

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

**DANIEL OTERO,**  
Appellant

v.

G2-14-301

**CITY OF LOWELL,**  
Respondent

Appearance for Appellant:

Gary G. Nolan, Esq.  
Noland Perroni Harrington, LLP  
133 Merrimack Street  
Lowell, MA 01852

Appearance for Respondent:

Kenneth Rossetti, Esq.  
Rachel M. Brown, Esq.  
City of Lowell Law Department  
375 Merrimack Street, 3<sup>rd</sup> Floor  
Lowell, MA 01852

Commissioner:

Cynthia A. Ittleman

**DECISION**

On December 24, 2014, Daniel Otero (“Appellant”), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (“Commission”), contesting the decision of the City of Lowell (“Lowell” or “Respondent”) to bypass him for promotional appointment to Sergeant. A pre-hearing conference was held at the offices of the Commission on January 13, 2015. The Appellant filed a Motion for Summary Decision or in the Alternative a Motion in Limine to Exclude Evidence and the Respondent filed an opposition thereto. This Motion was denied on February 27, 2015.

Prior to the full hearing on this appeal, the parties proposed that the bypass appeal be resolved by agreement, requesting relief under St. 1993, Chapter 310. Chapter 310 provides, in part,

“If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights, notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights. ...”  
Id.

The Commission denied the request for relief at that time as there was insufficient information to indicate whether the Appellant had been prejudiced through no fault of his own.

The Respondent filed a Motion for Adverse Fact Finding Against Appellant for failing to respond to discovery. However, this Motion was deemed moot as the Appellant responded indicating that he made a diligent search but did not find the information requested.

A full hearing was held at Lowell City Hall on March 2 and 24, 2015.<sup>1</sup> By a March 4, 2015 email message, the parties filed a stipulation providing:

1. On March 2, 2015, a full and complete hearing was conducted as to matter D-14-297, which concerned Appellant’s appeal of discipline imposed upon him by Respondent;
2. On March 2, 2015 a partial hearing was conducted as to matter G2-14-301, which concerned Respondent’s bypass of Appellant to position of police sergeant;
3. A continuation of the hearing on matter G2-14-301 is scheduled for March 24, 2015;
4. Respondent’s stated reasons for bypass as set forth in the bypass letter, entered in this matter as Appointing Authority Exhibit 5, include: a June 6, 2012 email; a June 11, 2013 Official Reprimand; a January 31, 2014 Official Reprimand; and a November 14, 2014 Five (5) Day Suspension. The November 14, 2014 Five Day Suspension is the subject of appeal D-14-297;

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

The hearing in the instant appeal began right after the conclusion of the hearing on Appellant’s disciplinary appeal, docketed as D-14-297. A decision on the Appellant’s disciplinary appeal is being issued the same day as the decision in the instant bypass appeal.

5. All record evidence from D-14-297 relating to the Five-Day Suspension referenced in paragraph No. 4 may be argued by the parties in G2-14-301 relative to the bypass issue;

6. All record evidence from D-14-297 relating to the June 6, 2012 email, June 11, 2013 Official Reprimand and January 31, 2014 Official Reprimand (all of which were introduced into evidence in connection with the Five-Day Suspension referenced in paragraph No. 4) may be argued by the parties in G2-14-301 relative to the bypass issue;

7. The parties reserve all rights to articulate, through legal memoranda and argument, the legal impact of such evidence as to matter G2-14-301.

By email message dated March 12, 2015, I informed the parties that this stipulation was made part of the record along with the following provisions:

1. that paragraphs 4 and 5 also provide that the record evidence referenced therein may also be considered by the Commission in rendering a decision in the promotional bypass cases; and
2. that paragraph 7 also indicate that its reference to ‘such evidence’ refers to the evidence from the discipline case referred to in paragraphs 4 and 5.

At the full hearing, witnesses were sequestered. The hearing was digitally recorded and both parties were provided with a CD of the hearing.<sup>2</sup> During the hearing, following the Respondent’s case in chief, the Appellant made an oral motion for summary decision, which motion was denied as there was a dispute as to genuine issues of material fact. Following the hearing, both parties submitted post-hearing briefs in the form of recommended decisions. The evidence, and the weight it is given, establishes the facts found herein.

