

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RENEE PALMER,
Appellant

v.

Docket NO. G1-11-18

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L.c.31 §2(b), the Appellant, Renee Palmer, (hereinafter "Appellant" or "Palmer") seeks review of the Boston Police Department (hereinafter "BPD", "Department") in its delegated capacity from the Commonwealth's Human Resource Division's (HRD) to decide the acceptability of its' reasons proffered for

bypass of the Appellant for original appointment to the position of Boston police officer. The reasons proffered for the bypass were the Appellant's recent employment history, specifically being placed on 90 days probationary status while a Loss Prevention Officer at CVS in 2009-10; and that, while an Assistant Manager at Runway Fashion from May 2008 – April 2009, the Appellant received six (6) warnings, including descriptions of these six incidents; and that a store manager also stated Appellant needed improvement in handling stressful situations by calmly assessing before taking action; and that although the Appellant stated that she had been laid off from Runway Fashion, a former co-worker stated that you "were both fired and both had to fight for unemployment [compensation]."

The Appellant filed a timely appeal with the Commission. A Full Hearing was conducted on August 24, 2011 at the offices of the Civil Service Commission (hereafter "Commission"). The hearing was digitally recorded and copies of the recording were provided to the parties. The parties submitted post-hearing proposed decisions.

FINDINGS OF FACT

Fourteen (14) exhibits, plus the Stipulation of Facts signed at the pre-hearing conference, were entered into evidence. Based upon the documents entered into evidence and the testimony of the following witnesses:

For the Appointing Authority:

- Detective Bernadette Izzard-Stinson, Boston Police Department
- Robin Hunt, Director of Human Resources, Boston Police Department

For the Appellant:

- Eric Sacco, former Supervisor at A.J. Wright
- Christopher Connolly, former Supervisor at CVS

- Renee Palmer, Appellant

I make the following findings of facts:

1. The Appellant's name appeared on Certification # 207159 for the position of police officer. Eventually, after review, the BPD bypassed the Appellant for appointment as a Boston police officer and appointed others who appeared lower than her on Certification # 207159. (Exhibit 8)
2. On September 15, 2010, the Appellant submitted her completed Student Officer Application to the BPD. (Exhibit 1)
3. The BPD Student Officer Application required the Appellant to provide a large amount of detailed information regarding all aspects of her background. That required background information included areas of: Personal History; Residences; Relationships; Domestic or Protective Orders; Educational History; Employment History including details of Discipline etc.; Licenses; Military Record; Fines, Tickets, Excise Taxes; Driver's License; Gaming/Gambling; Use of Alcohol; Drug Use; Personal Declarations of other activities; and Police Record with supplemental attached documentation like credit history and explanations regarding any of the questions answered. This BPD Student Officer Application was sworn and signed before a Notary Public by the Appellant on September 12, 2010 (Exhibit 1, Testimony of Det. Izzard-Stinson)
4. After the Appellant submitted her Student Officer Application, the Boston Police Recruit Investigations Unit (hereafter "RIU") undertook an investigation into the Appellant's background. (Testimony of Det. Izzard-Stinson and Robin Hunt)

5. The Appellant is a single 27 year old Black female who has maintained a permanent residence in a family owned home, in the Dorchester section of the City of Boston, since her birth in 1984. (Testimony of Appellant, Exhibit 1)
6. She graduated from Belmont High School in 2003 and received a Bachelor of Arts in Criminal Justice, Magna Cum Laude, from Virginia Union University in 2007. While at Virginia Union University she was a member of: Alpha Kappa Mu National Honor Society; Alpha Phi Sigma Criminal Justice National Honor Society; Charter Member (2005) & Vice President of the National Assoc. of Blacks in Criminal Justice; and Judicial Affairs Member (VUU Chapter 2006-2007). While attending college she also maintained part-time and summer employment; she held internships in the local Juvenile Detention Center and for a Judge in the local Circuit Court. After college, the Appellant returned to Boston and obtained employment as a loss prevention detective at A.J. Wright. She left A.J. Wright to obtain a position at Runway Fashion, where she worked and was promoted to assistant manager. She worked there for less than one year, until April, 2009. (Testimony of Appellant, Exhibits 1 & 3)
7. After being laid off at Runway Fashion, the Appellant obtained employment at CVS in July, 2009, working there to the present, as a Loss Prevention Detective. (Testimony of Appellant, Exhibits 1 & 3)
8. She enjoys investigatory or law enforcement related activities, feeling that she has the character, motivation, aptitude, judgment, education and experience for this type of activity. She has maintained a longstanding desire and motivation toward a law enforcement career as evidenced by her college major and B.A. Magna Cum Laude in Criminal Justice; her membership in Criminal Justice Associations; her Internships during

college at a Juvenile Detention Center and a State Circuit Court; in addition to her several jobs in the Loss Prevention field. (Testimony of Appellant, Exhibits 1 & 3)

9. The BPD Student Officer Application required and was completed providing information on all her employment, including: summer, part-time and work-study employment for a ten (10) year period. The Appellant provided the detailed required information, including: name, address, supervisor & co-worker names and telephone numbers, salary, position title, period of employment and reason for leaving. The Appellant listed the required detailed information for thirteen (13) individual prior employers for that ten year period. (Exhibit 1, Testimony of Appellant)
10. Detective Bernadette Izzard-Stinson ("Det. Izzard-Stinson") was the Recruit Investigator handling the Appellants background investigation. She had been a Boston police officer since 1985, assigned to the Community Disorder Unit and "detailed" to the Recruit Investigation Unit since 2006. She uses the BPD Student Officer Application as the basis for gathering and confirming background information on the applicants. She outlined the manner in which she conducted the investigation and her findings were summarized in her 2 background investigation reports ("P&C Memo") on the Appellant, (Exhibits 3 &4) both dated September 20, 2010. (Testimony of Det. Izzard-Stinson, Exhibits 1, 2, 3 & 4).
11. All information obtained by Detective Izzard- Stinson regarding the Appellant was positive, with the exception of information received from the Runway Fashion (hereafter "Fashion") manager, the Appellant's former manager at Fashion and a notation, which the Appellant had self-reported, that the Appellant had been placed on a 90 day probationary status while employed at CVS. (Testimony of Stinson).

