COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
617-979-1900

MICHAEL PIERRELOUIS,
Appellant

G1-20-164

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant: Michael Pierrelouis, *Pro Se*

Appearance for Respondent: Joseph S. Santoro, Labor Relations Advisor
Department of Correction
50 Maple Street, 1st Floor
Milford, MA 01757

Commissioner: Paul M. Stein

DECISION

On December 8, 2020, the Appellant, Michael Pierrelouis, acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from the decision of the Massachusetts Department of Correction (DOC), to bypass him for appointment to the position of a DOC Correction Officer/ Head Cook (CO I/Head Cook).[1] The Commission held a pre-hearing conference on December 8, 2020 via remote videoconference (Webex) and a full hearing, also by remote videoconference (Webex), on February 19, 2021 and March 29, 2021, which was recorded via Webex.[2] Twelve (12) Exhibits (*Exhs.1 through 12)* were received in evidence. Only the DOC filed a Proposed Decision. For reasons stated below, the Appellant's appeal is allowed.

[1] 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.

[2] A link to the Webex audio/video recording of the full hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- Eugene T. Jalette, DOC Supervising Identification Agent
- Kyle Brouillette, DOC Correction Officer/Background Investigator
- Lauren Fiola, DOC Background Investigator

Called by the Appellant:

- Michael Pierrelouis, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Michael Pierrelouis, is a Haitian-born black male in his mid-thirties who currently resides in Brockton, MA. He is fluent in Haitian Creole and also speaks and understands French. He is a qualified veteran, having served honorably on active duty in the U.S. Navy for six years and in the U.S. Army Reserves from 2013 to 2016. He holds an Associate's Degree in Criminal Justice. (*Exh.3; Testimony of Appellant*)

2. Since 2018, Mr. Pierrelouis has been employed as a Recovery Treatment Assistant with a company that provides contract security and medical services for patients confined in DOC facilities—primarily, at the Bridgewater State Hospital. His prior employment, in addition to his military duty, has included work as a machine operator and aviation mechanic. (*Exh3; Testimony of Appellant, Brouillette & Fiola)*

3. Mr. Pierrelouis took and passed the civil service examination for Correction Officer/Head Cook administered by the Massachusetts Human Resources Division on June 15, 2019. (*Exh.12*)

4. On or about May 18, 2020, HRD issued Certification #06865 to the DOC to fill positions of Correction Officer/Head Cook. Mr. Pierrelouis appeared third on the Certification. He signed

stenographic or other written transcript of the 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.

the Certification indicating he was willing to accept appointment and he submitted the standard application package on or about June 12, 2020. (*Exhs.8 through 12*)

5. On or about June 18, 2020, Mr. Pierrelouis met with a DOC investigator to review his application package and answered a series of additional written questions, including the following:

- "Have you ever been arrested? (Foreign or domestic) if YES, please state where below. YES ✓ Brockton MA (location added by DOC investigator during investigation)
- In the space below please list all discipline to include termination that you have received from your current and/or previous employers. Also indicate any charges against you for either workplace violence or sexual harassment.
  ✓ I have never been formally disciplined by an employer

(*Exhs.10 & 11*)

6. The DOC conducts a background investigation on all applicants for the position of Correction Officer under the supervision of Eugene Jalette, the DOC Supervising Identification Agent. The investigation includes: verification of entrance requirements; inquiry of past employers and character references; and a thorough criminal records check of all Criminal Offender Records Information (CORI) through the Massachusetts Criminal Justice Information Services (CJIS), which encompasses data from the Massachusetts Board of Probation (BOP) as well as other federal, state and local law enforcement agencies, and the applicant's driver history. (*Testimony of Jalette*)

7. The CJIS check of Mr. Pierrelouis's CORI disclosed no criminal charges or motor vehicle infractions. The only entry on his BOP was for an ex parte Civil Restraining Order (per c. 209A) entered on March 19, 2018 and vacated on April 2, 2018. The BOP contained no record that Mr. Pierrelouis had ever been arrested or charged with any criminal offense. (*Exhs.3 & 7*)