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<sup>2</sup> 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/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

Recordings of the Appellant’s bypass appeal hearing and his discipline appeal hearing were sent to Attorney Joseph Padolsky, who represented the Appellant in the discipline appeal, and to Attorney Gary Nolan, who represented the Appellant in the bypass appeal, as well as to the Respondent regarding both appeals. Attorney Nolan also attended part of the discipline appeal hearing.

### Findings of Fact

The Respondent submitted five (5) exhibits (Respondent's Exhibits 1 – 5) into evidence and the Appellant submitted an additional twelve (12) exhibits (Appellant's Exhibits 1 – 8, 9a, 9b, 10 and 11) into evidence at the hearing.<sup>3</sup> Based on these exhibits and stipulations in the file, the testimony of the following witnesses:

#### *Called by Respondent:*

- Superintendent William Taylor, Lowell Police Department

#### *Called by Appellant:*

- Deborah Friedl, Deputy Superintendent of Police, Lowell Police Department; and
- Daniel Otero, Appellant

and taking administrative notice of all matters filed in the case, including, without limitation information provided by the state's Human Resources Division ("HRD"), stipulations and pertinent statutes, regulations, policies, and case law, and reasonable inferences from the credible evidence; a preponderance of the evidence establishes the following findings of fact:

1. The Appellant has been a Police Patrolman with the Lowell Police Department (LPD) since 1996. (Finding of Fact in Otero v. Lowell, D-14-297 October 27, 2016)
2. The Appellant took and passed the October 2012 civil service exam for Sergeant; his score was 81. (Stipulation) HRD sent the Respondent an eligible list for the position of Sergeant on April 26, 2013. (HRD documents, April 26, 2013) Certification #00653 was created from the eligible list on November 12, 2014. The Appellant was ranked first on the Certification at that time. One candidate, Officer Perrin, was chosen by the

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<sup>3</sup> The bypass letter given to the Appellant at the prehearing conference in this case was admitted at the hearing de bene, subject to the parties' arguments at the hearing and other evidence. In view of the parties' arguments and evidence noted herein, the bypass letter was admitted in full (Respondent's Exhibit 5).

Respondent and promoted to Sergeant. Officer Perrin was ranked third on the Certification. The second ranked candidate was Officer Golden. (Stipulation)

3. At or about the time of the Sergeant exam and/or at least part of the process of selecting a candidate for promotion, Officer Golden was involved in a contentious divorce with his then wife, Ms. M. On or about the time that Ms. M and Officer Golden separated, Ms. M was dating the Appellant. The Appellant and Ms. M alleged that Officer Golden was harassing them and met with LPD and the DA's office concerning these and other allegations. Officer Golden filed a complaint against Ms. M for breaking and entering into the former marital home, which complaint was later dismissed. Subsequently, at a meeting at the office of the District Attorney to address the allegations that Officer Golden was harassing the Appellant and Ms. M, the Appellant falsely alleged that Officer Golden sexually abused his minor daughter (the daughter of Officer Golden and Ms. M). In the course of multiple investigations of the Appellant's allegations that Officer Golden abused his daughter, the Appellant changed his allegations and asserted that Officer Golden was a good father. The allegations that Officer Golden had abused his daughter were found to be unsupported. The Appellant was suspended for five (5) days for conduct unbecoming an officer in violation of LPD rules and regulations for having made the unsupported allegations that Officer Golden had abused his daughter. The Appellant appealed his discipline to the Commission; the Commission denied that appeal. Some of the allegations that Officer Golden harassed the Appellant and Ms. M were found to be supported and Officer Golden was disciplined for conduct unbecoming an officer in

violation of LPD rules and regulations.<sup>4</sup> The Appellant and Ms. M were subsequently married. (Otero v. Lowell, D-14-297 October 27, 2016)

