

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

ADAM PAICOS,
Appellant

v.

TOWN OF MAYNARD,
Respondent

Case No.: G1-13-132

DECISION

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

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. The Appointing Authority submitted written objections on February 6, 2014. The Appellant submitted a response to those objections on February 26, 2014.

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

The decision of the Town of Maynard to bypass the Appellant for the position of police officer is overturned and Mr. Paicos's appeal under Docket No. G1-13-132 is hereby ***allowed***.

The Commission, pursuant to its authority under Chapter 310 of the Acts of 1993, hereby orders the state's Human Resources Division (HRD) and/or the Town of Maynard in its delegated to:

- Place the name of Adam Paicos at the top of any current or future certification for the position of police officer in the Town of Maynard until such time as he is appointed or bypassed.
- In the event that Mr. Paicos is appointed as a police officer in Maynard, he shall receive a retroactive civil service seniority date for civil service purposes only the same as those appointed from Certification No. 00467.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on March 20, 2014.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Gary Nolan, Esq. (for Appellant)

Michael Kennefick, Esq. (for Respondent)

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

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Adam Paicos,
Appellant

v.

Docket No. G1-13-132
DALA No. CS-13-518

Town of Maynard,
Respondent

Appearance for Appellant:

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

Appearance for Respondent:

Michael J. Kennefick, Esq.
Blatman, Bobrowski & Mead, LLC
730 Main Street, Suite 2B
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Administrative Magistrate:

Maria A. Imparato, Esq.

SUMMARY OF TENTATIVE DECISION

The Appellant's appeal should be allowed because the Police Chief failed to perform an "impartial and reasonably thorough review" to confirm that there is a credible basis for the allegations of misconduct reported in newspaper articles that resulted in the Appellant's termination from the State Police. The Police Chief relied solely on the fact of the Appellant's termination to by-pass him for original appointment as a police officer, without investigating the underlying charges.

TENTATIVE DECISION

Adam Paicos filed a timely appeal under M.G.L. c. 31, s. 2(b) of the decision of the Town of Maynard Police Department (MPD) to bypass him for original appointment to the position of police officer.

I held a hearing on October 18, 2013 at the office of the Division of Administrative Law Appeals, One Congress Street, 11th floor, Boston, Massachusetts.

I admitted documents into evidence. (Exs. 1 – 16)¹ I marked the Joint Hearing Memorandum “A” for identification. I heard the testimony of Maynard Police Chief Mark Dubois on behalf of the Respondent. Adam Paicos testified in his own behalf.

FINDINGS OF FACT

1. Adam Paicos took a Civil Service examination on April 30, 2011. He scored a 96 on the exam. Mr. Paicos is a disabled veteran. (“A,” Stipulation.)
2. The eligible list was established on November 1, 2011. (“A,” Stipulation.)
3. The Appointing Authority requested certification from HRD on January 28, 2013. On February 19, 2013, HRD sent certification number 00467 to the Appointing Authority. (“A,” Stipulation; Exs. 2, 3, 4.)
4. Two candidates who ranked lower than Mr. Paicos were selected for appointment. (“A,” Stipulation.)
5. The Appointing Authority notified Mr. Paicos of his bypass by letter of March 26, 2013, stating that the reason for his bypass was “An initial background check was conducted

¹ Exhibits 1-15 were admitted at hearing. I requested that the Respondent submit a letter from the Maynard Board of Selectmen to the Commonwealth Human Resources Division dated January 28, 2013, delegating to Maynard Police Chief Mark W. Dubois the authority to act on behalf of the appointing authority through the administrative and candidate vetting process. I received the letter on October 28, 2013 and marked it **Exhibit 16**.

and the reason for your bypass is based on your termination for cause from the Massachusetts State Police in May 2012.” (Ex. 10.)

6. Mr. Paicos filed a timely appeal with the Civil Service Commission. (“A,” Stipulation.)
7. The Appointing Authority for the Town of Maynard is the Board of Selectmen. By letter of January 28, 2013, the Chairman of the Maynard Board of Selectmen informed the Commonwealth HRD that Maynard Police Chief Mark W. Dubois “will act on behalf of the appointing authority through the administrative and candidate vetting process. In the Town of Maynard the police commission powers lies with the Board of Selectmen. Chief Dubois will make his recommendation to that body for their final approval.” (Ex. 16.)
8. Mr. Paicos completed an application for employment with the MPD on March 15, 2013 and filed it with the MPD Desk Sergeant on Friday afternoon, March 22, 2013. (Ex. 6; Testimony, Dubois, Paicos.)
9. On page 7 of the employment application, Mr. Paicos indicated that he had been fired or asked to resign from a job, and that he had received disciplinary action from an employer. (Ex. 6, p. 7, questions 4 and 5.) In the appended Employment History, Mr. Paicos indicated that he had been employed by the State Police from October 2011 to June 2012 and had left employment because he was terminated. (Ex. 6, Employment History appended.)
10. When Chief Dubois reviewed Mr. Paicos’s application, he recognized Mr. Paicos’s name from television broadcasts that reported Mr. Paicos had been found driving the wrong way on Memorial Drive. (Testimony, Dubois.)
11. Chief Dubois went to the internet and found three newspaper articles dated in June 2012 that indicated that Mr. Paicos had been terminated from the State Police for driving the

wrong way on Memorial Drive, and for three other incidents that occurred while Mr.

Paicos was off-duty and a probationary employee. (Testimony, Dubois; Exs. 7, 8, 9.)

