

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

DANTE PERELLA,  
Appellant

v.

G1-18-085

CITY OF HAVERHILL,  
Respondent

Appearance for Appellant:

Stephen C. Pfaff, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street  
Boston MA 02110

Appearance for Respondent:

William D. Cox, Jr., Esq.  
City Solicitor, City of Haverhill  
145 South Main Street  
Bradford, MA 01835

Commissioner:

Christopher C. Bowman

**DECISION**

On May 11, 2018, Dante Perella (Mr. Perella), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Haverhill (COH) to bypass him for original appointment to the position of reserve police officer for not being forthcoming during the hiring process. On July 9, 2018, I held a pre-hearing conference at the Armand P. Mercier Community Center, 21 Salem Street, Lowell, MA 01854, which was followed by a full hearing at the same location on August 27, 2018.<sup>1</sup> The full hearing

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

was digitally recorded and both parties received a CD of the proceeding.<sup>2</sup> On October 26, 2018, the parties submitted post-hearing briefs in the form of proposed decisions.

## **FINDINGS OF FACT**

Twenty-one (21) Exhibits were entered into evidence at the hearing (Respondent Exhibits 1-4 and Appellant Exhibits 1-16, with 1 Respondent Post Hearing Exhibit). Based on the documents submitted and the testimony of the following witnesses:

*For the COH:*

- Penny Portalla, COH Police Officer and former Detective;
- Anthony Haugh, Deputy Chief of Police;
- Alan R. DeNaro, Chief of Police;

*For Mr. Perella:*

- Dante Perella, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. Mr. Perella is twenty-six (26) years old. He is a high school graduate; a resident of Haverhill; and has been a student at Northern Essex Community College. He has served in the United States Army National Guard from 2015 to the present. (Respondent Exhibit 4 and Testimony of Mr. Perella)

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<sup>2</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

### *Stipulated Facts*

2. On March 25, 2017, Mr. Perella took the civil service examination for police officer and believes he received a score of 86.
3. On September 1, 2017, the state's Human Resources Division (HRD) established an eligible list of candidates for Haverhill police officer.
4. On September 13, 2017, HRD, at the request of the COH, sent Certification No. 04941 to the COH, from which the COH ultimately appointed eleven (11) reserve police officers.
5. Based on his examination score of 86, Mr. Perella was ranked 19<sup>th</sup> among those candidates willing to accept appointment as police officer on Certification No. 04941.
6. Of the eleven (11) candidates appointed by the COH as police officers, two (2) were ranked below Mr. Perella.
7. On March 15, 2018, the COH notified Mr. Perella that it was bypassing him for appointment.

### *Reasons for Bypass*

8. The COH bypassed Mr. Perella for allegedly not being forthcoming during the hiring process, including, but not limited to: a) failure to disclose traffic citations as recently as 2015; and b) failure to disclose being involved in traffic accidents – 2 accidents with one involving an altercation.

### *Responses on Background Investigation Questionnaire*

9. Each candidate was initially provided with a Public Safety Application to complete. Page 15 of the Application contains several notices with regards to answering all questions fully, advises candidates that all statements will be investigated by Haverhill Police and that any misrepresentation or omission will cause your application to be rejected. The notice also

provides that a complete an unedited CORI check is performed on all applicants. The following page entitled “TRUTHFULNESS” is a memo from Chief DeNaro to Applicants with regard to the importance of being truthful and the consequences for not being truthful. Page 17 contains a signed certification from Mr. Perella that “I understand that false or misleading information give herein or during interview(s) may result in my being disqualified from further consideration and or termination from employment with the City of Haverhill.” (Respondent Exhibit 5)

