

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

MICHAEL PERDONI,

Appellant

v.

Case No.: G1-10-266

TOWN OF WELLESLEY,

Respondent

DECISION

The Civil Service Commission voted at an executive session on March 8, 2012 to acknowledge receipt of the report of the Administrative Law Magistrate dated November 22, 2011.

(On December 28, 2011, an extension was allowed and counsel for the Appellant was given until January 20, 2012 to submit written objections to the decision. No comments were received.)

After careful review and consideration, the Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith.

While the recommended decision is adopted, the Commission is compelled to express its concern regarding certain aspects of this hiring process. The Appointing Authority met its burden to establish that there were strong positive reasons for the appointment of the two candidates it selected, as well as presented credible evidence that the Appellant did not measure up to those other candidates in numerous respects, thus, justifying his bypass. The fact remains that of the three candidates, two had close family ties with the Fire Department. Mr. Perdoni was related to the Fire Chief and Mr. Sullivan was related to the Deputy Chief. To their credit, the Fire Chief rebuffed the efforts of his relative to intervene on Mr. Perdoni's behalf and the Deputy Chief recused himself from interviewing his nephew (but did sit in on the interview of Mr. Perdoni). There was, however, clearly a better path.


It was especially problematic that the Deputy Chief participated in the interview process, knowing that his nephew was a candidate, which does raise a legitimate question about the reliance on an alleged "poor interview" by Mr. Perdoni as a reason to bypass him. It is equally troublesome that the Fire Chief's brother-in-law (and Mr. Perdoni's uncle) even could have believed (erroneously) that he could have private access and influence the Fire Chief on Mr. Perdoni's behalf. Had this been a closer case, the Commission might have been persuaded to render a different decision. Given the close relationship between the candidates and the top ranks in the Fire Department who were the key personnel in the hiring process, the use of an outside review panel to conduct the interviews was clearly warranted here and would have avoided giving the perception that the process had been tainted by favoritism.

The Commission will continue to be vigilant to scrutinize appeals of this nature to ensure that all reasonable efforts have been made by appointing authorities to conduct the process for selection of candidates for civil service positions according to methods consistent with basic merit principles that are both fair and objective and avoid all appearances of being influenced by favoritism or bias.

The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Marquis, McDowell and Stein, Commissioners) on March 8, 2012.

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)(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.

Notice to:

James W. Stathopoulos, Esq. (for Appellant)

James M. Pender, Esq. (for Respondent)

John Marra, Esq. (HRD)

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



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

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RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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November 22, 2011

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108


Re: Michael Perdoni v. Town of Wellesley
DALA Docket No. CS-11-64
CSC Docket No. G1-10-266

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: James W. Stathopoulos, Esq.
James Pender, Esq.

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Michael Perdoni,
Petitioner

v.

Docket No. G1-10-266
DALA No. CS-11-64

Town of Wellesley,
Respondent

Appearance for Petitioner:

James W. Stathopoulos, Esq.
Post Office Box 202
East Sandwich, MA 02537

Appearance for Respondent:

James M. Pender
Morgan, Brown & Joy, LLP
200 State Street
Boston, MA 02109

Administrative Magistrate:

Kenneth J. Forton, Esq.

SUMMARY OF RECOMMENDED DECISION

The Town of Wellesley's decision to bypass the Appellant for original appointment to the position of firefighter was reasonably justified based on his pattern of violent and defiant behavior, as was evidenced by admissions in his interview and several Town police reports. His interview performance also showed a lack of interest in and understanding of the position.

RECOMMENDED DECISION

Pursuant to G.L. c. 31 §2(b), the Appellant, Michael Perdoni appeals from the decision of the Respondent, the Town of Wellesley, to bypass his original appointment to

the position of firefighter. Mr. Perdoni requested an adjudicatory hearing to challenge the bypass decision.