12. All other references and interviews other than Fashion manager's that Det. Izzard- Stinson obtained, either from former employers, co-workers, friends and neighbors were positive. (Testimony of Izzard- Stinson, Exhibits 1 & 3, 4 –Det. Izzard-Stinson's 2 Privileged and Confidential Memo/ Reports).
13. It is noted that Det. Izzard-Stinson's second of her two Privileged and Confidential Memo/ Reports (Exhibit 4) only contains detailed information received from the Fashion manager and virtually all of that information is negative or contains negative implications regarding the Appellant. Yet, there is absolutely no corroboration of any of this information by either co-worker Mrs. Yates or any of the approximately 3-4 other Fashion employees referred to but unidentified by the Fashion manager in her interview by Det. Izzard-Stinson. Det. Izzard-Stinson did not distinguish whether her interviews of the Fashion manager was either in person or by telephone. Det. Izzard-Stinson attempted to reach the Fashion manager by telephone on September 17, 2010, yet could only reach an unidentified female who apparently did not speak English; she declined to take a message and suggested to the Detective that she leave a voicemail. (Exhibit 4) (Testimony of Izzard- Stinson, Exhibits 1 & 3, 4 –Det. Izzard-Stinson's 2 Privileged and Confidential Memo/ Reports, reasonable inferences).
14. Det. Izzard-Stinson reported the interview of Mrs. Yates, a 58 year old married woman, who was employed at Runway Fashion with and laid off with the Appellant. Mrs. Yates gave Det. Izzard-Stinson an extremely high appraisal of the Appellant and conversely an extremely low appraisal of the Fashion manager, their mutual supervisor. Mrs. Yates gave the assessments of the Appellant and Fashion manager in strong descriptive language and phrases. Such language and phrases regarding the Appellant as: "She and her

husband love her like a daughter”; “I cannot say enough about her... and I mean it with all my heart”; “a wonderful person”; “intelligent, highly likeable and that there was not one person that did not like her”; and, “outstanding, one in a million”. **In contrast, Mrs. Yates gave Det. Izzard-Stinson a very negative assessment of the Fashion manager as follows:** “... but unfortunately you cannot get people to like you who don’t like you...”; “[Fashion manager]... ‘hated us’.” [Fashion manager] fired both of them and they had to fight to get unemployment, because she (Fashion manager) did not want them to get it.”; [Fashion manager] discriminated against her (Mrs.Yates) maybe because of her age 58 years old... [Fashion manager] is in her 30’s”; “...that she did get unemployment. Mrs. Yates stated that her son told her to let it go.” The Appellant “got a ‘raw deal’ at Runway Fashion.”; Mrs. Yates gave an example-“ [Fashion manager] would say you can come in today and then when you come in she would tell you that she did not need you.” And, finally Mrs. Yates left the door open for further inquiry from Det. Izzard-Stinson by inviting the Detective to call again if she needed her. (Exhibit 3 & 4-Det. Izzard-Stinson’s Privileged and Confidential Memo/ Reports)

15. Det. Izzard- Stinson’s reported interviews of several neighbors described the Appellant and her family as quiet, friendly and attentive to their property. The Appellant additionally was described as down to earth, attentive, non-abuse of drugs or alcohol, all positive indications, and having good judgment. (Testimony of Izzard-Stinson, Exhibits 1 & 3).
16. Det. Izzard-Stinson’s reported interview of another neighbor who has known the Appellant for 17 years showed that the neighbor had not observed any unusual, suspicious or illegal activity by the Appellant or a family member. (Exhibit 3 –Det. Izzard-Stinson’s Privileged and Confidential Memo/ Report)

17. Det. Izzard-Stinson reported the interview of a resident-neighbor, who is married to the Appellant's aunt and has known the Appellant for 25 years. He reported that the Appellant socializes mostly with her family and that she is from a multi-cultural, West Indian background, learning early-on to appreciate diversity. He has never known the Appellant to use or abuse drugs or alcohol or to gamble. He has never noticed any suspicious activity or disturbances at her home. He reported that the Appellant often walks in the neighborhood while reaching out and engaging the neighbors along the way. (Exhibit 3--Det. Izzard-Stinson's Privileged and Confidential Memo/ Report).
18. Det. Izzard-Stinson's reported the interview of **Eric Sacco, Loss Prevention Supervisor at A.J. Wright**. Mr. Sacco has known the Appellant for 3 years and had been her Supervisor for 1 year, from 2007-2008. "Mr. Sacco stated that he could always count on the applicant and that she was very dependable and hard working." She "was his top detective who had numerous apprehensions and was professional and respectful." She "was looked up to by her co-workers and had a good relationship with all employees." She "gained trust and respect by her subordinates. She "treated everyone with respect and that verbally she would talk any conflict down and try to find a resolution." Mr. Sacco also gave a letter stating "that while working at AJ Wright from 06/2007 – 06/2008, the Appellant had **a perfect attendance history** and that **there have never been any issues with tardiness or attendance with the applicant.**" (Exhibit 3--Det. Izzard-Stinson's Privileged and Confidential Memo/ Report)
19. Det. Izzard- Stinson's reported the interview of **Enchanta Vaughn, the Appellant's Supervisor at Sam's Club**. Vaughn stated that **"the applicant was an excellent worker and that anytime she called upon the applicant to do something, she did it without**

hesitation. Vaughn stated that the applicant was always on time and never late.

Vaughn stated there was no abuse of sick time.. and that if her college classes ran late. The applicant would call and notify her. Vaughn stated that she would re-hire the applicant if she wished to return to Sam's Club. Ms. Vaughn states that she hopes that the applicant gets the job and that she will be a great worker in whatever she decides to do." (Exhibit 3)

20. Det. Izzard- Stinson was unable to contact the Appellant's Supervisor at her prior employer **Walgreen's** for feedback, despite several attempts. (Exhibit 3—Det. Izzard-Stinson's Privileged and Confidential Memo/ Report)
21. Det. Izzard-Stinson's reported the interview of the **Appellant's supervisor at the Henrico Juvenile Detention Center and the Henrico Circuit Court (Richmond VA), Superintendent Bingham**. Mr. Bingham stated that the applicant worked as an Intern there, while she was in college. "She did very well at the center and had a good working knowledge of the job. "She was fair and consistent with the juvenile population and a good worker who had good writing skills." Mr. Bingham reported that **"the applicant had a good work ethic and that there were no problems with tardiness or sick time."** (Exhibit 3—Det. Izzard-Stinson's Privileged and Confidential Memo/ Report)
22. Det. Izzard- Stinson reported the interview of the **Appellant's supervisor for 9 months at CVS, Senior Loss Prevention Investigator Chris Connolly**. This interview elicited the following statements regarding the Appellant: She "is supervised very little"; and she "is among the most consistent detectives in his span". He also reported that her attendance history has been satisfactory and she handles situations professionally and he has never had any issue with her. He stated that she does a "great job as a detective, and handles herself well in dangerous situations". He stated that she "has made several apprehensions and has

earned a reputation as a calm and balanced detective.” He further elaborated that she “is always the most consistent detective on the team and she would be a great addition to the Boston Police Department.”; She “has shown significant ability to think clearly and use good judgment in stressful situations. “And that he would absolutely rehire her if she ever were to leave his employ. (Exhibit 3–Det. Izzard-Stinson’s Privileged and Confidential Memo/ Report)