10. Each candidate was also provided with a multi-page Background Investigation Questionnaire containing questions regarding M/V History, Organizations, Weapons Permits, Military Service, Employment History, Financial History, Criminal History, Educational Background, Drug Use and Other, which the candidates are asked to answer “Yes” or No”. (Testimony of Portalla, Haugh and DeNaro, Respondent Exhibit 6)
11. Applicants are instructed to “Carefully read each statement below.” They are also advised that the purpose of the Questionnaire is to get truthful answers, and, finally are once again warned that false, incomplete or misleading information may be cause for disqualification. (Respondent Exhibit 6)
12. The Background Investigation Questionnaire itself has been adopted in whole from the Certification Unit of the Massachusetts State Police. (Testimony of DeNaro, Respondent Post Hearing Exhibit 1)
13. Mr. Perella completed the first Questionnaire on January 25, 2018. (Respondent Exhibit 6)
14. Page 1, Question 3 under M/V History asks: “Have you ever had a traffic accident?” Mr. Perella circled “no”. (Respondent Exhibit 6)

15. Page 2, Question 6 M/V History asks: “Have you ever been given a traffic ticket?” Mr. Perella circled “no”. (Respondent Exhibit 6)

16. Page 7, Question 1 under Other asks: “Is everything accurate and complete on your application?” Mr. Perella circled “Yes”. (Respondent Exhibit 6)

***Findings Related to: Page 1, Question 3 under M/V History asks: “Have you ever had a traffic accident?” Mr. Perella circled “no”.***

17. Mr. Perella while operating a car belonging to his mother was involved in a motor vehicle accident on May 28, 2011 at 1:01 pm while he was traveling north on a road in Haverhill, MA. He was making a left turn into the driveway of his parents’ residence, when a vehicle traveling behind him attempted to pass on his left side and the vehicles collided. (Respondent Exhibit 8 and testimony of Portalla and Perella)

18. Haverhill Police responded to the accident scene and generated an Accident Report as well as a Commonwealth of Massachusetts Motor Vehicle Crash Report. (Respondent Exhibit 8 and testimony of Portalla and Perella)

19. Detective Portalla, who had copies of the above reports, questioned Mr. Perella after he had completed the first Questionnaire and asked him if he had been in a traffic accident, to which he answered “No.” (Testimony of Portalla)

20. Detective Portalla then prompted him about the accident and asked him about the accident reports they had. (Testimony of Portalla)

21. Mr. Perella responded in a manner that indicated he was aware of the accident and responded “oh, yeah. Oh, okay.” (Testimony of Portalla)

22. Mr. Perella was also involved in a second motor vehicle accident on December 31, 2011 at approximately 1:55 am while driving northbound on Route 125, Main Street in Haverhill, MA. A vehicle traveling behind Mr. Perella “slammed into” the rear of his car, hitting the vehicle hard enough that Mr. Perella said he could feel it in his lower back. When Mr.

Perella stopped his vehicle and opened the door he was punched in the upper left jaw while he was still seated in the vehicle. The operator of vehicle which struck Mr. Perella then began yelling profanities and kicked the rear of Mr. Perella's vehicle causing a dent before leaving the scene at a high rate of speed. Mr. Perella then followed the other operator's vehicle to get the license plate number. After losing sight of the vehicle, Mr. Perella returned to the Haverhill Police Station to report the incident. Mr. Perella was treated at the Police Station by Trinity EMS. (Respondent Exhibit 10)

23. Haverhill Police generated an Incident Report as well as a Commonwealth of Massachusetts Motor Vehicle Crash Report. (Respondent Exhibit 10 and testimony of Portalla and Perella)
24. Detective Portalla, who had copies of the above reports, also questioned Mr. Perella about this motor vehicle accident after he had completed the first Questionnaire. (Testimony of Portalla)
25. Mr. Perella was able to speak in detail about the December 31, 2011 accident after Detective Portalla began questioning him about it. (Testimony of Portalla)
26. After Detective Portall's interview with Mr. Perella, he was allowed to complete and submit a second Questionnaire, which he did on February 8, 2018. (Respondent Exhibit 7 and testimony of Portalla and Perella)
27. Mr. Perella switched his answer to this question from "No" to "Yes" on the second Questionnaire and attached a more detailed explanation sheet to the Questionnaire in which he described both motor vehicle accidents. (Respondent Exhibit 7)