4. Supt. Taylor has been at the LPD for thirty-three (33) years; at the time of the Commission's hearing in this case, he had been Superintendent for thirteen (13) months. (Testimony of Supt. Taylor)
5. On November 12, 2014, Supt. Taylor issued a memorandum to the Appellant stating that the LPD is "planning to fill one (1) permanent full time police sergeant position. Please report to the Superintendent's Office where you will be asked to sign a form stating whether you will or will not accept the position. ... You have until 4:30 p.m., Friday, November 21, 2014 to sign the list for this position." (Appellant's Exhibit 7)
6. The officers' union asked Supt. Taylor to hold off on the Sergeant promotion until the Appellant's discipline had been issued in regard to the matters referenced in Finding of Fact #3 and Supt. Taylor agreed to do so. (Testimony of Supt. Taylor)
7. On November 13, 2014, Supt. Taylor issued a Notice of Five (5)-Day Suspension to the Appellant for conduct unbecoming a police officer after investigations found that his allegation that Officer Golden abused his (Officer Golden's) minor daughter was unsupported. The Appellant appealed the suspension. On December 4 and 8, 2014, the Respondent conducted a hearing on the Appellant's appeal of the suspension. On December 12, 2014, City Manager Murphy wrote to the Appellant stating that he adopted the findings of the hearing officer that the Appellant's conduct constituted conduct unbecoming a police officer, that he affirmed the five (5)-day suspension, and that he enclosed copies of Mass. General Laws, Chapter 31, §§ 41-45 concerning appeals to the Commission. (Otero v. Lowell, D-14-297 October 27, 2016; Appellant's Exhibit 6)

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<sup>4</sup> The Commission has no record that Officer Golden appealed his own discipline in this regard.

8. On December 12, 2014, Personnel Order No: 35-14, regarding a permanent promotion, was posted at the LPD stating, "Effective Sunday, December 14, 2014, the following permanent Promotion shall take place: Officer Daniel Perrin Promoted to Permanent Sergeant." (Appellant's Exhibit 2) The Order was signed by Supt. Taylor. (Id.) Prior to this posting, Supt. Taylor had provided information to City Manager Murphy about all three (3) candidates for the Sergeant position at that time. The candidates were not interviewed. Supt. Taylor recommended that Officer Perrin be promoted to Sergeant after reviewing the candidates' personnel files, the candidates' positives and negatives, and after checking for any outstanding internal affairs complaints against the candidates. Officer Perrin was an exemplary candidate who sends a positive message and has no suspensions, although there was a 2012 reprimand in his personnel file. Supt. Taylor discussed this information with City Manager Murphy for approximately fifteen (15) minutes. City Manager Murphy asked Supt. Taylor questions about the candidates; they discussed the pending discipline of the Appellant and Officer Golden. It was noted that the Appellant's disciplines occurred within the last couple of years and that although he may be considered for a leadership role in the future, it was not appropriate at that time. City Manager Murphy approved Officer Perrin's promotion. (Testimony of Supt. Taylor)
9. By letter dated January 9, 2015, City Manager Murphy wrote a letter addressed to HRD, stating, in pertinent part,

As the appointing authority, I exercised my right to bypass the top two candidates on the certified promotional list for Sergeant of Police. This action was taken due to the fact that the third place candidate, Daniel Perrin, is uniquely qualified to be promoted to this position. Sergeant Perrin has long been recognized by his superiors as a highly motivated, self-starter, with an exceptional grasp of the various responsibilities required of him in his patrol assignments. He has

consistently demonstrated a high degree of professionalism and initiative. Sergeant Perrin has demonstrated strong communication and problem solving skills during the courses of his career. His efforts have been recognized both internally as well as externally by the community. Sergeant Perrin has received two citations and one commendation for outstanding police work. Additionally, as Sergeant Perrin exemplifies the qualities we want to see in our officers, he has been chosen to serve as a Field Training Officer for new officers joining the department.

A sergeant is a vitally important role within our organization. He or she must have the confidence of both his subordinates and his superior to carry out the mission of the organization. Sergeant Perrin is highly regarded by the rank and file as well as his superiors and viewed as a leader within the organization.