23. Det. Izzard-Stinson reported the interview of the Appellant regarding her self-disclosed CVS 90 day probation period incident as follows: the woman that the Appellant was watching that day was speaking in Spanish to the Appellant, while the Appellant had a co-worker to translate and “that one thing led to another and the conversation got way out of hand.” The woman ended up writing a letter to the CVS District Manager, prompting the 90 day probationary period. The Appellant stated that the situation could have been avoided and that she did not use her best judgment that day and that she learned a valuable lesson from it. (Exhibit 3–Det. Izzard-Stinson’s Privileged and Confidential Memo/ Report)
24. The Appellant testified at this this hearing and confirmed with more detail, what she had told Det. Izzard- Stinson about the CVS incident. Indeed, the Appellant initially notified the Detective of the incident. She testified that she allowed the interaction to go on too long and her participation probably contributed to its continuing, until it got out of hand. However, Det. Izzard- Stinson had her CVS Supervisor Chris Connolly available to report on the incident and **Chris Connolly believed that the Appellant handled the incident appropriately, and that favorable view was not contained in Det. Izzard- Stinson’s report** . (Testimony of Appellant, Chris Connolly, and Debt Izzard-Stinson, Exhibit 3)

25. It appears to be a **significant oversight** that **Det. Izzard- Stinson** either failed to ask or failed to record in her report, the Appellant's Supervisor- CVS' Senior Loss Prevention Investigator **Chris Connolly's version of the incident prompting the 90 day probation period at CVS.** (Exhibit 3–Det. Izzard-Stinson's Privileged and Confidential Memo/ Report)
26. CVS' Senior Loss Prevention Investigator Chris Connolly was the Appellant's Supervisor at the time of the 90 day probation period incident. He reviewed the video of the incident at a later date. He did not determine that it was a disciplinary incident but he was directed by his supervisor to write it up as a "bad stop". According to CVS practice, in a "kind of a loss prevention rule of thumb",- that any contact with a customer that does not result in an apprehension or a recovery of product is considered a "bad stop". The woman "customer" involved did later call and complain and then followed up with a letter that was pretty adamant that she wanted something done about it. Her letter made it up above his supervisor's head to the District Manager who directed him to write it up as a "written corrective...". Connolly testified that they had good reason to believe that the woman was a shoplifter from a prior incident. The woman, a so-called "customer"- "called out" the Appellant with some comments because she was being observed. Connolly thought the woman acted very aggressively with her protest by taking off her hat and jacket while making comments to the Appellant in Spanish. Connolly said that in his experience some shoplifters try to "flip" the situation by becoming the aggressor when caught by an observer. Connolly believed that the Appellant acted appropriately in this incident. Connolly added that it is the CVS store manager's job to deescalate such a situation and the observing person to step away. Connolly added that the Appellant's market area of

multiple stores, mainly in Chelsea and East Boston is one of the “toughest” by far in terms of theft and it takes a lot of work by a loss prevention detective to be successful there. **Yet, the Appellant had no other incidents during the time she worked for CVS in that “toughest” of markets.** (Testimony of Christopher Connolly)

27. Connolly reaffirmed all of the positive statements attributed to him and reported in Det. Izzard-Stinson’s report. He has been in Loss-Prevention for 8 years and now works at Saks Fifth Avenue at the Wrentham Outlet Mall, since June, 2011. As the Appellant’s supervisor, she reported to him from the Fall of 2008 to the Summer of 2011. At that time her assigned area was multiple CVS stores in East Boston, Chelsea, plus covering other areas in absences. This assigned area served mostly Hispanic customers. He never had any issues with the Appellant regarding tardiness or performance. He would absolutely rehire the Appellant if he were in such a position to do so. (Testimony of Christopher Connolly)
28. Connolly described the Appellant as very consistent, professional, reliable and a very good performer. She was his top performer, producing the highest recoverable per case in one of the toughest areas for thefts. (Testimony of Christopher Connolly)
29. In sum, the CVS incident was initiated and provoked by the so-called “customer”, a possible shoplifter. The unidentified customer engaged the Appellant in conversation, speaking in Spanish. The customer acted in an aggressive fashion toward the Appellant. After the engagement the Appellant partially contributed to its protraction by continuing the conversation instead of disengaging and walking away, notifying the manager. The entire incident did not cover much time. The Appellant’s supervisor, Christopher Connolly, who reviewed the video of the incident believed that the Appellant acted appropriately in this incident. The Appellant testified that she did not use her best judgment but learned a

valuable lesson from it. This was a single, isolated incident for the Appellant while employed at CVS. (Exhibits and testimony of Christopher Connolly and the Appellant)

30. The matter of the 90 day probationary period for the Appellant, instituted by CVS due to the above described incident is not being considered here, as imposed employment discipline. Supervisor, Chris Connolly believed that the Appellant acted properly in this matter and described the 90 day probationary period he was ordered to impose, as a “written corrective...”. The circumstances as found here describe a unique situation of the Appellant being engaged by a very aggressive person, believed to be shoplifter. The person acted aggressively toward the Appellant and engaged the Appellant in Spanish, this led to a co-worker voluntarily interpreting for the Appellant. The Appellant later admitted that she could have handled the situation better. In retrospect the better course of action might have been for the Appellant to walk away from the woman and to have the Store Manager handle the situation. However, that may have been exactly what the person wanted to happen. The Appellant did not receive from the employer: any prior notice of intended discipline, an opportunity to respond, or for a hearing and an opportunity for an appeal to an impartial third party. All of these earmarks of properly imposed, employment related discipline are missing. Therefore, for all of the above described circumstances, this incident is treated as a matter administratively addressed by a written corrective remedy by the employer. It is also noted that this matter was self-reported to the BPD by the Appellant and not reported by the employer. (Exhibits and testimony of Appellant and Chris Connolly, reasonable inferences)

31. I informed the BPD during the hearing that any statement attributed to Fashion manager of Runway Fashion would be treated as hearsay, not taken for the truth of its content, unless

otherwise corroborated since Fashion manager is not testifying and subjecting herself to cross-examination. This Hearing Officer also questioned the lack of contact with any higher up at Runway Fashion, above Fashion manager, so as to gauge Fashion manager's authority for issuing discipline etc., company policy and practice, the change in circumstances: the size, staffing, sales and financial circumstances of company during the relevant time, etc. (administrative notice)

32. Robin Hunt is the BPD Director of Human Resources. Part of her duties involves the oversight of the BPD application and hiring process. (Testimony of Robin Hunt)
33. Robin Hunt testified that each applicant's file is presented to a hiring committee, or round table for review. The roundtable discussion [BPD's hiring committee] typically involves the Commander of Recruit Investigations, the Director of Human Resources, a Deputy Superintendent from Internal Affairs, an attorney from the Legal Advisor's Office, and, on occasion, the detective who investigated the applicant's background. (Testimony of Robin Hunt)
34. Robin Hunt testified that the roundtable looks at the candidate's profile as a whole when making a determination about whether the applicant will be given a conditional offer of employment. Every candidate is considered on a case-by-case basis. (Testimony of Robin Hunt)
35. Robin Hunt testified that unless there is an immediate disqualifier, such as a felony conviction, a significant amount of time is spent discussing the applicant's background at the roundtable. If the investigator who performed the background investigation is not present, the Commander of the RIU discusses the applicant's employment history, time and

attendance, criminal history, driving record, and personal and professional references.