A pre-hearing conference was held on October 26, 2010, at the Civil Service Commission, One Ashburton Place, Boston, Massachusetts. A hearing was held on December 20, 2010, at the Division of Administrative Law Appeals, 98 North Washington Street, Boston. The hearing was recorded on three (3) cassette tapes.

Ten documents were entered into evidence. (Exs. 1-10.) Richard DeLorie, Fire Chief, testified on behalf of the Town of Wellesley. Mr. Perdoni testified on his own behalf. He also called Scott Wagner, a Wellesley police officer, and Cheryl Ann Daebritz, of the Town of Wellesley Human Resources Department.

The Respondent filed its proposed decision on March 1, 2011, and Mr. Perdoni filed his on March 8, 2011, whereupon the administrative record was closed.

FINDINGS OF FACT

Based on the testimony and documents presented at the hearing, I make the following findings of fact:

1. The Town of Wellesley has a population of about 27,000 residents. The Fire Department includes 59 firefighters, two fire stations, three fire engines, and one ladder truck. Along with the police, the firefighters act as first responders to emergency situations. Firefighters are required to be certified emergency medical technicians (EMTs), though a private ambulance service is contracted by the Town. (Testimony DeLorie.)
2. The Board of Fire Engineers (Board) is the appointing authority for the Department. In a typical hiring process, the Fire Chief along with the Deputy Chief and a Human Resources representative interview the potential candidates. The Chief then

makes a written recommendation to the Board. The Board usually accepts the recommendation of the Fire Chief in hiring matters. (Testimony DeLorie.)

3. The Town has a preference for hiring Town residents. To be considered for the position of firefighter, applicants must complete an employment application and an interview, consent to a background check, and pass a physical fitness test. Once hired, the candidate must also become EMT-certified within the first year. (Testimony DeLorie.)

4. In early 2010, a firefighter retired, thus creating a firefighter job opening. To fill the position, Chief DeLorie requested a certification list from the state's Human Resources Department. Chief DeLorie received a certification list dated March 25, 2010. (Testimony DeLorie; Ex. 1.)

5. The March 25 certification list contained six names. The first name on the rank-ordered list was Ian McMakin. Michael Perdoni was second. The next two, Bryan Beckwith and Chris Corda, were already working for the fire department. The last two, Kevin Rooney and Justin Woodacre, subsequently withdrew their names from consideration. (Testimony DeLorie; Ex. 1.)

6. Around the same time, another firefighter resigned thus opening up a second position. Since only two names remained on the certification list, another expanded certification list was requested. The expanded certification list was dated May 21, 2010. (Testimony DeLorie; Ex. 2.)

7. The May 21 certification list contained an additional nine names. The first on the list, Jeffery Egan, withdrew his application. The second, Evan Rosenberg, had already accepted a position with the police department. The third was Gerard Sullivan.

The rest of the candidates on the list did not reside in the Town. (Testimony DeLorie; Ex. 2.)

8. Ian McMakin, Michael Perdoni, and Gerard Sullivan were each interviewed and considered for the two open firefighter positions. (Testimony DeLorie.)

9. In considering the candidates, Chief DeLorie was looking for an individual who exhibits a high level of integrity and solid character, has demonstrated in his record a commitment to public safety and public service, is physically fit, has good references, has work experience, and has nothing in his history that would reflect poorly upon him. (Testimony DeLorie.)

10. During the interviews, Chief DeLorie worked off of a standard list of questions that he uses in all interviews. (Testimony DeLorie; Ex. 5.)

11. Ian McMakin was the highest-ranked candidate on the certification list. He was a graduate of the Massachusetts Maritime Academy, had experience as a firefighter for the U.S. Coast Guard, had prior training from the state firefighter academy, and was enrolled in an EMT program. He also had excellent references, no criminal record, and his name did not come up in any police reports from the Town. (Testimony DeLorie; Ex. 1.)