12. Chief Dubois had been Chief since September 2012, and was new to Civil Service. He relied on the Certification Handbook (Handbook) subtitled, "Entry Level Public Safety Appointments Subject to Civil Service" issued by the Civil Service Unit of Commonwealth HRD. The Handbook cites as one reason for by-pass, "Information obtained from the background investigation indicating the references from previous employers were poor, i.e., frequent absenteeism, poor performance, *termination for cause*, abandonment of job, poor military record, or other such reasons may be sufficient for by-pass." (Emphasis supplied.) (Testimony, Dubois; Ex. 14, p. 11, Reasons for By-pass, #2.)
13. Chief Dubois thought that a probationary employee with four pending investigations was alarming, and indicative of bad judgment. He believed that the seriousness of the allegations that were substantial enough to result in termination from the State Police were substantial enough reasons to by-pass Mr. Paicos. (Testimony, Dubois.)
14. Chief Dubois did not contact the State Police or any other past employer before making the decision to by-pass Mr. Paicos. He did not do a CORI check or contact any of Mr. Paicos's references. (Testimony, Dubois.)
15. Chief Dubois recommended two candidates to the Board of Selectmen who were subsequently hired by the Board of Selectmen: NL and AP. A full background check and investigation were done on NL and AP prior to Chief Dubois recommending them for appointment. (Exs. 12, 13.)

16. Mr. Paicos is 30 years old and single. He graduated from high school in 2001 and attended Wheaton College for one year. He left college in 2002 at the end of one year and joined the Army National Guard because he is from a military family and the events of 9/11 affected him. Mr. Paicos was in basic training in 2002. He entered the Army's language school in Monterey, California, and after 16 months of language immersion, he became fluent in Arabic. (Testimony; Ex. 6, p. 6.)
17. In 2005, Mr. Paicos attended a part-time police academy in Foxboro which he passed. He became a special part-time police officer in Easton where he performed road details while in uniform with a weapon and a badge. (Testimony; Ex. 6, Employment History.)
18. In 2007, Mr. Paicos paid for another part-time police academy to hone his skills. He completed the academy. (Testimony.)
19. In 2008, Mr. Paicos deployed to Iraq with the Massachusetts National Guard where he worked on a police transition team to train the Iraqi police. He was in charge of the interpreters; he monitored their living situations to be sure they were not insurgents. He sat in with police chiefs to discuss daily operations. He sat in to monitor Arabic conversations. As a result of sniper attacks, IEDs and mortar fire, Mr. Paicos suffered a 20% hearing loss in his right ear resulting in a 10% disability. He received an Army commendation medal. (Testimony; Ex. 6, Employment History.)
20. Mr. Paicos returned from Iraq in October 2009. In 2011 he attended the MBTA Transit Police Academy. He was sponsored by the Police Chief of Hingham. He won a physical fitness award. (Testimony.)
21. Mr. Paicos then took the Civil Service exam in April 2011 in order to seek police work through Civil Service. (Testimony.)

22. In 2011, the State Police contacted Mr. Paicos at a time when he was working as an armed guard for a private security company. Mr. Paicos was hired. He began the State Police academy in October 2011 that lasted for six months. He was appointed as a State Trooper and began working. He was terminated in June 2012 while he was still a probationary employee. (Testimony.)
23. Mr. Paicos has been admitted to Officer Candidate School and plans to begin in March 2014. (Testimony.)

TENTATIVE CONCLUSION AND RECOMMENDATION

The Civil Service Commission, under M.G.L. c. 31, s. 2(b), is required “to find whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303 (1997). Justified 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.” *Id.* at 304.

If the Commission finds by a preponderance of the evidence that there was just cause for an action against the Appellant, the Commission shall affirm the action of the Appointing Authority. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004). The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but 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.” *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

The fundamental purpose of the Civil Service Commission 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.” *City of Cambridge*, 43 Mass. App. Ct. at 304. “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.” M.G.L. c. 31, s. 1.

Bypass cases are decided based on a preponderance of the evidence. A “preponderance of the evidence test required the Commission to determine, whether on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991). “[T]he 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, and ‘prior misconduct has frequently been a ground for not hiring or retaining a police officer.’” *City of Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 188 (2010), quoting from *City of Cambridge*, 43 Mass. App. Ct. at 305.

The issue in the instant case is “whether the city put forward a sufficient quantum of evidence to substantiate its legitimate concerns” about the Appellant’s alleged misconduct. *Id.* I conclude that it has not.

The Police Chief, who was new to Civil Service, performed virtually no investigation of the Appellant, other than accessing three internet articles. He relied on the Handbook to

conclude that "termination for cause" was a valid reason for by-pass. A careful reading of the section of the Handbook on which the Chief relied demonstrates that the section contemplates obtaining information "from the background investigation indicating the references from previous employers were poor[.]" Here, there was no background investigation. The State Police were not contacted to determine why the Appellant was terminated. The Appellant was not interviewed and given an opportunity to address the Chief's concerns about the information he gleaned from the newspaper articles. Although the Chief had found information indicating that the Appellant was terminated for allegedly engaging in serious misconduct, he failed to conduct "an impartial and reasonably thorough review that confirmed that there appeared to be a credible basis for the allegations." *Id.* at 189.

In accordance with the decision in *Beverly*, before an Appointing Authority may by-pass an applicant on the basis of an adverse personnel action taken by another employer, the Appointing Authority must itself make a reasonably thorough investigation of the underlying facts to determine if there is a credible basis for the allegations.

I recommend that the Civil Service Commission allow the Appellant's appeal, and place his name at the top of the next certification list for appointment as a police officer in the Town of Maynard.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imparato
Maria A. Imparato
Administrative Magistrate

Dated:

JAN - 6 2014