(Testimony of Robin Hunt)

36. Detective Stinson explained that applicants are responsible for completing a packet of information, the Student Officer Application, which is provided to the RIU. The Student Officer Application is the starting point for RIU detectives to begin their investigation. The application includes information about the applicant's employment and education as well as information about previous residences, personal references, and references from prior employers, including attendance records. An applicant's driving record and criminal history (if one exists) is also reviewed by the background investigator. (Testimony of Detective Stinson and Robin Hunt)

37. Robin Hunt testified that it is important to look at each of the areas identified by the application and background investigation because issues in any of these areas can be indicators of future performance or behavior. The Department is looking for the most suitable and most qualified candidates out of the pool of applicants. (Testimony Robin Hunt)

38. Det. Izzard-Stinson explained that the Appellant had received six (6) written warnings from her supervisor at Runway Fashion, the Fashion manager (hereafter "Fashion manager"). Additionally, the supervisor forms that the Fashion manager filled out stated multiple times **"please call for further reference."** (Testimony of Detective Izzard-Stinson and Exhibits 5-7)

39. Detective Izzard-Stinson testified that while working at Runway Fashion, the Appellant had received written warnings for tardiness, failure to notify store manager about lights not working in the store, failure to log off the company computer containing confidential files,

bringing personal items onto the sales floor, and not completing a scheduled shift/leaving without prior approval from upper management. The Appellant also received two verbal warnings and a written warning for leaving the company safe unlocked with deposit bags containing cash inside the safe. (Testimony of Detective Izzard- Stinson, Robin Hunt and Exhibits 5-8)

40. Det. Izzard- Stinson contacted Fashion manager to discuss the Appellant's employment with Runway Fashion. Fashion manager described the reasoning behind some of the warnings that the Appellant received. For example, she stated that the Appellant would read magazines and balance her checkbook and have other personal items with her while on the sales floor, in violation of company policy. (Testimony of Det. Izzard- Stinson and Exhibit 4)

41. Det. Izzard- Stinson testified that during her conversation with Fashion manager, Fashion manager described an incident she had with the Appellant and another store employee who was suspected of stealing from the store. The decision was made to monitor this employee because they did not have proof that the employee was stealing. The Appellant was aware of the situation but was also friends with the employee. The Appellant opted to tell the suspect employee jokingly that they believed that she was stealing. Fashion manager felt that the Appellant mishandled the situation by trying to be the employee's friend and not acting as a supervisor. (Testimony of Det. Izzard- Stinson and Exhibit 4)

42. Robin Hunt testified that when reviewing the Appellant's background, she found portions of the Appellant's work history to be problematic. She specifically identified the multiple incidents that occurred while the Appellant was employed at Runway Fashion and one incident while the Appellant was employed at CVS. She testified that the "recency" of that

information and a “pattern” of incidents might be repeated as a performance issue.

(Testimony of Robin Hunt)

43. Robin Hunt also testified that she was aware of the Appellant’s positive employment history. She thought that overall the Appellant had a “good file” showing good education, motivation and references. She thought that based on round table discussion, the Appellant’s file was not a permanent bar and that with time and maturity the problems could be cured. (Testimony of Robin Hunt)

44. This Hearing Officer also raised the issue with witness Robin Hunt; which issue is: when in a situation like this; of receiving strong positive employment information from other employers except for negatives from Fashion manager of Runway Fashion. What practice or policy does the BPD follow to attempt to resolve an obvious anomaly like this; to possibly determine Fashion manager’s motivation or corroborate the accuracy of Fashion manager’s negative information. Robin Hunt responded that the “round table” could request more information or the Investigator could seek more information or corroboration. (Testimony of Robin Hunt)

45. In spite of the obvious and sharp anomalies contained in Fashion manager’s statements regarding employment at Runway Fashion, when compared to all of the other employment and other reference reporters, Detective Izzard-Stinson made no further effort to investigate or corroborate Fashion manager’s negative reports. It is even more striking or inexplicable, given the Appellant’s Runway Fashion co-worker’s (Mrs. Yates) extremely positive assessment of the Appellant, contrasted with her extremely negative assessment of Fashion manager. Det. Izzard-Stinson also relied on the BPD practice that it was sufficient

to inquire of the applicant's immediate employment supervisor. (Testimony of Izzard-Stinson, Exhibits 3 & 4).

46. Fashion manager also reported to Det. Izzard-Stinson that the Appellant was employed by Runway Fashion for 11 months, from May, 2008 to April, 2009. Fashion manager promoted the Appellant to Assistant Manager on July 14, 2008, then began paying her a salary. Fashion manager stated that the Appellant had no "call outs" but that she had some issues with tardiness. **Fashion manager stated that she would not re-hire the Appellant because the position of Assistant Manager is no longer available and that she laid-off the Appellant on April 22, 2009.** (Testimony of Izzard-Stinson, Exhibit 3).
47. **Det. Izzard-Stinson was aware and reported it to the BPD that the Appellant was laid-off and not fired, since Fashion manager told the Detective that she laid-off the Appellant so that she could collect unemployment compensation and that the company was downsizing at that time.** (Exhibit 4, testimony of Det. Izzard-Stinson)
48. **However, Det. Izzard-Stinson testified that she was not aware that that the Appellant received severance or a bonus when she left Runway Fashion.(Exhibit 10)** The Detective was also unaware that Runway Fashion was under financial pressure at the time of the lay-off and that the business was failing as their sales had dropped dramatically, and their staffing also was severely reduced at that time. (Testimony of Det. Izzard-Stinson, Exhibit 4)
49. One of the stated reasons for bypass contained in the BPD bypass letter is: **"Although you state that you were laid off from Runway Fashion, a former co-worker, [Mrs. Yates] stated that you were both fired and had to fight for unemployment."** This statement clearly implies that the Appellant lied about the circumstances of leaving the employment

of Runway Fashion and tried to portray herself in a more favorable light: “laid off” rather than the prejudicial “fired”. However, the fact that she was laid off and not fired from Runway Fashion, was admitted by Fashion manager and specifically relayed to Det. Izzard-Stinson and included in Det. Izzard-Stinson’s report. Why the BPD roundtable would reach in and extract such a misleading hearsay statement from a co-worker to include as a basis for an implied misrepresentation or inconsistency, (a serious matter for a police officer applicant), without further investigation or corroboration was not explained. It is found that the Appellant did not intend to lie or mislead by the implication derived from the former co-worker’s statement and stated in the bypass letter. **Robin Hunt testified that she is now aware that the Appellant was laid off and not fired as stated in the bypass letter.** (Exhibits 3, 4 & 8, testimony of Det. Izzard-Stinson and Robin Hunt)