12. Mr. Perdoni was the next candidate, with the second highest ranking on the certification lists. He has an Associate's Degree in Business/Accounting from Dean College. He had previously worked as a foreman for his father's company, as a shop foreman for Lou's Welding, and he currently owns his own business renting out trucks and equipment for construction. (Exs. 1, 3.)

13. Mr. Perdoni's uncle is the brother-in-law of Chief DeLorie. Petitioner's uncle attempted to contact Chief DeLorie to put in a good word for Mr. Perdoni, but Chief DeLorie told him that was not how the selection process worked and refused to discuss the matter further with him. (Testimony DeLorie.)

14. On his employment application, Mr. Perdoni responded to a series of questions, some of which were cause for concern and required further explanation. His application indicated that he had a Protective Order for Abuse Prevention issued against him, which Perdoni explained was false and had been lifted within two weeks. The application also indicated that he had some moving violations incurred when he was a teenager, which resulted in his license being suspended for two months, but that his driving record has been excellent ever since. He had been involved in three motor vehicle accidents, but all were found to be not his fault. He also responded affirmatively that he had been involved in a court action and police inquiry, but explained that the cases were dismissed with no charges. Finally, he replied affirmatively that he had been tried for a criminal offense but was not convicted; he gave no further explanation. (Ex. 3.)

15. Mr. Perdoni was interviewed on May 25, 2010 by Chief DeLorie and Cheryl Daebritz. Bahia Sauer and Deputy Chief Peterson were both present at the interview and observed, but did not ask any questions. (Testimony DeLorie, Daebritz; Ex. 6.)

16. During his interview, Mr. Perdoni indicated that he was currently being prevented from taking the certification test to become an EMT even though he had taken

the course and passed it. He stated that he was working on clearing up the problem.

(Testimony DeLorie, Perdoni; Ex. 6.)

17. Chief DeLorie then informed Mr. Perdoni that the Department would do a complete background check and was asked if there was anything he thought might come up that he would like to explain. Mr. Perdoni stated that he was not sure what would come up, but that he had been previously charged with attempted murder, witness intimidation, assault and battery, and destruction of property. He further explained that most of the charges had been brought in 2009 by an ex-girlfriend and all those charges had been subsequently dropped. He also indicated that when he was eighteen or nineteen, he had been charged with assault and battery, but that those charges had also been dropped. Mr. Perdoni did not offer any further explanation of the events. Perdoni was 28 years old when he applied to the Department. (Testimony DeLorie, Perdoni; Exs. 3, 6.)

18. Chief DeLorie found Mr. Perdoni's responses in the interview, with respect to the duties of a firefighter, to be weak, which he interpreted as being a lack of motivation for the position. Perdoni could not clearly communicate why he wanted to be a firefighter; he stated that he did not know what the job entailed but that he "would keep busy in the downtime." (Testimony DeLorie; Ex. 9.)

19. A Criminal Offender Record Information (CORI) report was requested for each candidate, and each was found to have no criminal record. (Testimony DeLorie.)

20. As part of their employment applications, each candidate signed a "Waiver Form." The form contained the following statements:

I . . . understand that any appointment will be contingent upon the results of a complete character and fitness investigation

I hereby authorize the Town of Wellesley and/or the Wellesley Fire Department to release all information relative to my employment, education, medical records, psychological records, criminal records, and all pertinent information gained by them in connection with my application for the position of firefighter in the Town of Wellesley.

This information may be released to the Commonwealth of Massachusetts, Human Resources Division, and to any other person or agency that requires such information.

Mr. Perdoni signed the Waiver Form on April 1, 2010. (Exs. 3, 4; Testimony DeLorie.)

21. The candidates also signed a document called "Authorization for Release of Information." It contained the following statement:

The intent of this authorization is to give my consent for full and complete disclosure of . . . records of complaints, arrest, trial and/or convictions for alleged or actual violations of the law, including criminal and/or traffic records, records of complaints of a civil nature made by or against me It is the intent of this authorization to provide full and free access to the background and history of my personal life, for the specific purpose of pursuing a background investigation, which may provide pertinent data for the Wellesley Fire Department to consider in determining my suitability for employment by that Department. It is my specific intent to provide access to personal information, however personal or confidential it may appear to be, and the sources of information specifically enumerated above are not intended to deny access to any records not specifically mentioned herein.