... I am exercising my right to bypass candidate number one, Officer Daniel Otero. The reason for bypass is based on the following:

On June 6, 2012, Officer Daniel Otero was formally counseled regarding a violation of the City of Lowell Computer Usage Policy. Officer Otero, upon learning that his assigned police mountain bike was missing from its storage location, expressed his displeasure with profanity by sending a department wide email which read "Who the F\*\*\* took my bike from the precinct?"

On June 11, 2013, Officer Daniel Otero received an official reprimand for Violation of General Order 95-08 – Sick Leave, for fraudulently reporting illness. On May 29 and 30, 2012, Officer Otero called in sick for his regularly scheduled tour of duty. During a subsequent investigation, Officer Otero admitted he was not sick and attended a police promotional training session in Westford, MA on these dates.

On January 31, 2014, Officer Daniel Otero received an official reprimand for Violation of the Rules and Regulations of the Lowell Police Department, Sections H and K. An investigation was conducted in response to receiving a complaint from City Councilor Vesna Noun regarding a marked police car parked for two hours with no officer present. The investigation determined that Officer Otero was assigned to this patrol unit and that the vehicle remained parked for 1:29:11 hours at a location not on Officer Otero's assigned route. Officer Otero stated that he was visiting his brother for lunch and to view the football game. A further review of department records revealed that on September, (sic) 22, 2013, another football game day, his assigned patrol vehicle was similarly parked for excessive periods of time in this same area.

Officer Otero was determined to have left his assigned area of patrol without permission of a supervisor. He was absent from duty, post or station without proper leave and he was loafing while on post.



On November 14, 2014, Officer Daniel Otero was served notice of a Five (5) Day Suspension for Violation of the Rules and Regulations of the [LPD], specifically, conduct Unbecoming an Officer. These findings resulted from a long term investigation into the conduct of Officer Otero as well as Officer Timothy Golden and are based on the following:

On December 12, 2012, Lieutenants Mark Buckley and Francis Rouine met with [Ms. M] and Officer Otero regarding harassment and possible threats made by Officer Timothy Golden. [Ms. M] had been in contact with the [LPD] on several occasions relative to the actions of her ex-husband, Officer Golden. The nature of the relationship between the Golden family at this point was severely strained. ... reference was made to a video recording of the young daughter of the Golden family, which had been recorded by Timothy Golden and sent via text to [Ms. M]. The video was described at that time as depicting [the child without underwear while playing]. ... A text accompanied this video which stated "see what happens to kids of divorced parents." This video was not available for viewing ... as it was no longer on the phone due to reported ongoing phone issues.

During a subsequent meeting on April 25, 2013 at the District Attorney's Office ... [Ms. M] described the video as depicting her daughter [without underwear while playing] ... At this point, Officer Otero [made false statements embellishing, in specific terms, what was in the video which, if such statements were true, would warrant a mandatory report of child sexual abuse.] ... When asked by Lt. Buckley why he had not been told this information back in December, Officer Otero related that he was embarrassed and afraid of what would happen. ...

As a mandated reporter, Lieutenant Buckley immediately filed a 51-A report with [DCF] ... Ms. Jennifer Capone, DCF investigator, had occasion to interview Officer Otero on May 3, 2013. During this interview ... Officer Otero noted that [Ms. M]'s cellphone was an old flip phone and the picture was "small and not clear." ... Officer Otero reported to Ms. Capone that you "could not tell if [the video showed evidence of child sexual abuse] ... because the picture was "not clear." ... Further Officer Otero reported to Ms. Capone that he never had concerns of sexual abuse or inappropriateness by Officer Golden towards his daughter ...

The investigation by DCF resulted in findings that the allegation of sexual abuse against Officer Gold was unsupported. The Middlesex County District Attorney's Sexual Assault Unit also conducted an investigation into this matter. On June 13, 2013, Assistant District Attorney Michelle Margolis notified [Ms. M] that they were closing their review of this matter as the conduct was not determined to be sexual in nature.

