation was completed on November 29, 2021. The Appellant's references were generally positive, but Henrickson noted an "extensive disciplinary history" and "lengthy legal history including serious assault and battery charge." (Resp. Exhibit 3)
4. Since graduating high school, the Appellant has been employed as a press operator for several printing companies. He was first hired by his current employer in May 2003, and was later terminated from that position in September 2012 for reasons that remain unclear. The Appellant was rehired by his current employer in March 2014. (Testimony of the Appellant; Resp. Ex. 3; Case No. G1-18-157).
5. The Appellant has been disciplined by his current employer at least twelve times during both his original and subsequent reemployment⁴:
 - i. 01/20/2004: 3-day suspension for throwing a brush.
 - ii. 10/24/2005: 5-day suspension for refusing to follow instructions, using profanity.
 - iii. 04/01/2006: 3-day suspension for refusing to follow instructions, throwing things.
 - iv. 05/01/2007: 1-day suspension for being disrespectful to supervisors.
 - v. 01/24/2010: 1-day suspension for unsatisfactory work performance.
 - vi. 03/29/2010: 2-day suspension for unsatisfactory work performance.
 - vii. 01/31/2011: 3-day suspension for refusing to follow instructions.
 - viii. 08/03/2011: 1-day suspension for unsatisfactory work performance.
 - ix. 05/03/2017: written warning for insubordination, refusing to follow instructions.
 - x. 11/28/2017: 1-day suspension and "final written warning" for several incidents in which the Appellant was disrespectful to supervisors.
 - xi. 04/13/2018: sent home for the remainder of shift for talking on the phone.
 - xii. 02/11/2019: 1-day suspension for insubordination and unprofessional behavior.

(Resp. Ex. 9)

⁴ The Appellant alleges that most of this discipline was issued during his initial employment period by or at the behest of a supervisor with a personal dislike of the Appellant, who was later terminated. (Testimony of the Appellant)

6. Recent performance reviews conducted by the Appellant's current employer have rated him as consistently meeting or exceeding expectations. He is described as knowledgeable and helpful, but also as having "a tendency to become frustrated and let his emotions get the best of him."
(App. Ex. 4)
7. The Appellant is currently ineligible to obtain a license to carry a firearm (LTC) in Massachusetts. (Testimony of Appellant; Resp. Ex. 6; Resp. Ex. 8); G.L. c. 140, § 131(d)(i)(B); G.L. c. 265, § 13A)
8. The Appellant was previously bypassed for the position of CO I in July 2018. On appeal to the Commission (CSC No. G1-18-157), the Commission found that DOC had reasonable justification to bypass the Appellant, based on his disciplinary record at that time, including six incidents of insubordinate behavior against multiple supervisors. (Ortiz v. Department of Correction, 33 MCSR 19 (2020) [Ortiz I])

Current Bypass Appeal

9. The announcement of the March 19, 2021 civil service exam included a list of requirements that candidates must meet prior to their appointment. This list included the ability to qualify for a license to carry a firearm under G.L. c. 140, § 131. (Resp. Ex. 12)
10. DOC does not issue licenses to carry firearms, but considers the ability to carry a firearm essential to the job, as there are circumstances where correctional officers are required to do so.
(Testimony of Jalette)
11. The Appellant has made some attempts to secure a license to carry a firearm, including enrolling in a firearms safety class, but has been unsuccessful as of the Commission hearing.
(Testimony of the Appellant)
12. The Appellant's hiring package was reviewed by a committee of senior DOC management,

including the Commissioner of the DOC and two deputy commissioners. The hiring package included the Appellant's application for employment, the results of his background investigation, and his CORI check. (Testimony of Jalette)

13. By letter dated February 4, 2022, DOC informed the Appellant that he had been bypassed. The primary reasons for bypass were the Appellant's prior employment discipline history and his inability to obtain an LTC. (Resp. Ex. 2)

APPLICABLE LEGAL STANDARD

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Basic merit principles in hiring and promotion calls for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L. c. 31, §§ 6-11, 16-27; Personnel Administration Rules, PAR.09. In order to deviate from that formula, an appointing authority must provide specific, written reasons – positive or negative, or both, consistent with basic merit principles—to affirmatively justify 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. 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, 543 (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, § 2(b), 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 for the Commission to 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).

However, appointing authorities are vested with a degree of discretion in selecting public employees of skill and integrity. The Commission "cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority" unless

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.

ANALYSIS

DOC has established, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant for appointment as a CO I. While there is no dispute that the Appellant can be a knowledgeable employee, DOC is entitled to weigh a candidate’s positive traits against their negative traits. In this case, DOC reasonably concluded that the Appellant’s positive qualities were outweighed by his fifteen-year history of discipline, coupled with his inability to qualify for a license to carry a firearm.

DOC requires its correctional officers to be eligible for a license to carry a firearm. As such, while it is possible that the Appellant may be able to obtain a license to carry in the future, the undisputed evidence established that he is currently ineligible to obtain an LTC and, as such, he is unable to meet an essential qualification for employment as a DOC Correction Officer.

Second, DOC is a para-military organization in which correctional officers are regularly subjected to high-stress situations, during which they must remain disciplined and follow the instructions of their superiors. Given the serious safety concerns associated with the care, custody, and transport of incarcerated persons, stable temperament and sufficient self-control are paramount. Having reviewed the specific details of the Appellant’s disciplinary record, I find a well-documented pattern of problematic behavior. The record therefore supports DOC’s decision to bypass the Appellant at this time. While the Appellant’s disciplinary history may become stale at some point with the passage of time and continued good behavior, given the history of discipline that included a suspension in 2019 for insubordination (taken against him after he was bypassed in Ortiz I), I find that, on this record, DOC is reasonably justified to conclude that the Appellant

does not possess the temperament necessary to perform the job of CO I.

I considered the Appellant's claim that the discipline he received was largely the result of a single previous supervisor's personal bias against him. I do not credit that claim. All discipline against the Appellant was reviewed and approved by a department manager and, by the Appellant's admission, the four most recent instances of discipline following his rehiring in 2014 were not issued by the supervisor in question. Absent some compelling evidence, I do not find it credible that half a dozen individuals conspired to mete out this discipline over almost two decades.

In sum, based on his inability to meet an essential requirement of the job (ability to obtain a LTC) and the conclusion that the Appellant's problematic employment history continued to present an unreasonable risk of non-suitability to perform the high-stress duties of a CO I, DOC had reasonable justification to bypass the Appellant.

CONCLUSION

For all of the above reasons, the bypass appeal of the Appellant under Docket No. G1-22-055 is hereby *denied*.

Civil Service Commission
/s/ Paul M. Stein
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on February 23, 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)(I), the motion must identify a clerical or mechanical error in the 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:

Armando Ortiz, Jr. (Appellant)

Joseph S. Santoro (for Respondent)