I understand that any information obtained by the personal history background investigation, which is developed directly or indirectly, in whole or in part, upon this release authorization will be considered in determining my suitability for employment. I have had explained to me, and I full understand that the refusal to grant this authorization will not of itself, constitute a basis for rejection of my application.

Mr. Perdoni signed the Authorization for Release of Information on April 1, 2010. (Exs. 3, 4; Testimony DeLorie.)

22. Given Mr. Perdoni's disclosures at the interview, Chief DeLorie requested from the Wellesley Police all police reports involving each applicant.

23. No police reports were found with respect to [REDACTED] or [REDACTED]

[REDACTED] However, the Police produced three police reports relating to Mr. Perdoni. The reports were dated May 5, 1999; January 16, 2005; and May 2, 2010. (Testimony DeLorie.)

24. In the police report dated May 5, 1999, officers responded to a report of domestic assault and battery. Mr. Perdoni and his younger brother, [REDACTED] had been involved in a fight in which both brothers were hitting each other. Officers observed [REDACTED] chest which was red and took his statement, but were unable to speak with Mr. Perdoni because he had already left. The responding officer asked Michael's mother to have Michael call him or go to the police station so that he could be interviewed. Michael failed to do either, which resulted in a summons being issued for a hearing on domestic assault and battery. (Ex. 7.)

25. According to the police report dated January 16, 2005, officers responded to a report of domestic assault and battery. When they arrived at the residence, they had been informed that there was an altercation between Mr. Perdoni and his younger brother [REDACTED]. Mr. Perdoni told officers that he and his brother had started to argue over a set of car keys and that [REDACTED] had pushed him. When officers started asking Mr. Perdoni questions he became uncooperative and argumentative. At one point Mr. Perdoni took a defensive posture, which the officers interpreted as a threat. The officers then tried to handcuff Mr. Perdoni to ensure their safety, but Mr. Perdoni resisted. The officers warned Mr. Perdoni to stop resisting or they would pepper spray him, but he did not stop. The officers proceeded to pepper spray Mr. Perdoni and handcuff him. [REDACTED] told officers that Mr. Perdoni had struck him; there were apparent injuries to [REDACTED] Mr.

Perdoni had no apparent signs of injury. Officers determined Mr. Perdoni was the primary aggressor and arrested him for assault and battery. (Ex. 7.)

26. The police report dated May 2, 2010, related to a response to a report of a domestic disturbance. Perdoni's brothers, [REDACTED] and [REDACTED], had gotten into an altercation, when [REDACTED] told [REDACTED] that he was pushing his son too high on the swing and told him he needed to be gentler. [REDACTED] responded by biting [REDACTED] at which point [REDACTED] punched [REDACTED]. Their father tried to break up the fight, but Michael Perdoni interfered and prevented him from doing so. Mr. Perdoni also encouraged [REDACTED] to hit [REDACTED]. When the officers arrived Mr. Perdoni had already left, but the rest of the family was interviewed. The father told officers that [REDACTED] has Asperger's Syndrome and gets agitated easily, but that everything was under control now. Officers gave the family a list of agencies they could contact to get help for [REDACTED], and the family assured the officers they would look into it. (Ex. 7.)

27. Gerard Sullivan, the selected candidate, was ranked third on the certification list. Mr. Sullivan has a bachelor's degree in criminal justice from UMass Boston and was working as a public safety dispatcher for the Wellesley College Police Department. He had been a certified EMT for two and a half years. He also received excellent references from the Wellesley College Police and did not have a criminal record, nor was he mentioned in any police reports. During his interview, Chief DeLorie thought Mr. Sullivan presented himself as very knowledgeable, forthcoming, and highly motivated. Mr. Sullivan passed his physical assessment test on his first try. (Testimony DeLorie; Ex. 8, 9.)