... Such a heinous allegation made against an individual makes it nearly impossible to restore their reputation even if the investigation yields no criminal

conduct. To have such an allegation made by a police officer, who has advanced training in this matters, against a colleague for some perceived personal gain is especially alarming. These allegations cast the accused officer and the department in a negative light. Officer Otero's specific recollection and description of the events set in motion a series of investigations in this matter. His subsequent recantation of the information provided is troublesome.

Additionally, Officer Otero is the subject of a complaint presenting pending before the [MCAD] regarding his actions towards a female academy classmate while both were students at the Lowell Police Academy. An internal investigation into this matter found that Officer Otero made a statement to Officer Timothy Golden, in the presence of [other officers] ... According to Officer Golden, he stated "not only did he take [Ms. X] under his wing but that he had "banged her" a couple of times." (sic). The investigation sustained a finding of Misconduct on the part of Officer Otero for his disrespect towards the female cadet.

(Appellant's Exhibit 4)

10. Supt. Taylor discussed the Sergeant promotion with Deputy Superintendent Deborah

Friedl, who drafted the bypass letter, which was reviewed by Supt. Taylor and the

Solicitor's office and it was signed by City Manager Murphy. (Appellant's Exhibit 4)

11. Although Dep. Supt. Friedl was aware that HRD had delegated certain hiring and

promotional processes, she was under the mistaken belief that the Respondent had to

notify HRD of any bypasses. She was not aware if the letter addressed to HRD was

actually mailed to HRD and to the Appellant because the letter was to be mailed from the

City Manager's office. (Testimony of Dep. Supt. Friedl) The bypass letter addressed to

HRD was delivered to the Appellant and the Commission at the Commission's

prehearing conference after the Appellant filed the instant appeal. (Administrative

Notice)

### *Applicable Law*

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, § 1.

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge at 304. Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions (City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n., 447 Mass. 814, 824-826 (2006)) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. Beverly. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Such deference is especially appropriate

with respect to the hiring of police officers. In light of the high standards to which police officers appropriately are held, appointing authorities are given significant latitude in screening candidates. Beverly citing Cambridge at 305 (*see cases cited*).

With respect to candidates who have been bypassed for hiring or promotion, G.L. c. 31, § 27 provides, in part,

If an appointing authority makes an original or promotional appointment from a certification of any qualified person other than the qualified person whose name appears highest, and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator a written statement of his reasons for appointing the person whose name was not highest. Such an appointment of a person whose name was not highest shall be effective only when such statement of reasons has been received by the administrator. The administrator shall make such statement available for public inspection at the office of the department. (Id.)(*see* Appellant's Exhibit 11, the Certification Handbook promulgated by the state's Human Resources Division (HRD))

Personnel Administrator Rule .08(4) provides, in part,

Upon determining that any candidate on a certification is to be bypassed, as defined in Personnel Administration Rule .02, an appointing authority shall, immediately upon making such determination, send to the Personnel Administrator, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reason or reasons for selecting another person or persons, lower in score or preference category. Such statement shall indicate all positive reasons for selection and/or negative reasons for bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission. (Id.)

However, in 2009, HRD delegated the law enforcement promotion process to civil service municipalities, providing, *inter alia*, that municipalities no longer need transmit their promotional bypass letters to HRD but they are to be sent to the bypassed candidates and keep copies of such letters, which HRD may audit. Appellant's Exhibit 11.

Mass. Gen. Laws Chapter 31, section 2(b) provides, in part, that the Commission has the power and duty,

To hear and decide appeals by a person *aggrieved* by any decision, action, or failure to act by the administrator, except as limited by the provisions of section twenty-four relating to the grading of examinations; provided that no decision or action of the administrator shall be reversed or modified nor shall any action be ordered in the case of a failure of the administrator to act, except by an affirmative vote of at least three members of the commission, and in each such case the commission shall state in the minutes of its proceedings the specific reasons for its decision.