8. DOC Correction Officer Kyle Brouillette was assigned to complete the pre-employment background investigation of Mr. Pierrelouis. He checked Mr. Pierrelouis' education, employment history and professional references, as well as personal and neighborhood references, and

conducted a personal interview (on August 24, 2020) with Mr. Pierrelouis, all of which were positive. (*Exh.3; Testimony of Jalette & Brouillette)*

9. CO Brouillette also followed up on Mr. Pierrelouis' disclosure in his application that he had been arrested in Brockton. CO Brouillette contacted the Brockton Police Department (BPD) and obtained copies of the incident report that resulted in Mr. Pierrelouis' January 18, 2020 arrest, as well as the BPD record of service and termination of the 209A restraining order on March 19, 2018 and April 2, 2018, respectively.[3] (*Exhs.3, 5 & 6; Testimony of Brouillette*)

10. The BPD arrest report contains the following narrative:

> "On Thursday January 18, 2018 Ofc. Scully and I, Ofc. Quirk . . . were dispatched to [address] for a Family Disturbance. The call narrative stated that he [Mr. Pierrelouis] would like an officer to come before things escalate [,] stating that him an[d] his wife are in a verbal argument."
>
> "These officers . . . were met outside . . . by [female] who stated that she resides at the above residence with her fiancé Michael Pierre-Louis [sic]. . . . for approximately three years together. [Female] stated . . . last night she was lying on the couples [sic] bed. . . . Michael and her were in a verbal argument about the couples bills. As she was lying down on the bed [female] stated that Michael grabbed her by the left leg and right arm and pulled her off the bed causing her to fall. . . . [S[he then continued to talk to him about the bills and . . . . made her way into the kitchen where Michael then pushed her causing her to fall. . . . Michael then grabbed her by the back of the neck while she was on the ground."
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> "These officers spoke to Michael Pierre-Louis who was placed into handcuffs . . . Michael did not appear to be under the influence of drugs or alcohol. . . . Michael stated that nothing physical took place and that every day the two are in a verbal argument."
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> "It should be noted that [female] did have bruising on her right arm with redness. She denied medical attention. Plymouth BCI was contacted to take pictures of her injuries. All parties advised on 209A Rights."
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> "Michael Pierre-Louis was transported to the Brockton Police Department and booked in the usual manner without incident and charged with Domestic Violence Assault & Battery."[4]

[3] The BPD record about the restraining order proves that the only involvement by the police department was to serve the ex parte order and shows that the incident was closed after receiving notice that the order had been terminated by the court. Thus, the DOC investigator's note that the Brockton Police had "obtained" the order is erroneous. (Exhs. 3 & 7)

[4] As no record of any criminal charges against Mr. Pierrelouis appear on his BOP, I infer that, in fact, no criminal complaint was issued.

(*Exhs.5 & 6*)

11. When asked about the January 2018 incident during the August 24, 2020 DOC interview, Mr. Pierre-Louis pointed out that he was the one who called the police and "never put my hands on her." [5] He also pointed out that the 209A restraining order was not taken out until months later, had nothing to do with the events of January 2018, and was terminated within two weeks after the parties appeared in court. (*Exhs.3 & 6; Testimony of Appellant & Brouillette*) [6]

12. CO Brouillette prepared a report dated August 28, 2020, summarizing the results of his investigation which he submitted to Mr. Jalette. The report noted the 2018 Brockton incident for "Domestic A&B (No charges on BOP)" in "Negative Employment Aspects" and summarized Mr. Pierrelouis's honorable military service, positive work history, positive professional references, his bilingual ability and his "experience in similar work environment" (i.e. Bridgewater State Hospital), as his "Positive Employment Aspects." (*Exh.3; Testimony of Brouillette & Jalette*)

13. CO Bouillotte's background report included a summary of his interview with Mr. Pierrelouis' current supervisor, a former DOC Lieutenant, who described Mr. Pierrelouis as "a good employee that did his job and is able to deescalate various situations" and is not afraid to go "hands off [sic] if needed but does try to use every possible method to avoid that route." He stated that Mr. Pierrelouis' "attendance is not the greatest*"* but was not formally disciplined or accused of sexual misconduct or violation of sexual harassment policies or inappropriate contact with persons in custody. He believed Mr. Pierrelouis would be a "good asset for the DOC" (*Exh.3*).