28. Deputy Chief Peterson was excused from participating in the interview of Gerard Sullivan because he is Mr. Sullivan's uncle. Once Gerard Sullivan was identified as a candidate, Deputy Chief Peterson was excused from any further involvement in the selection process and Chief DeLorie did not discuss the process any further with Deputy Chief Peterson. (Testimony DeLorie.)

29. On July 28, 2010, Chief DeLorie submitted a memorandum to the Board of Fire Engineers recommending the appointment of Ian McMakin and Gerard Sullivan. (Ex. 8.)

30. By letter dated July 23, 2010, Chief DeLorie notified Mr. Perdoni that he was being bypassed. Chief DeLorie cited the following negative reasons for bypassing Perdoni: (1) his three interactions with police, which resulted in police reports being filed; (2) his admission during his interview that he had been charged with attempted murder, witness intimidation and property destruction; (3) his police interactions and charges were preventing him from completing his EMT certification; (4) the restraining order that his former girlfriend had filed against him; (5) his lack of experience working for non-family members; and (6) his lack of motivation for the job, which the Chief inferred from his interview responses. Additionally, Chief DeLorie stated specifically that Mr. Perdoni's "conduct and character, as evidenced by [his] multiple interactions with the Wellesley Police Department, are such that [he] would negatively impact the Wellesley Fire Department's strong working relationship with [the Department's] partner public safety agency." (Ex. 9.)

31. On September 30, 2010, Mr. Perdoni filed an appeal with the Commission. (Ex. 10.)

CONCLUSION AND ORDER

After reviewing the testimony and documents presented in this matter, I conclude that the Town has proven by a preponderance of the evidence that there was a reasonable justification to bypass Mr. Perdoni.

The authority to bypass a candidate for permanent promotion or appointment to a civil service position is governed by G.L. c. 31, § 27, which provides:

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.

PAR.08(3) of the Personnel Administration Rules promulgated by the Human Resources Division provides further, that when a candidate is to be bypassed, the appointing authority must make a full and complete statement of all the reasons to justify the bypass. “No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed . . . shall later be admissible as reasons for selection or bypass in any proceeding before . . . the Civil Service Commission.” PAR.08(3) (2003).

Upon an appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for bypass are justified. *Brackett v. Civil Serv. Comm’n*, 447 Mass. 233, 241 (2006). The Commission should apply *de novo* review and determine “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.” *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). Reasonable justification is established when such action is “done upon adequate reasons

sufficiently established by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” *See Commissioners of Civil Service v. Municipal Ct.*, 359 Mass. 211, 214 (1971), citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928).

An appointing authority may use as a basis for bypass any information it has obtained through an impartial and reasonably thorough independent review, including allegations of misconduct. *City of Beverly v. Civil Service Comm’n*, 78 Mass. App. Ct. 182, 189 (2010). When considering allegations of misconduct, there must be a “credible basis for the allegations” that presents a “legitimate doubt” about a candidate’s suitability, but the appointing authority is not required “to prove to the commission’s satisfaction that the applicant in fact engaged in the serious alleged misconduct” *Id.* at 189-90.

Although the commission makes the findings of fact anew, substantial deference should be given “to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown.” *Id.* at 189. Substantial deference is especially appropriate in cases dealing with the appointment of public safety officers, given the sensitive nature of their position and the high standards to which they are held. *Id.* “It is not within the authority of the commission . . . to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *City of Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 304 (1997). Appointing authorities selecting public employees are given broad discretion in making their determinations. *Id.*