50. Fashion manager reported numerous negative statements and conclusory assessments regarding the Appellant to Det. Izzard-Stinson. Fashion manager also relayed specific, alleged incidents involving the Appellant; **while, admitting that she would often not be there at the store with the Appellant.** When the Detective quizzed her on how she would then know about these alleged incidents, **Fashion manager answered that other unidentified Runway Fashion employees told her.** Fashion manager relayed one particular alleged incident regarding another employee suspected of stealing and the Appellant’s mishandling of the situation. **Fashion manager reported this alleged incident** by referring to approximately 4 other employees besides the Appellant and Fashion manager, **all without identifying any of those approximately 4 other employees** and the date of the incident. This totem pole hearsay lacks any corroborating information

like date, time and identity of the reporting employee. (Testimony of Det. Izzard-Stinson, Exhibits 3 & 4, reasonable inferences)

51. Det. Izzard-Stinson's second of her two reports (Exhibit 4), only included information received from Fashion manager of Runway Fashion. It is not clearly distinguished whether the information was received by way of a personal interview or by telephone; but it appears to be by telephone. The Detective asked the Fashion manager how she "felt about Ms. Palmer becoming a Boston Police Officer?" The Fashion manager expressed concerns, that she needed "to be able take a leadership role as a Boston Police Officer", needing "more experience" "... to be able to make decisions.". Fashion manager's opinion or expression of the Appellant's need for more experience is subjective and unexplained. It also is clearly in contradiction to all of the other more specific and highly positive assessments by all of the Appellant's other background references, including prior employers. Some of those prior employment supervisors testified here and were subject to cross-examination. It would be expected that a prior employer would provide only generic, or generally neutral or positive information on employment. (Testimony of Det. Izzard-Stinson, Exhibits 3 & 4, reasonable inferences)
52. Det. Izzard-Stinson did not sufficiently verify or corroborate the negative reports she received regarding the Appellant from Fashion manager of Runway Fashion. This negative information was an obvious anomaly in the Appellant's background information. Therefore, the BPD relied on this significant, unsubstantiated, yet incongruous hearsay information in forming its decision to bypass the Appellant. (Testimony of Det. Izzard-Stinson and Robin Hunt, Exhibits 3, 4 & 8, reasonable inferences)

53. In the matter of the CVS 90 day probationary period issue, Hunt gave emphasis to the fact that CVS took the Appellant's behavior seriously enough to place her on probation, assumedly because she failed to de-escalate the conflict with a customer. (Testimony of Hunt).
54. Robin Hunt found the Runway Fashion "warnings" from Fashion manager (Exhibit 5) were troubling because they indicated, insofar as the warnings regarding leaving the safe unlocked in violation of company rules might give rise to the idea that the Appellant might not follow strict BPD policies regarding proper handling of evidence and the warnings regarding tardiness might indicated a pattern that might be such that Appellant would not show up for roll call and cause overtime expense for BPD. (Testimony of Hunt).
55. BPD does, at times, require additional follow-up investigations or interviews regarding applicants on a discretionary basis, but did not do so in the Applicant's case, despite the fact that the Runway Fashion reports appeared to be an anomaly, based upon all other indicators. Robin Hunt assumed and she relayed same to the round table that, because Appellant had refused to sign one warning that she accepted that all of the occurrences outlined in the other warnings had occurred. (Testimony of Hunt)
56. Robin Hunt made the above assumption, despite the fact that the language printed on the Runway Fashion warning forms specifically contains the language, "Signing this form does **not** necessarily indicate that you agree with this warning". (Emphasis added)(Exhibit 5, testimony of Robin Hunt).
57. The Appellant testified that Runway Fashion is a small fashion boutique store located in the International Terminal at Logan Airport. She was ordered that the store had to remain open from 7:00 AM to 30 minutes before the last flight left, even if there was a flight delay.

Sometimes the last flight did not leave until 4:00-5:00 AM. She was ordered to stay open until 30 minutes before the last flight departed, even for a weather delay. There were long periods in which there were few or no customers in the store. (Testimony of Appellant)

58. The Appellant testified that she received no training when she started at Runway Fashion.

She was shown how to open and close the store. Her duties as an assistant manager was to manage the other employees and to keep the store open. The store was new and busy when she started, but, while she was employed at Runway Fashion, the sales at the store had fallen by almost 90% and that, from daily sales expectations of \$5,000 per day, down to as low as \$300 per day. She was happy to have sales of \$500 per day at the time she left.

There were 11-12 employees including 4 supervisors (includes herself as Asst. Mangr. and Fashion manager as Manager) when she started there and that decreased down to 6 employees including 2 supervisors, at the time she left, less than 1 year later. Her testimony is found to be credible and accurate. (Testimony of Appellant)

59. The Appellant addressed and explained each incident by date as contained in the employee warning notices of Runway Fashion, given to her by Fashion manager. (Exhibit 5). She explained that the first "write up" for 12/13/08 occurred after she discussed and informed Fashion manager that due to the long hours of work she needed some time off to prepare for an upcoming vacation; that she would be coming in late. Fashion manager told her that it was "OK". I came in late and Fashion manager wrote me up despite Fashion manager admitting that they had discussed it and had given the "OK". Fashion manager explained that she had to write it up as an example for the other employees. The second warning event occurred on 12/30/08, a date Fashion manager was off duty. The Appellant arrived at work to find the lights were not working properly. "Susan" the morning supervisor on duty

then explained that the lights never turned on. So actually this lights malfunction occurred on morning supervisor Susan's watch. Then the Appellant turned the lights off then on again to test them. She then telephoned Tito the store's warehouse manager, who did all the repairs. Tito said that since switching them on and off didn't work it would have to wait until Monday. The Appellant then wrote out all the details in the "Red Book" as she was taught as the way to communicate events among supervisors at the store even when the manager, Fashion manager was off duty. She also called "BA" the Airport Maintenance office and informed them of the lights. She also wrote this in the Red Book. The Fashion manager later wrote her up for not calling her on her day off despite being taught to communicate everything done through the Red Book even when the Fashion manager was off duty. The third warning event occurred on 1/16/09. Fashion manager wrote her up for not logging off the computer. However, the Appellant did actually log off the computer when she closed the store and Fashion manager admitted that the same thing had happened to her previously, so the Appellant thought she understood; that the computer was not functioning properly. Fashion manager stated to her that it was not a big issue it was only a "verbal", yet, Fashion manager wrote it up anyway. The Appellant, said "OK" and signed the form, "trying to keep the peace." The fourth warning occurred on 2/06/09 when the Appellant arrived for work early in the morning, at 7:00 AM, business was fairly dead as usual at that time of day. Fashion manager again was on a day off. The Appellant stated there were no customers in the store. She admitted that she had a LSAT study book behind the register out of sight and not on the "sales floor", which the rule proscribed. She also pointed out that although there was a store rule that employees were not to have cell phones on their person when on the sales floor; yet, Fashion manager ordered every employee to