[5] Mr. Pierrelouis said he did grab his girlfriend's arm because she was "hurting my daughter", which was the reason he had called the police. (*Testimony of Appellant*)

[6] Neither the March 2018 209A ex parte restraining order nor the supporting Affidavit was introduced at the Commission hearing. The only evidence concerning the circumstances which led his ex-girlfriend to get the restraining order was provided by Mr. Pierrelouis, who explained that they were no longer living together and she was upset that he took back a car he had given to her after she failed to keep up her share of the car payments. He used his own car key and had no interaction with her at that time. (*Testimony of Appellant*)

14. After receiving CO Brouillette's report, Mr. Jalette assigned Lauren Fiola, another DOC investigator, to follow up with Mr. Pierrelouis' current employer concerning the supervisor's comment about Mr. Pierrelouis' attendance record. (*Testimony of Jalette*)

15. On September 3, 2018, Ms. Fiola went to the employer's HR department and reviewed Mr. Pierrelouis' personnel file. She prepared a Pre-Employment Supplemental Report which cited the following information she hand-copied from two documents in his file:

- A June 5, 2019 verbal corrective action report which stated:

  "Mr. Pierre-Louis [sic] was observed sitting on a patient 1:1.[7] Mr. Pierre-Louis then is observed looking down the hallway during the 1:1 while patient was still in the room. After a few minutes, Mr. Pierre-Louis gets up and abandons his 1:1 and walks into the break room and speaks to the lead who assigned him to the 1:1. Mr. Pierre-Louis remains in the break room for 15 minutes while the patient remains uncovered by staff for approximately 7 minutes."

- A July 1, 2020 verbal warning which stated:

  "During a 6 month [sic] review, Mr. Pierrelouis had 2 unscheduled absences beyond his 5 that are allotted for the calendar year. Mr. Pierre-Louis has also been tardy on 9 occasions and failed to punch out for a break as required for 7 occasions."

(*Exh.4; Testimony of Fiola*)

16. The concerns about Mr. Pierrelouis' performance and attendance issues at his current employer had not come up during his interview in August 24, 2020. The DOC did not follow up with Mr. Pierrelouis regarding Ms. Fiola's supplemental report. (*Testimony of Appellant, Jalette & Fiola*)[8]

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[7] A 1:1 means an assignment to a patient whose condition (e.g., risk of suicide or self-harm) requires constant, uninterrupted observation by a staff member. (*Testimony of Appellant*)

[8] Mr. Pierrelouis took issue with the corrective action report as being incomplete. He admitted that he received the corrective action notice but protested that he ever left his post unattended. On the night in question, he was working his regular 3 pm to 11 pm shift and had been on a "1:1" since 8:30 pm. When his replacement did not arrive at 11:00 pm, he remained at his post until someone finally arrived about 1:00 am. He asked that person to fill in while he went to the break room to call his supervisor about the situation. He also acknowledged the warning about attendance issues mentioned at his July 1, 2020 review, which he attributed to his obligations to take his mother to dialysis treatments. He called in each morning that he had to bring her for treatment to let his employer know he would be a few minutes late for his 3:00 pm shift or would not be able to work that day. He no longer has that obligation and has not been tardy or absent from work since his July 2020 review. (*Testimony of Appellant*)

17. The background investigation report, together with all accompanying documentation, including Mr. Pierrelouis' application, criminal history, references and the Pre-Employment Supplemental Report were submitted for review and consideration by the Appointing Authority, DOC Commissioner Carol A. Mici, who decided that Mr. Pierrelouis should be bypassed for appointment based on his 2018 arrest and disciplinary record with his current employer. (*Exh.2; Testimony of Jalette*)

18. Ultimately, DOC appointed 18 candidates as Correction Officers from Certification #06865, of which seventeen (17) candidates were ranked below Mr. Pierrelouis. (*Exh.11*)

19. By letter dated October 27, 2020, DOC Deputy Commissioner Thomas J. Preston informed Mr. Pierrelouis that he had been bypassed for appointment for the following reason:

> "Background investigation: Failed Background due to a 2018 arrest by the Brockton Police Department for Domestic Assault and Battery; additionally, while employed for [current employer] you received (2) verbal corrective actions, one for a violation for the 1:1 policy and the other for unscheduled absences, tardiness and failure to punch out for break."

