

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

THOMAS PILLING,
Appellant

CASE NO. G1-17-152

v.
CITY OF TAUNTON,
Respondent

Appearance for Appellant:

Thomas Pilling, Pro Se

Appearance for Respondent:

Mark S. Gould, Esq.
Office of the City Solicitor
Temporary Taunton City Hall
141 Oak Street
Taunton, MA 02780

Commissioner:

Paul M. Stein

DECISION

The Appellant, Thomas Pilling, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b)¹, to contest his bypass by the City of Taunton (Taunton) for appointment as a Firefighter with the Taunton Fire Department (TFD). A pre-hearing conference was held on August 4, 2017 at the UMass School of Law in Dartmouth. A full hearing, which was digitally recorded², was held at the Temporary Taunton City Hall on November 3, 2017. Ten exhibits (Exh.1 through Exh. 10) were received in evidence at the hearing. The Commission received a Proposed Decision from the City of Taunton on January 12, 2018. The Appellant did not submit a proposed Decision.

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 Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the 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.

FINDINGS OF FACT

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

Called by the Appointing Authority:

- Thomas Pilling, Appellant
- TFD Fire Chief Timothy Bradshaw
- TFD Fire Lieutenant Michael Krockta
- TFD Fire Lieutenant Gregory Galligan
- Westfield Police Officer William Cavanaugh

Called by the Appellant:

- Thomas Pilling, 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, Thomas Pilling, is a life-long resident of Taunton, MA, graduating from Taunton High School in 2003.³ He then trained as a golf pro, worked at New Hampshire and Florida country clubs, returned to Taunton in 2008 where he worked in his family's construction business until November 2009, when he enlisted in the U.S. Army. (*Exhs. 2 & 6; Testimony of Appellant*)

2. Mr. Pilling served on active duty with the U.S. Army for 5 years, which included two overseas deployments. He was honorably discharged at the rank of Sergeant. He has continued his military service with a unit of U.S. Army Reserve in Brockton, MA with which he currently serves. He has operated heavy motorized equipment as part of both his active duty and reserve assignment. (*Exh. 2; Testimony of Appellant*)

3. Mr. Pilling currently works part-time in his family construction business. He is studying for a Criminal Justice Associate's Degree at Quincy College. (*Testimony of Appellant*)

4. On or about January 23, 2017, Taunton received Certification #04340 issued by the Massachusetts Human Resources Division (HRD), authorizing Taunton to appoint seven (7)

³ Mr. Pilling struggled academically in high school and, eventually, took make-up courses to earn the credits needed to graduate, a situation he attributed to caretaking for a then ailing parent. (*Exh. 6; Testimony of Appellant*)

Permanent Full Time Firefighters from the eligible list for Firefighter established by HRD on November 4, 2016. (*Undisputed Facts [HRD Letter to the Commission dated August 15, 2017]*)

5. Mr. Pilling's name appeared on Certification #04340 tied in 11th place with another candidate. (*Undisputed Facts [HRD Letter to the Commission dated August 15, 2017]*)

6. On or about January 31, 2017, Mr. Pilling completed and returned the Candidate Information Questionnaire to the TFD along with certain other requested information. (*Exh. 2*)

7. Upon receipt of the applications, the TFD commenced a background investigation into each candidate's employment and personal history, and commissioned the Taunton Police Department to query each candidate's criminal history and driving records. While this investigation was on-going, the candidates, including Mr. Pilling, were interviewed by a five-member TFD panel, headed by Chief Bradshaw. (*Testimony of Chief Bradshaw & Lt. Gilligan*)

8. The TFD interviews were semi-structured, with substantially the same questions asked of each candidate, but the interview performances were not scored or recorded. Following all of the interviews, the panel discussed the candidates and arrived at a consensus as to which candidates would be referred to the nine-member Taunton Municipal Council (Council), the TFD's Appointing Authority. Ten of the fifteen candidates interviewed, including Mr. Pilling, were referred for further consideration. (*Exhs. 1, 8 & 10; Testimony of Chief Bradshaw*)

9. The Council's three-member Committee on Fires and Wires interviewed the ten candidates over two different dates in March 2017 and, subject to any "additional references to be completed", voted unanimously to forward the names of six candidates to the full Council and to bypass three candidates. An initial motion to bypass Mr. Pilling failed to receive a second, and a motion to forward his name then passed by a vote of 2-1. (*Exhs. 8 & 10*)

10. After all “the references were finished up”, Chief Bradshaw recommended six candidates for appointment, two ranked above Mr. Pilling and four ranked below him on Certification #04340. On April 4, 2017, the Council voted 8-0 to offer conditional offers of employment to the six candidates. (*Exh. 10; Testimony of Chief Bradshaw*)

11. By letter dated June 12, 2017, Mr. Pilling was informed that he had not been selected “due to the superior application and superior qualifications” of other candidates “as well as the deficiencies in your background and application” including a “subpar performance on the initial employment interview” and “your repeated motor vehicle infractions”. (*Exh. 1*)

12. In particular, the bypass letter sent to Mr. Pilling cited (a) six motor vehicle infractions over the period from 2002 through 2016, including an OUI and multiple suspensions for driving with a suspended license and/or without insurance; (b) deficiencies in the application, including failure to timely submit his high school diploma and providing references that did not check out positively; (c) a 2015 arrest for domestic violence; and (d) a 911 call made to his Taunton residence in April 2016 where his then girlfriend had just overdosed on heroin. (*Exh. 1; Testimony of Chief Bradshaw*)

13. Mr. Pilling’s criminal record and driving infractions noted in Taunton’s bypass letter involved the following specific incidents:

- 2002 – Cited for operating an unregistered, uninsured vehicle with a suspended license. Defaulted for not appearing in response to criminal summons. Mr. Pilling said it was his mother’s car. Eventually, charges were dismissed at the request of the Commonwealth.
- 2002 – Surchargeable accident
- 2004 – Arrested for DWI in California. Disposition of criminal case was not provided but license was suspended and, later, revoked.
- 2007 – Arrested for operating while license was suspended. Admitted he told arresting officer he only had a Massachusetts ID card and, then, that he left his license at home. Case dismissed at request of the Commonwealth.
- 2008 – License reinstated.