***Findings Related to: Page 2, Question 6 M/V History asks: “Have you ever been given a traffic ticket?” Mr. Perella circled “no”.***

28. On May 27, 2011 Mr. Perella was cited for Speeding, Obstructing Emergency Vehicle and Child under 8 & under 58 in w/o carseat. The Driver History obtained by the Haverhill Police Department from the Massachusetts Registry of Motor Vehicles (RMV) provides that the Speeding charge was not prosecuted (NP) and that he was found “responsible” (R) as to the two remaining charges. (Respondent Exhibit 15 and testimony of Portalla)
29. Detective Portalla did not disclose to Mr. Perella during her interview with him that she was aware of the above citation. (Testimony of Portalla)
30. Mr. Perella believes he was never charged with these motor vehicle offenses and yet is also at a loss to explain how or why they appear on his drivers’ record, although he did eventually state that he believes the entry on his Drivers History to be correct. Mr. Perella has never obtained a certified copy of his drivers’ license. (Testimony of Mr. Perella)
31. On August 23, 2015 Mr. Perella was cited for Failing to wear a seatbelt and crosswalk violation. The Driver History obtained by the Haverhill Police Department from the RMV provides that he was found “not responsible” (NR) as to the two charges. (Respondent Exhibit 15 and testimony of Portalla and Perella)
32. Mr. Perella had a clear memory of this incident and that he successfully contested the citation resulting in the “not responsible” finding. (Testimony of Perella)
33. Despite his knowledge of receiving this citation, Mr. Perella answered the first questionnaire “No” because he felt where he was found “not responsible”, he did not have to answer “Yes”. (Testimony of Perella)

34. After this citation was discussed with him by Detective Portalla during her interview with him, he changed his response to this question on the second Questionnaire to “Yes” and attached a more detailed explanation sheet to the Questionnaire in which he described only the 2015 citation and again did not include the 2011 citation. (Respondent Exhibit 7)

***Findings Related to: Page 7, Question 1 under Other asks: “Is everything accurate and complete on your application?” Mr. Perella circled “Yes”.***

35. In responding to this question Mr. Perella on first Questionnaire answered “Yes”, however, switched his answer to this question from “Yes” to “No” on the second Questionnaire. He did not attach a more detailed explanation sheet about this change to the Questionnaire. (Respondent Exhibit 7)

36. Mr. Perella initially testified that he had “no idea” why he made that change. He then surmised that he might have changed his answer because he was switching answers which were not initially accurate. (Testimony of Mr. Perella)

*Responses by Mr. Perella to Deputy Chief and Chief at 2/15/18 Oral Interview*

37. On February 15, 2018 Mr. Perella was given an oral interview. Chief DeNaro and Deputy Chief Haugh were present and asked a series of pre-determined questions which were asked of all applicants during their oral interview. (Respondent Exhibit 16 and Testimony Haugh, DeNaro and Perella)

38. In addition to the pre-determined questions, Mr. Perella was also asked about some of the issues which had arisen as a result of his completing two Questionnaires. (Respondent Exhibit 16 and Testimony Haugh, DeNaro and Perella)