(*Exh.2*)

20. This timely appeal to the Commission duly ensued. (*Exh.1*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, § 1. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Original and promotional appointments of civil service employees are made from a list of candidates, called a "certification", whose names are drawn in the order in which they appear on

the applicable civil service "eligible list", using what is called the 2n+1 formula. G.L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission's role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has "reasonable justification" for the bypass after an "impartial and reasonably thorough review" of the relevant background and qualifications bearing on the candidate's present fitness to perform the duties of the position. Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 461, 474-78 (2019); Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

"Reasonable justification . . . means 'done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law'". Brackett v. Civil Service Comm'n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), and cases cited. See also Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons "more probably than not sound and sufficient").

The governing statute, G.L. c. 31, gives the Commission's de novo review "broad scope to evaluate the legal basis of the appointing authority's action" and it is not necessary that the Commission find that the appointing authority acted "arbitrarily and capriciously." City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102

(1997). The commission ". . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority" but, when there are "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." Id. (*emphasis added*). See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission's jurisdiction to enforce basic merit principles under civil service law).

ANALYSIS

DOC failed to establish reasonable justification to bypass Mr. Pierrelouis in that the two reasons for bypassing him were made without a reasonably thorough review and were not supported by a preponderance of the evidence. Mr. Pierrelouis' CJIS check was clean, save for the ex parte civil restraining order. His arrest two months earlier (which resulted in no criminal charges) did not appear on his BOP. It was discovered only because Mr. Pierrelouis volunteered that information in answering certain questions on the DOC application and in his interview with the background investigator that are not permitted by law. There was no evidence from any percipient witness of the circumstances surrounding the issuance of the ex parte restraining order, which was vacated two weeks later when the parties appeared in court. As to employment issues, at the time of his interview with Mr. Pierrelouis, the background investigator had received a positive recommendation from all employers, including confirmation that Mr. Pierrelouis had never been formally disciplined, and the investigator did not bring up the performance or attendance issues at the interview. The Appointing Authority never received Mr. Pierrelouis's explanation for his behavior, as the information used to bypass him was never brought to his attention before he received the bypass letter.

The January 2018 Arrest

Massachusetts law imposes specific limitations on an employer's ability to access and use information about the criminal history of a candidate for employment. General Laws c. 151B, §4(9) and §4(9½), contained within the state's antidiscrimination law and applicable to both private and public employers, prohibits an employer from asking a candidate to disclose information about his criminal record save for certain enumerated offenses. That statute makes it unlawful:

> "*For an employer, himself or through his agent, in connection with an application for employment . . . 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 3 or more years prior to 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*."
>
> . . .
>
> "*For an employer to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any criminal convictions on an applicant's application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses*; . . . ."

Id. See G.L. c. 151B, §1 ("The term 'employer'' . . . shall include . . . the commonwealth and all political subdivisions, boards, departments and commissions thereof.")

The Commission has been clear that no public employer is exempt from the requirements of this law and, specifically, that "broad questions . . . designed to obtain information from the

applicant, beyond what is provided for under Chapter 151B, are not permissible." See Kodhimaj v. Department of Correction, 32 MCSR 377 (2019), and cases cited. See also St. Germain v. Massachusetts Bay Transp. Auth., 33 MCSR 222 (2020); McManus v. Waltham Fire Dep't, 33 MCSR 83 (2020); Periera v. City of New Bedford, 32 MCSR 128 (2019).