have a cell phone on them at all times even when on the sales floor. The fifth event, which was also written up on 2/06/09, occurred on 1/31/09 for the alleged violation of company policies, for not completing her shift and leaving work “without prior approval from upper management”. The Appellant explained that she left work 1 hour early, at 3:00 PM instead of 4:00 PM because she was ill, informing the other supervisor who began work at 2:00 PM and also writing the details in the “Red Book” as she was taught. Again, Fashion manager was not on duty that day. The sixth incident was written up on 4/18/09 and occurred on 4/17/09. The Appellant explained that both a key and the combination were needed to open the safe. The armored car service had arrived to pick-up the money. She became distracted by a customer and went out to the sales floor to help a customer and left the key in the safe lock however, the office was locked; then Fashion manager came in before she could return to the office and take the key out of the safe lock. The office was locked during her brief absence. **The safe was still secure and all the money had already been removed by the armored car service.** The key is routinely kept in an “unlocked box” marked “safe”. The Appellant also explained that the only time she may have been late for work would have been due to unusual traffic. Her testimony is found to be credible and accurate. (Testimony of Appellant)

60. The Appellant is a tall, poised black woman. She wore a suit, is neat, appropriate and professional in her manner. She is easy going and responsive in her answers. She did not embellish or extend her answers in a defensive fashion. If anything she seems to readily admit an imperfection rather than rationalize it away; as she did with the CVS incident. She gave reasonable and credible explanations regarding each of the warnings given by the Fashion manager of Runway Fashion and contained in the background investigator’s

report. The Appellant's explanations of each of the six or so alleged incidents at Runway Fashion were stated with clarity and a resolute manner. Her description of the dramatic decline of the Runway Fashion' business during her 1 year employment there, was stated matter of factly and rang true. That decline in business is a significant factor and may have had some influence on Fashion manager's appraisal. The Appellant's consciousness of maintaining her own reputation and keeping her educational and employment performance record clean, came across and is reflected in her impressive and consistent background history. The only anomalies or aberrations are the single incident at CVS, of which her supervisor believed she handled appropriately and her 1 year employment at Runway Fashion. It is difficult to reconcile Fashion manager's negative appraisal at Runway Fashion with the highly favorable appraisals from the Appellant's numerous other employers and references. All the more reason to have further investigated Fashion manager's claims or have her subject to cross-examination. The Appellant held up well under cross examination and Fashion manager did not testify here. The Appellant's testimony regarding the incidents underlying the warnings she received from Fashion manager is believable. Her testimony is found to be credible and reliable. (Exhibits, testimony; testimony and demeanor of Appellant)

61. Based on the Appellant's credible description of the warning incidents and other events at Runway Fashion, it is found that Fashion manager acted in an arbitrary and capricious manner toward the Appellant or with some negative motivation. Cross-examination of the Fashion manager may have further confirmed this determination. The need for a determination of this critical circumstance is also supported by the contrasting descriptions and statements made by Runway Fashion co-employee, Mrs. Yates, regarding the

Appellant and Fashion manager. Fashion manager's negative reports are an anomaly in the Appellant's extensively documented background. I find the Appellant to be an accurate and credible witness. (Exhibits, testimony; testimony and demeanor of Appellant)

62. The Fashion manager volunteered detailed negative information and assessments to Det.

Izzard-Stinson, nearly one and one-half years after the Appellant's employment at Runway Fashion ended. It would be expected that a prior employer would provide scarce or neutral information regarding a prior employee, just to avoid a potential liability situation. Little or no reliability or weight is attributed to hearsay statements attributed to Fashion manager, not otherwise supported by credible evidence in the record. (Exhibits and testimony, reasonable inferences)

63. Eric Sacco testified for the Appellant. He is currently Regional Loss Prevention Manager

for Hudson News at Logan Airport. He has been employed in Loss Prevention for 11 years. He was previously the direct supervisor of the Appellant while she was employed as a loss prevention detective at the A.J. Wright store located at East Boston, MA, which served a predominately Hispanic community. Appellant was his most educated, professional detective he has ever supervised. There were no issues regarding attendance, tardiness or relations with the customers. He would not hesitate to hire the Appellant again, if he could afford her. (Testimony of Sacco, Exhibit 11).

64. Eric Sacco previously worked in a Marshall's store in loss prevention, where Fashion

manager was employed as an administrative assistant. He knew Fashion manager from Marshalls. Fashion manager left Marshalls to become store manager at Runway Fashion. When Fashion manager went to Runway Fashion, she also took with her a co-worker named "Tito", with whom he believed she was romantically involved. "Tito" held a

position equivalent to assistant manager on the same level as Appellant. Mr. Sacco, in his present position is responsible for patrolling the entire airport, including the area where Runway Fashion is located, passing by the store regularly. Currently, he has not observed any other assistant managers remaining in the store except for "Tito". (Testimony of Sacco).

65. Eric Sacco appeared neatly dressed in a polo shirt, wearing his hair short. He answered all questions without hesitation and forthrightly. He did not exaggerate or embellish his answers and performed well under cross-examination. He described the Appellant as the "most educated and professional loss prevention employee that A.J. Wright ever had"; yet, he was not challenged on this superlative assessment. His answers in language, tone and body presentation rang true. He maintained good eye contact. I find him to be a reliable and credible witness. (Testimony and demeanor of Eric Sacco)

66. Christopher Connolly, the Appellant's Supervisor at CVS appeared neatly dressed in a collared shirt, wearing his hair short. He is tall and athletic in build. He answered questions without hesitation and directly. He did not try to embellish or provide advantageous answers. He has a good memory and if he could not recall a detail, he stated so or would describe as closely as he could recall, in an attempt to provide information. He did not try to withhold information that might be viewed unfavorably toward the Appellant. However, he also stated his view of the Appellant in the highest form of approbation, as if inviting further examination. His presentation appeared appropriate and believable in all respects. His answers rang true and he held up well under cross-examination. I find him to be an accurate and credible witness. (Testimony and demeanor of Christopher Connolly)