“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 . . . and to protect efficient public employees from political control.” *City of Cambridge*, 43 Mass. App. Ct. at 304, citing *Murray v. Second Dist. Court of East. Middlesex*, 389 Mass. 508, 514 (1983); *Kelleher v. Personnel Adm’r of the Dept. of Personnel Admin.*, 421 Mass. 382, 387 (1995); *Police Comm’r of Boston v. Civil Service Comm’n*, 22 Mass. App. Ct. 364, 370 (1986). “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.” *City of Cambridge*, 43 Mass. App. Ct. at 304, citing *School Comm. of Salem v. Civil Serv. Comm’n*, 348 Mass. 696, 698-99 (1965); *Debnam v. Belmont*, 388 Mass. 632, 635 (1983). *Commissioner of Health & Hosps. v. Civil Service Comm’n*, 23 Mass. App. Ct. 410, 413 (1987).

In this case, Chief DeLorie recommended bypassing Mr. Perdoni for the following reasons: (1) his three interactions with police, which resulted in police reports being filed; (2) his admission during his interview that he had been charged with attempted murder, witness intimidation and property destruction; (3) his police interactions and charges were preventing him from completing his EMT certification; (4) the restraining order that his former girlfriend had filed against him; (5) his lack of experience working for non-family members; and (6) his lack of motivation for the job, which the Chief inferred from his interview responses.

Mr. Perdoni claims that he was bypassed because Gerard Sullivan was well connected and had many family members that work for the Town. Additionally, Mr.

Perdoni claims that Mr. Sullivan is frail, not a resident of the town, and that his work experience is more limited than Perdoni's. Furthermore, Mr. Perdoni claims that his statements during the interview were mischaracterized by Chief DeLorie and that Chief DeLorie improperly considered the police reports as evidence of misconduct, since the incidents never resulted in a conviction.

Mr. Perdoni is incorrect in stating that the appointing authority may not consider evidence of misconduct unless the misconduct results in a conviction. The Commission has long held that an applicant's arrest record, even in the absence of a conviction, is entitled to some weight by the appointing authority in making its decision. *Thames v. Boston Police Dep't*, 17 MCSR 125, 127 (2004); *Soares v. Brockton Police Dep't*, 14 MCSR 168 (2001); *Brooks v. Boston Police Dep't*, 12 MCSR 19 (1999); *Frangie v. Boston Police Dep't*, 7 MCSR 252 (1994). What's more, an appointing authority may use any information it receives as long as there is a credible basis for its consideration. See *City of Beverly v. Civil Service Comm'n*, 78 Mass. App. Ct. at 189-90. Chief DeLorie obtained the police reports using a valid waiver signed by Mr. Perdoni. The reports were prepared by Wellesley police officers in the normal course of their duties. And, the 2005 incident was corroborated at the hearing by Officer Wagner's testimony; his recollection of Perdoni's anger and rage that day might have been enough to support a bypass. Perdoni presented no evidence to counter the facts in the police reports, like ask any of the persons present to testify what happened at any of the events that have been documented by the police reports. In sum, Chief DeLorie was justified in relying on the police reports and corroborating evidence in drawing his conclusions.

The police reports taken together with Mr. Perdoni's admissions demonstrate a pattern of incidents that call into question his character. The police reports establish repeated allegations of assault and battery, and in his interview Mr. Perdoni also admitted to being charged with assault and battery when he was eighteen or nineteen. Furthermore, the 2005 and 2010 police reports indicate a disregard for authority and detail antagonistic behavior toward the Wellesley Police, another public safety department. In 2005, Mr. Perdoni was uncooperative and aggressive towards Town police officers, which resulted in him being pepper sprayed and handcuffed. The 2010 report states that only weeks before his interview, Mr. Perdoni prevented his father from intervening in a fight between his brothers and encouraged one brother to hit the other. The timing of these incidents displays a pattern of conduct that has continued over the years and shows no signs of abating. No doubt, this pattern of violence and defiance of authority is what may be holding up Perdoni's application for EMT certification, which he would be required to complete within a year of being hired. While Mr. Perdoni was never convicted of any crime and in most of these instances he was never charged, it does not follow that there is not a credible basis for believing these allegations.