Thus, an employer may ask a candidate about a specific matter which came to the employer's attention through an independent lawful source other than the candidate. However, no employer may directly or indirectly, ask a candidate for employment to disclose information about prohibited matters contained within G.L. c. 151B, §4 and may not penalize him or her for answering such a prohibited inquiry. Compare Kraft v. Police Comm'r of Boston, 410 Mass. 455 (1991) (police officer could not be terminated for providing a false answer to a prohibited matter (medical condition) covered by G.L. c. 151B, §4); Kerr v. Boston Police Dep't, 31 MCSR 35 (2018) (BPD impermissibly disqualified candidate for untruthfulness who answered "NO" to the question: "Is there anything not previously addressed that may cause a problem concerning your possible appointment as a police officer?") with Bynes v. School Comm. of Boston, 411 Mass. 264 (1991) (school committee lawfully obtained CORI information independently, not from employee). See also, G.L. c. 151B, §4(5) (prohibiting "interference" with the exercise of c. 151B rights); Lysek v. Seiler Corp, 415 Mass. 625 (1993) ("Any result other than the one reached in Kraft at best would have ignored the employer's unlawful inquiries, and at worst would have rewarded the employer for them. In either event, employers in the future would have been encouraged to violate the law.")

In sum, the DOC's application process that led to the decision to bypass Mr. Pierrelouis "due to a 2018 arrest by the Brockton Police Department for Domestic Assault and Battery" did not comply with these requirements. The arrest was not contained in the CORI record obtained by the DOC. The DOC only learned about the arrest because Mr. Pierrelouis responded affirmatively to

a prohibited question that asked him to disclose (in violation of G.L. c. 151B) whether he was ever arrested and where, which was the only reason that the investigator contacted the Brockton Police.

The Employment History

The second reason provided by the DOC to justify bypassing Mr. Pierrelouis was his receipt from his current employer of two "verbal corrective actions, one for a violation for the 1:1 policy and the other for unscheduled absences, tardiness and failure to punch out for break." The DOC did not establish that this reason was based on a reasonably thorough review, and it was not supported by a preponderance of the evidence presented to the Commission. The sole basis for the concern with Mr. Pierrelouis' performance were two documents that the DOC investigator hand-copied from the Appellant's personnel file after the investigator had conducted the "home visit" interview with Mr. Pierrelouis. Appellant was never provided any notice that the DOC intended to use this "paper review" of his employment record as a basis for his bypass and he was never allowed an opportunity to address the issues. At the Commission hearing, Mr. Pierrelouis presented plausible explanations for both of the performance issues.[9] He was entitled to a more thorough inquiry of the matter and to have made decision-makers privy to that information. See, e,g., Ramirez v. Department of Correction, 34 MCSR 151 (2021) (candidate "is entitled to more than a paper review of his [employment] situation [leading to his layoff] and a "reasoned assessment of all of the facts that should be thoroughly considered in a proper background investigation.") By failing to provide Mr. Pierrelouis the opportunity to explain these two isolated

[9] The attendance issues were an isolated situation attributed to a family medical issue (for which intermittent family leave may well have been appropriate). Mr. Pierrelouis took issue with the version of the 1:1 incident for which he was given a "verbal corrective action". He did not consider the verbal action or performance review "formal discipline" (and neither did his supervisor) and none of those incidents detracted from the overall positive recommendation from his supervisor, a former DOC Lieutenant, supporting Mr. Pierrelouis appointment. I also find that that there is good reason to question the "paper record" of the 1:1 incident. For example, it seems implausible that the report stated that Mr. Pierrelouis did call another staff member to sit in for him (as he claimed), went to the "break room" for 15 minutes, but his post was not covered for 7 minutes. Also, had he known this incident was an issue, he believed there would have been video that would corroborate his version.

performance issues and allow the decision-maker the opportunity to consider this information in context with his otherwise positive employment history, including the recommendation of a former DOC Lieutenant that Mr. Pierrelouis should be hired, violated basic merit principles which requires that decisions be made after a reasonably thorough review and supported by a preponderance of the evidence, not just on a paper record that the appellant was never informed about. Had the decision-maker considered *all* of the evidence, I cannot be certain that the decision-maker would have viewed Mr. Pierrelouis' performance issues as disqualifying. See generally, Connor v. Town of Andover, 30 MCSR 439 (2017), citing McKennon v. Nashville Banner Pub. Co., 513 U.S. 352, 360 (1995) ("[P]roving that the same decision would have been justified . . . is not the same as proving that the same decision would have been made.")