CONCLUSION

In a bypass appeal, the Commission must consider whether, based on a preponderance of the evidence before it, the Appointing Authority sustained its burden of proving there was “reasonable justification” for the bypass. E.g., City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, 682 N.E.2d 923, rev.den., 428 Mass. 1102, 687 N.E.2d 642 (1997) (Commission may not substitute its judgment for a “valid” exercise of appointing authority discretion, but the Civil Service Law “gives the Commission some scope to evaluate the legal basis of the appointing authority’s action, even if based on a rational ground.”). See Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 461-62 (2001) (“The [Civil Service] commission properly placed the burden on the police department to establish a reasonable justification for the bypasses [citation] and properly weighed those justifications against the fundamental purpose of the civil service system [citation] to insure decision-making in accordance with basic merit principles the commission acted well within its discretion.”); MacHenry v. Civil Service Comm’n 40 Mass.App.Ct. 632, 635, 666 N.E.2d 1029, 1031 (1995), rev.den., 423 Mass. 1106, 670 N.E.2d 996 (1996) (noting that personnel administrator [then, DPA, now HRD] (and Commission oversight thereof) in bypass cases is to “review, and not merely formally to receive bypass reasons” and evaluate them “in accordance with basic merit principles”); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 577 N.E.2d 325 (1991) (“presumptive good faith and honesty that attaches to discretionary acts of public officials . . . must yield to the statutory command that the mayor produce ‘sound and sufficient’ reasons to justify his action”). See also, Bielawski v. Personnel Admin’r, 422 Mass. 459, 466, 663 N.E.2d 821,

827 (1996) (rejecting due process challenge to bypass, stating that the statutory scheme for approval by HRD and appeal to the Commission “sufficient to satisfy due process”)

It is well settled that reasonable justification requires that the Appointing Authority’s actions be based on “sound and sufficient” reasons supported by credible evidence, when weighed by an unprejudiced mind guided by common sense and correct rules of law. See Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214, 268 N.E.2d 346, 348 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 451 N.E.2d 443, 430 (1928).

All candidates must be adequately and fairly considered. The Commission has been clear that it will not uphold the bypass of an Appellant where it finds that “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988). The stated reasons for bypass must not be subjective determinations or “rationalizations” but rather objectively legitimate reasons. Tuohey v MBTA, 19 MCSR 53, (2006)

A “preponderance of the evidence test requires the Commission to determine whether, on the 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 Comm’n, 31 Mass. App. Ct. 315, 321, 577 N.E.2d 325, 329 (1991).

The greater amount of credible evidence must in the mind of the judge be to the effect that such action ‘was justified,’ in order that he may make the necessary finding. If the court is unable to make such affirmative finding, that is, if on all the evidence his mind is in

an even balance or inclines to the view that such action was not justified, then the decision under review must be reversed. The review must be conducted with the underlying principle in mind that an executive action, presumably taken in the public interest, is being re-examined. The present statute is different in phrase and in meaning and effect from [other laws] where the court was and is required on review to affirm the decision of the removing officer or board, 'unless it shall appear that it was made without proper cause or in bad faith.' Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427, 430 (1928) (emphasis added) The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001)

In making that analysis, 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. . . . When there are, in connection with personnel decisions, 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. It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority. The courts have repeatedly stated that. . . . In the task of selecting public employees of skill and integrity, appointing authorities are invested with broad discretion. City of Cambridge, 43 Mass. App. Ct. at 304

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. Falmouth v. Civil Service Commission, 447 Mass. 814, 824-826 (2006). In doing so, the Commission owes substantial deference to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. City of Beverly v. Civil Service Commission, 78 Mass.App.Ct. 182, 188 (2010). Such deference is especially appropriate with respect to the hiring of police officers. *Id.* 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." (Emphasis added) Town of Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Service V. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In addition to the discretionary aspect of the decision making process, the appointing, public officer is expected to employ honesty and good faith in the selection process. A judicial judgment should "not be substituted for that of . . . [a] public officer" who acts in good faith in the performance of a duty. See M. Doyle & Co. Inc. v. Commissioner of Pub. Works of Boston, 328 Mass. 269, 271-272." Goldblatt vs. Corporation Counsel of Boston, 360 Mass 660, 666, (1971)

The Appeals Court in Beverly found that the Civil Service Commission (commission) erred in concluding that an appointing authority (city) improperly excluded a candidate from consideration for a police officer position on the basis of information that the

candidate had been previously fired for alleged serious misconduct, where the commission assigned to the city an erroneous evidentiary burden (i.e., requiring the city to prove that the candidate engaged in the alleged misconduct), and where the city, having conducted an impartial and reasonably thorough review that confirmed that there appeared to be a credible basis for the allegations, demonstrated that it had a reasonable justification for bypassing the candidate. [188-192] City of Beverly vs. Civil Service Commission 78 Mass. App. Ct. 182 (2010). This present appeal is distinguishable from Beverly for several reasons. First, it has been found that The BPD did not conduct an impartial and reasonably thorough review of the pivotal background information. Second, the information upon which the bypass was made, was found in part and indeed, admitted at the hearing to be mistaken. Third, it has been found here that the bulk of the employment related stated reasons for bypass have not been proven by credible evidence in the record. Except for the CVS 90 day probationary period and the alleged “fired” not “laid-off” allegation, all of the reasons for bypass were attributed to uncorroborated hearsay, provided to BPD Detective Izzard-Stinson by the Runway Fashion Manager; which this hearing officer has found to be unreliable. The circumstances of those negative reports were not reliably established. Detective Izzard-Stinson did not know at the time of her report that the Appellant received a bonus or severance upon leaving Runway Fashion. Det. Izzard-Stinson was unaware that there existed unusual circumstances surrounding Runway Fashion at the time of the Appellant’s brief employment there. The circumstances of dramatically declining sales and revenue, prompting the reduction or elimination of staff positions. Although Fashion manager stated to Det. Izzard-Stinson that she would not hire the Appellant again, the reason given was the lack of an available assistant-manager position.

Det. Izzard-Stinson did not sufficiently verify or corroborate the negative reports she received regarding the Appellant from Fashion manager. This negative information was an obvious anomaly in the Appellant's overall outstanding background information. Thereafter, the BPD relied on this significant, unsubstantiated, yet incongruous information in forming its decision to bypass the Appellant. In forming its opinion of some past poor employment performance as a projection of future performance or untoward character traits; the BPD chose to ignore or minimize the Appellant's long term historical high performance evidence which countered this opinion. The Appellant was thereby denied an opportunity to have her candidacy fairly and reasonably considered on "basic merit principles", a fundamental precept of the civil service law.