39. Both Chief DeNaro and Deputy Chief Haugh made notations in their interview question/answer sheets of Mr. Perella's responses. (Respondent Exhibit 16 and Testimony of Haugh and DeNaro)
40. After being asked the predetermined questions at his interview, Mr. Perella was asked by Deputy Chief Haugh to explain the accidents he was involved in and specifically what happened. (Respondent Exhibit 16 and Testimony of Haugh and DeNaro)
41. Mr. Perella stated that he had no recollection of being involved in an accident. (Respondent Exhibit 16 and Testimony of Haugh and DeNaro)
42. Deputy Haugh prompted him by asking if he recalled being in a motor vehicle accident where an altercation took place and he was assaulted. (Testimony of Haugh and DeNaro)
43. Mr. Perella stated that he did not remember that. (Testimony of Haugh and DeNaro)
44. Mr. Perella testified that he answered "No" to the question and that he offered no additional explanation for his response. (Testimony of Perella)
45. When asked why he answered "No" to this question, Mr. Perella stated that "I look at it as I'm not at fault because none of the accidents or citations I was either given a ticket or at-fault for accidents. So I still look at it as "No." (Testimony of Perella)
46. Deputy Haugh next asked Mr. Perella if he had any recollection of being issued any traffic citations. (Testimony of Haugh and DeNaro)
47. Mr. Perella stated that he did not remember that either. (Testimony of Haugh and DeNaro)
48. Mr. Perella admitted that he also answered "No" to this question and that he offered no additional explanation for his response. (Testimony of Perella)
49. When asked why he answered "no" to this question, Mr. Perella stated "I looked at it as being – being ticketed, but in the end result, I go to court, and have it fought, and they

dismiss it. So I look at it as I'm not charged with anything." He then added "I still think of it as a – as a "No" answer." (Testimony of Perella)

### *Decision Making Process*

50. Detective Portalla prepared and provided to Deputy Chief Haugh and Chief DeNaro a summary of her findings with regards to the background investigation she conducted on Mr. Perella, including the results of the two Questionnaires. (Respondent's Exhibit 4 and Testimony of Portalla, Haugh and DeNaro)

51. She was not involved in the process beyond conducting the background investigation. (Testimony of Portalla)

52. Deputy Chief Haugh and Chief DeNaro had a discussion about Mr. Perella's candidacy after the oral interview and they were dumbfounded at his responses to questions concerning motor vehicle accidents and traffic citations. Mr. Perella denied any such involvement on the first Questionnaire, then admitted motor vehicle accidents and at least one traffic citation on the second Questionnaire, and, then, remarkably, denied any knowledge whatsoever at the concluding oral interview of either, even after being prompted about one of the motor vehicle accidents. The interview with Mr. Perella left Chief DeNaro confused "at a higher level" than he was before the interview was conducted. (Respondent's Exhibit 16 and Testimony of Haugh and DeNaro)

53. Although the COH found other alleged omissions or misstatements by Mr. Perella, the Chief concluded that even if you take everything off the table except for the motor vehicle accidents, citations, and the contact with the police involving the accidents and the citations, he still would recommend a bypass of Mr. Perella. (Testimony of DeNaro)

### *Legal Standard*

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass 256 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (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).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n., 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Beverly citing Cambridge at 305, and cases cited. "It is not

for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

### *Analysis*

In addition to the examples cited in the findings, the COH provided multiple other alleged instances in which Mr. Perella was not forthcoming regarding questions posed to him during the hiring process. Those questions, and whether Mr. Perella was forthcoming in responding to them, raise potential issues related to G.L. c. 151B, §4(9) which provides that it is unlawful:

“For an employer, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred five or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within five years immediately preceding the date of such application for employment or such request for information.

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.

Nothing contained herein shall be construed to affect the application of section thirty-four of chapter ninety-four C, or of chapter two hundred and seventy-six relative to the sealing of records.”

As this appeal can be decided based on those questions that do not raise potential issues regarding c.151B, §4(9), I have not made any findings or conclusions related to those questions.