The March 2018 Ex-Parte Restraining Order

The March 2018 Ex-Parte 209A Restraining Order did appear on Mr. Pierrelouis' CORI report, and so the DOC did lawfully receive independent access to that information. The Commission has consistently afforded reasonable discretion to an appointing authority, including the DOC, to bypass a candidate (or terminate an employee) who has a properly documented record as a perpetrator of sexual harassment or domestic violence, pursuant to an appointing authority's "zero tolerance" policy regarding sexual harassment and domestic violence. See, e.g., Adams v. Department of Correction, 32 MCSR 1 (2019); Pilling v. City of Taunton. 32 MCSR 69 (2019); Lima v City of New Bedford, 32 MSCR 98 (2019); Lavery v. Town of North Attleborough, 30 MCSR 373 (2017).

However, in the present case, the DOC did not rely on the March 2018 ex parte restraining order as a reason for bypassing him and, on that basis alone, the DOC cannot assert the restraining

order as a basis to justify the bypass in this appeal before the Commission. G.L. c. 31, § 27; PAR.08(4).

Moreover, the DOC presented no evidence to the Commission about the ex parte restraining order other than the summary entry found in the CORI report and the Brockton Police incident report documenting the service of the ex parte order on and its "termination by the court". The Commission has also been clear that a CORI entry, alone, is not sufficient to satisfy the responsibility to support the duty to make a reasonably thorough review of the facts (especially, where, here, the ex-parte order was contested by the Appellant and vacated, not continued, after a hearing before the court). See Kodhimaj v. Department of Correction, 32 MCSR 377 (2019) citing G.L. c. 6, §171A and Governor Patrick's Executive Order 495, "Regarding the Use and Dissemination of Criminal Offender Record Information by the Executive Department" (2008). See also Spady v. Department of Correction, 34 MCSR 83 (2021); Golden v. Department of Correction, 33 MCSR 194 (2020). Finally, although it is not necessary to the decision, in the absence of any evidence to the contrary, I credit the Appellant's version of the events which showed that the ex parte restraining order was unrelated to the January 2018 incident and the evidence he presented persuade the court to terminate the order. See generally Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 461, 474-78 (2019).

In sum, Mr. Pierrelouis must receive at least one further opportunity for consideration for appointment to the position of Correction Officer I/Head Cook so that all of the facts concerning his record are thoroughly investigated, fairly reported to, and fully considered by the decision-maker.

CONCLUSION

For the above stated reasons, the bypass appeal of Michael Pierrelouis, under Docket No. G1-20-164 is ***allowed.***

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders that HRD and/or DOC in its delegated capacity to take the following actions:

1. Place the name of Michael Pierrelouis at the top of any current or future certification for the position of Correction Officer I/Head Cook until such time as he has been appointed or bypassed to ensure that he received at least one additional consideration for appointment.[10]

2. If Mr. Pierrelouis is appointed as a Correction Officer I/Head Cook, he shall be granted a retroactive civil service date the equivalent to those appointed from Certification No.06865.

3. This retroactive date is for civil service purposes only and is not meant to provide Mr. Pierrelouis with any additional pay or benefits, including any credible time toward retirement.

4. Once the Appellant has been provided with the relief ordered above, DOC shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

Civil Service Commission

/s/ Paul M. Stein
Paul M. Stein, Commissioner

By a 4-1 vote of the Civil Service Commission (Bowman, Chair - NO; Ittleman, Camuso, Stein & Tivnan, Commissioners - YES) on October 21, 2021.

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.

[10] The relief granted by the Commission applies to Mr. Pierrelouis's future employment with the DOC as a Correction Officer I/Head Cook. Should his name appear on a certification for a "line" position of Correction Officer I., this Decision will not affect his placement on such a list, given that it pertains to a different position. But the principles by which he must be reconsidered for appointment as a Correction Officer/Head Cook (i.e., consistently with basic merit principles as set forth in this Decision) are equally applicable to any consideration for appointment as a "line" Correction Officer I.

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:
Michael Pierrelouis (Appellant)
Joseph Santoro. (for Respondent)