(Id.)(emphasis added)

### Parties' Arguments

The Appellant argues that the Respondent failed to provide him timely notice of the bypass and that, therefore, the Commission may not consider the bypass reasons contained in the letter provided by the Respondent at the Commission's prehearing conference. Further, the Appellant avers that the recent five (5)-day suspension issued to him by the Respondent should not have been considered when the Respondent was evaluating the candidates for promotion to Sergeant and the timing of the suspension is suspicious since it was known that a Sergeant position would soon be filled. The Appellant argues, in addition, that he should not have been suspended since he denies that he accused anyone of child abuse and then changed his accusations, which were the bases for his suspension. In addition, the Appellant asserts that it was Officer Golden, not the Appellant, who was the subject of the underlying complaint and that he (the Appellant) was not interviewed during the investigation of the complaint. The Appellant also argues that the City Manager should have recused himself in the process of promoting an officer to Sergeant, as the City Manager did regarding the Appellant's five (5)-day suspension,

because the City Manager is an attorney who previously represented Officer Golden in a legal matter.<sup>5</sup>

The Respondent avers that it had numerous and detailed reasons to bypass the Appellant, as indicated in the letter it provided to the Appellant at the Commission's prehearing conference. The Appellant's record included a number of disciplinary matters in the recent past, not least of which was the suspension for the Appellant's accusation that Officer Golden abused his daughter, which multiple investigations determined were unsupported. Further, the Respondent asserts that, of the three candidates who were considered for promotion to Sergeant, Officer Perrin has only a reprimand in his recent disciplinary record and that he had a superior record and was viewed highly by his fellow officers. Finally, the Respondent asserts that there was nothing untoward about its process in selecting a candidate to promote to Sergeant.

### Analysis

Lowell has met its burden of proving, by a preponderance of the evidence, that there was reasonable justification for bypassing the Appellant for promotion to the position of Sergeant. As established in Otero v. Lowell, D-14-297, also decided this day, and as referenced in the Respondent's bypass letter, at or about the time of the promotional process, the Appellant incurred a five (5)-day suspension for reporting that Officer Golden had abused his daughter, then changed his allegation, and multiple investigations subsequently concluded that his abuse allegation was was unsupported. The Appellant's allegation against Officer Golden occurred within the context of a bitterly contentious divorce between Officer Golden and Ms. M, and the Appellant subsequently married Ms. M. In addition, the Appellant had been counseled within the last couple of years for an incident in which he sent an inappropriate email message to fellow

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<sup>5</sup>In addition to bypassing the Appellant for promotion to Sergeant, the Respondent also bypassed Officer Golden for promotion at the same time.

officers and was reprimanded for taking sick time in order to attend a promotional training course and for being out of his assigned area without permission on two (2) occasions for protracted periods in which he went to his brother's house for lunch and, on at least one occasion, stayed to watch part of a football game. The candidate the Respondent promoted, Officer Perrin, had a superior record and reputation in the LPD. The Respondent had reasonable justification to bypass the Appellant. I find no evidence of bias or other improper motive in the Respondent's decision, although its process of notifying bypassed candidates should be remedied to ensure that such candidates receive more timely written notice of the reasons for their bypass.<sup>6</sup> In this instance, the Appellant was not aggrieved, pursuant to G.L. c. 31, § 2(b) by not having received the bypass letter from the Respondent (pursuant to HRD's delegation to municipalities) until the Commission's prehearing conference.

### **Conclusion**

For the foregoing reasons, the Respondent has established by a preponderance of the evidence that it had reasonable justification to bypass the Appellant for promotion to the position of Sergeant. Therefore, the bypass appeal of the Appellant, under Docket No. G2-14-301, is hereby *denied*.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Tivnan, and Stein) on October 27, 2016.

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<sup>6</sup> The Appellant's allegation that bias was evidenced by the Respondent's delay in issuing the five (5)-day suspension is unwarranted. The Commission's decision issued today in the Appellant's discipline appeal finds adequate and proper justification for the intervals, including the multiple internal and external investigations and processes prompted by the Appellant's allegation that Officer Golden sexually abused his (Officer Golden's) daughter, which allegation was eventually determined by the investigating agencies to be unsupported.

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:

Gary G. Nolan, Esq. (for Appellant)

Kenneth Rossetti, Esq. (for Respondent)

Rachel M. Brown, Esq. (for Respondent)