The CVS 90 day probationary period was the result of the blanket application of a CVS policy regarding a "bad stop" by an unnamed District Manager, unfamiliar with the Appellant or the full circumstances of the incident, who received a complaining telephone call and a letter from a "customer". However, CVS' Senior Loss Prevention Investigator Chris Connolly was the Appellant's Supervisor at the time of the 90 day probation period incident and he testified credibly as a witness at this Commission hearing. However, he was not questioned about this incident by Det. Izzard-Stinson; yet, he reaffirmed all of the positive statements attributed to him and reported in her report. He has been in Loss-Prevention for 8 years and now works at Sachs Fifth Avenue at the Wrentham Outlet Mall, since June, 2011. The Appellant reported to him from the Fall of 2008 to the Summer of 2011. At that time the area she worked and he supervised for CVS was multiple stores in East Boston, Chelsea, and covering other areas in absences. This area was one of the "toughest" for customer theft. He never had any issues with the Appellant regarding

tardiness or performance or any other issues. He described the Appellant with the highest praise in all categories as an employee. He viewed the video of the incident precipitating the 90 day probationary period and he felt that the Appellant handled the situation appropriately. He felt that the woman-customer may have been a shoplifter from a prior incident and had acted aggressively toward the Appellant in this incident. He would absolutely rehire the Appellant if he were in such a position.

In sum, the CVS incident was initiated and provoked by the so-called “customer”, a possible shoplifter. The unidentified customer engaged the Appellant in conversation, speaking in Spanish. The customer acted in an aggressive fashion toward the Appellant. After the engagement the Appellant admittedly, did at least partially contribute to its protraction by continuing the conversation instead of disengaging and walking away, notifying the manager. The entire incident did not cover much time. The Appellant admitted that she learned a valuable lesson from this experience. The Appellant’s supervisor, Christopher Connolly, who reviewed the video of the incident believed that the Appellant acted appropriately in this incident. This was a single, isolated incident for the Appellant during her entire employment at CVS. Again, Supervisor Christopher Connolly’s favorable view of the Appellant’s handling of the incident at CVS was completely omitted from Det. Izzard-Stinson’s reports, depriving the BPD of this critical information in forming its bypass decision.

Eric Sacco, another of the Appellant’s past supervisors testified at this Commission hearing. He described the Appellant as the “most educated and professional loss prevention employee that A.J. Wright ever had”; yet, he was not challenged on this superlative

assessment. He also had no problem whatsoever with the Appellant in any aspect of her employment. He also is found to be a reliable and credible witness.

Yet, the BPD unreasonably relied on hearsay employment records which painted a picture of the Appellant which was clearly at odds with the Appellant's very impressive background history. The BPD had some obligation to attempt to explain or reconcile this anomaly. If all the Appellant's other employers found her performance and character to be of an exceptionally high level over a 10 year period; how did her 1 year employment under the supervision of Fashion manager result in such a negative assessment? Fashion manager's untested hearsay-negative reports are clearly contradictory to all the others and also sharply opposed by co-worker Mrs. Yates, also under Fashion manager's supervision at that time. The unusual circumstances indicating that Runway Fashion was a rapidly failing business at that time was also deserving of some further investigation, as a possible cause of the negative reports. These unusual circumstances are also construed in context of the expected reluctance of an employer to gratuitously provide negative reports on a prior employee.

The specific bypass reasons stated in Robin Hunt's bypass letter were: the Appellant's recent employment history, specifically being placed on 90 days probationary status while a Loss Prevention Officer at CVS in 2009-10; and that, while an Assistant Manager at Runway Fashion from May 2008 – April 2009, the Appellant received six (6) warnings, including descriptions of these six incidents; and that a store manager also stated Appellant needed improvement in handling stressful situations by calmly assessing before taking action; and that although the Appellant stated that she had been laid off from Runway

Fashion, a former co-worker stated that you were both fired and both had to fight for unemployment [compensation].

The above stated reason of her claiming to be “laid off” while actually being “fired” an implied lie or misrepresentation (a serious charge against a police officer-applicant) was known by the BPD to be untrue at the time of the bypass letter.

The BPD’s Robin Hunt claimed a concern that the “recency” of the employment incidents and especially the series of warnings she received from Fashion manager of Runway Fashion, in less than a year’s time showed a “pattern” which might carry over to breaching of BPD rules and practices while a police officer. Yet, the BPD failed to demonstrate a realistic risk or expectation that the Appellant might respond with the claimed poor judgment and other stated inadequacies, as a police officer. However, Robin Hunt also testified that she was aware of the Appellant’s positive employment history. She thought that overall the Appellant had a “good file” showing good education, motivation and references. She thought that based on round table discussion, the Appellant’s file was not a permanent bar and that with time and maturity the problems could be cured.

Robin Hunt was candid and accurate in her testimony in describing that the Appellant had a “good file” showing good education, motivation and references. The Appellant, by all objective measure, taking away Fashion manager’s warnings and negative assessment and the lone CVS incident, the Appellant has an outstanding and exceptional educational, employment and personal background.

The Appellant appears to have diligently and responsibly pursued a potential career in law enforcement during most of her life. Her very impressive and accomplished employment, education and personal background history attests to her dedication in this

pursuit. By all objective measure, her long term dedication and performance could easily serve as a model and inspiration for others, and therefore, a boon to the BPD recruitment efforts.

As Robin Hunt testified, the BPD looks at the totality of a candidate's background when making hiring decisions. In reviewing the Appellant's background, the BPD supposedly considered the Appellant's very positive references from her former employers, including Mr. Connolly and Mr. Sacco, who testified on the Appellant's behalf.

Based on the totality of the facts and circumstances found by a preponderance of the credible evidence in the record, the appointing authority lacked sound and sufficient reasons for its decision to bypass the Appellant for appointment to the position of police officer, for the reasons stated in its bypass letter.

For all of the above reasons, the Appellant's appeal under Docket No. G1-11-18 is hereby *Allowed.*

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission directs HRD and/or the BPD in its delegated capacity to place the name of the Appellant, Renee Palmer, at the top of the eligibility list for original appointment to the position of Police Officer so that her name appears at the top of any current certification and list and/or the next certification and list from which the next original appointment to the position of Police Officer in the Boston Police Department shall be made, so that she shall receive at least one opportunity for consideration from the next appointment to the position of BPD police officer. The BPD shall not use the same reasons for bypass in that consideration. The Commission further directs that, if and when Renee Palmer is selected for appointment and commences employment as a BPD police officer, her civil service

records shall be retroactively adjusted to show, for civil service seniority purposes only, as her starting date, the earliest Employment Date of the other persons employed from Certification # 207159. This retroactive date is not intended to provide the Appellant with any additional pay or benefits including retirement benefits.

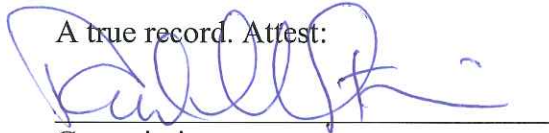
Civil Service Commission,



Daniel M. Henderson
Commissioner

By a vote of the Civil Service Commission (McDowell, Stein, and Henderson, Commissioners), [Bowman and Marquis absent] on December 29, 2011

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), 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 a Civil Service Commission's final decision.

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

Notice:

James W. Gilden, Atty. (Appellant)
Amanda E., Atty. (Appointing Authority)
John Marra, Atty. (HRD)