Chief DeLorie is also reasonably justified in relying on his impressions from the interview in making his decision. During the interviews, Chief DeLorie worked off of the same standard list of questions for each candidate. Substantial deference is given to an appointing authority when the authority is able to point out specific reasons for its decision. Chief DeLorie stated specifically that, during the interview, Mr. Perdoni's responses showed a lack of knowledge and motivation for the position. Also, Mr. Perdoni's disclosures about his past behavior were less than forthcoming and did not help

diminish their effect. Additionally, Perdoni's poor interview performance was just one factor that was taken into consideration when making the bypass decision.

As to Mr. Perdoni's work references, he is correct that he should not be penalized for owning his own business and working for other family businesses. There is no evidence that Chief DeLorie made any efforts to obtain any references, professional or otherwise, concerning Mr. Perdoni. On his employment application Mr. Perdoni did provide a list of references that could be contacted. Chief DeLorie may not have inquired as to Mr. Perdoni's references because he had already decided to bypass Mr. Perdoni based on the other factors discussed; however, it was improper for Chief DeLorie to have included Mr. Perdoni's lack of references as a reason for the bypass if he made no effort to actually check the references that Perdoni provided.

Mr. Perdoni alleges that the appointment of Mr. Sullivan was motivated by the close family connections Mr. Sullivan has to many Town employees. However, the only person with appointing authority in this situation was the Board of Fire Engineers, acting on Chief DeLorie's recommendation. Chief DeLorie is no relation to Mr. Sullivan, and there is no evidence that any other Board member is related to Mr. Sullivan. While Deputy Chief Peterson was Mr. Sullivan's uncle, once Chief DeLorie was made aware of the relationship, Deputy Chief Peterson was excused from any involvement in the selection process. If anything, family relations could have benefitted Mr. Perdoni since Chief DeLorie's brother-in-law was Mr. Perdoni's uncle, who directly attempted to influence Chief DeLorie's decision by phoning the Chief. Other than repeating that many of Mr. Sullivan's family members work for the Town, Mr. Perdoni has not presented any

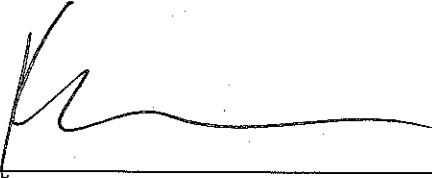
evidence to indicate that Chief DeLorie was improperly influenced in making his decision.

The allegations concerning Mr. Sullivan's work experience are also without merit. Again, appointing authorities are given broad discretion in making judgments concerning public safety officers. Mr. Sullivan's work experience as a dispatcher for the Wellesley College Police Department, along with his excellent recommendations from his superiors, were relevant factors in Chief DeLorie's decision. Work experience in the public safety sector is relevant to being a firefighter, and Mr. Sullivan's excellent references suggest he has good character and is able to work well in stressful situations.

Additionally, Mr. Perdoni's allegations that Mr. Sullivan is not a town resident and is physically frail are unfounded and irrelevant. Mr. Sullivan passed his physical assessment test, which qualifies him for the firefighter position. Also, during the selection process, efforts were made to ensure that all applicants being considered were currently town residents. Mr. Perdoni, again, has offered no evidence to indicate that Mr. Sullivan was not a Town resident during the selection process other than a mere uncorroborated allegation. Mr. Sullivan's excellent references, relevant work experience, and good interview together demonstrate that he is a good candidate for the position. Whereas, Mr. Perdoni's questionable past indiscretions and his poor interview make him a less desirable candidate.

Considering all the evidence, the Town was reasonably justified in bypassing Mr. Perdoni based on his lackluster interview performance and a pattern of violent and defiant behavior established by three police reports and admissions he made during his interview. Accordingly, I recommend the dismissal of Mr. Perdoni's appeal.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton
Administrative Magistrate

DATED: **NOV 22 2011**