Honesty is a required trait of any person holding the position of police officer -- or seeking to become a police officer. The criminal justice system relies on police officers to be truthful at all times and an appointing authority is justified in bypassing a candidate who does not meet this standard. See, e.g., LaChance v. Erickson, 522 U.S. 262 (1998) (lying in a disciplinary investigation alone is grounds for termination); Meaney v. Woburn, 18 MCSR 129, 133-35 (discharge upheld for police officer based, in part, on officer's consistent dishonesty and "selective memory" during departmental investigation of officer's misconduct); Pearson v. Whitman, 16 MCSR 46 (appointing authority's discharge of police officer who had a problem telling the truth upheld); Rizzo v. Town of Lexington, 21 MCSR 634 (2008) (discharge upheld based partially on officer's dishonesty regarding a use of force incident); and Desharnias v. City of Westfield, 23 MCSR 418 (2009) (discharge upheld based primarily on officer's dishonesty about a relatively minor infraction that occurred on his shift). Here, the question is whether Mr. Perella was indeed untruthful, which, if proven, would justify the COH's decision to bypass him for appointment.

Even the COH appears to acknowledge that a candidate may be in a situation where they don't have a recollection of an event when completing the Questionnaire. Such a situation does not always equate to untruthfulness. A random traffic stopped that did not result in a citation to the candidate or being interviewed as a witness to a street fight may not come to the forefront of a candidate's memory. The point here is that labeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and uniform review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety. (See Morley v. Boston Police Department, 29 MCSR 456 (2016) (Based on unreliable hearsay and false assumptions, the

Boston Police Department erroneously concluded that the Appellant, a federal police officer and a disabled veteran who had been deployed on active duty overseas on four occasions, was untruthful.)

The thrust of the COH case is that Mr. Perella was not forthcoming in completing his Questionnaire and during his interview, including his failure at times to disclose his involvement in two traffic accidents and his receipt of two traffic citations. By all available information, including Mr. Perella's own admission, he was aware of the two traffic accidents and one of the traffic citations before he completed the first Questionnaire. Yet he responded no to each question regarding these events. There was a second traffic citation which appears on his Drivers' History that he did not disclose.

The COH had concerns about the answers Mr. Perella provided on the first Questionnaire because they had evidence which demonstrated that his responses were incorrect. Mr. Perella was given additional consideration in this process and allowed to complete a second Questionnaire. Before doing so Detective Portalla discussed the two traffic accidents and one of the traffic citations with Mr. Perella. As a result of this conversation and aware that the COH knew about the traffic accidents and one of the traffic citations, Mr. Perella switched his responses on the second Questionnaire to the questions about traffic accidents, traffic citations and whether his name appeared in any police reports.

The change in his responses left questions which still needed to be addressed at the oral interview. Inexplicably, Mr. Perella reversed his answers from the second Questionnaire at the oral interview and simply answered with an emphatic "no" offering no further explanation.

As part of his testimony before the Commission, Mr. Perella struggled to answer straightforward questions. Questions had to be asked multiple times, including numerous

redirections to the actual question asked, before he responded. When he did respond, his response was not logical. He repeatedly stated that his interpretation of a response was that if he was not found at fault or responsible for a violation, then he had no obligation to disclose it.

I credit Detective Portalla's recollection of the events and her discussions with Mr. Perella, as well as the testimony of Deputy Chief Haugh as to the oral interview questions that he posed to Mr. Perella, and the testimony of both Deputy Chief Haugh and Chief DeNaro as to the responses they received from him. I did take into account that the interviews were not recorded and that both Deputy Chief Haugh and Chief DeNaro produced their hand-written notes to memorialize the interview. The COH witnesses appeared to have a clear recollection of their dealings with Mr. Perella and their account of what occurred and what was said appeared to be more logical and rang true to me.

In summary, the COH has shown that their decision to bypass Mr. Perella was based on valid concerns regarding his ability to be forthcoming during the hiring process and was not based on any factors unrelated to basic merit principles that would warrant intervention by the Commission.

*Conclusion*

For all of the above reasons, Mr. Perella's bypass appeal under Docket No. G1-18-085 is hereby ***denied***.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein, and Tivnan, Commissioners) on December 20, 2018.

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

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice To:

Stephen Pfaff, Esq. (for Appellant)

William Cox, Jr., Esq. (for Respondent)