[Military Service - 2009 to 2015]

- April 2015 – Arrested for domestic assault and battery. Physical altercation in parking lot and while driving with girlfriend (Ms. S.) resulting in minor injuries to both, his windshield smashed by Ms. S, her side-view mirror ripped off by him. Admitted to putting his hand over her mouth at one point to prevent her from screaming. She eventually exited vehicle and walked away. She was later located by responding police, who were called by neighbors. Case dismissed when Ms. S. pleaded the Fifth and would not testify. Mr. Pilling said he played down Ms. S.’s violent behavior because he thought she was the one that was going to be arrested and wanted to “protect her” from going to jail.”⁴
- July 2015 – Ms. S. obtains ten-day Chapter 209A Abuse Prevention Order claiming fear of him from April altercation and possibility that he had “access to weapons/was recently in military”. Summons served on Mr. Pilling by Taunton Police (return in evidence) but he denied ever knowing about the Order. Did not appear at return date, case dismissed at Ms. S.’s request.⁵
- 2016 – Cited for failure to yield right-of-way and operating unregistered and uninsured motor vehicle. Mr. Pilling claimed he had accelerated through intersection ahead of speeding (he said 110 MPH) police cruiser who was in pursuit of another vehicle but broke off pursuit and cited him. Warrant issued for default in criminal case and license suspended. Mr. Pilling stated he was unaware of suspension until he was informed by TFD in application. License reinstated after hearing in February 2017.

(Exhs.2, 3 & 9: Testimony of Appellant & Officer Cavanaugh)

14. On April 16, 2016, the TFD responded to a 911 call placed by Mr. Pilling (from a residence where Mr. Pilling stated on his TFD application he had then lived). He had returned from a military drill to find the woman he was then dating unconscious from a drug overdose. While waiting for the ambulance, Mr. Pilling performed CPR and resuscitated the woman. She was conscious when the ambulance arrived and required no medical aid but was taken to the hospital. Mr. Pilling was aware that the woman was “in recovery” but denied any knowledge that she continued to abuse drugs. He ended the dating relationship immediately after she admitted to using heroin. *(Exh. 5; Testimony of Appellant)*

⁴ On his TFD application, Mr. Pilling described the disposition as follows: “Found innocent after story was heard.” *(Exh. 2)*

⁵ Taunton subpoenaed Ms. S. to the Commission hearing but she did not appear. I infer that the Massachusetts address at which the subpoena was left was not her current residence and that, more than likely, she lived in Connecticut, where the evidence indicated her vehicle was registered. *(Exhs. 3 & 7; Testimony of Appellant)*. I draw no adverse inference against either party for her failure to testify at the Commission hearing.

15. The problematic issues with Mr. Pilling’s references included a personal reference whom he claimed was a veteran Boston Police Detective, but who turned out to be a rookie Quincy Police Officer, and the inability to find anyone at the Army Reserve Unit who could confirm that he worked there. Mr. Pilling explained that the police officer belonged to his Army Reserve Unit and he must have been misinformed as to where the officer worked. As to the lack of confirmation about his Army Reserve Duty, Mr. Pilling explained that more than one Reserve Unit was stationed at the Armory and the TFD investigator evidently talked to soldiers in the wrong unit. (*Exhs. 1 & 2; Testimony of Appellant, Lieutenants Galligan & Krockta*)

16. Chief Bradshaw did not consider the delay in providing a high school transcript, alone, a disqualifier. He also could have overlooked the 2002 driving history and, even, the 2004 OUI, if they had been the only infractions on his record. Given the totality of that record, however, including an infraction as recent as 2016 (and, apparently, driving without a license from May 2016 to February 2017), Chief Bradshaw believed that, given the duties required of a TFD firefighter, it was not in the best interest of the TFD or the citizens of Taunton to hire a candidate with a pattern of operating unregistered, insured vehicles and multiple license suspensions. He could not, in good conscience, recommend such a candidate over other well-qualified candidates who had no such blemishes on their records. The four candidates who bypassed Mr. Pillings had “impeccable” records and three worked as EMTs. (*Exh. 1; Testimony of Chief Bradshaw*)⁶

17. Mr. Pilling alluded to what he believed was bias against him, which he attributed to the fact that, in 2009, he married the daughter of one of the TFD’s Deputy Fire Chiefs, against the father’s consent, a marriage that ended in divorce in 2015. He also heard from “anonymous” sources that he was going to be hired but something derailed him. (*Testimony of Appellant*)

⁶ Chief Bradshaw has never hired any candidate with the pattern of driving infractions on Mr. Pillings record. (*Testimony of Chief Brandshaw*)

18. The TFD vigorously denied any bias against Mr. Pilling due to his prior marriage. The former father-in-law took no part in the hiring process. I heard no evidence to suggest, let alone credibly prove, that animosity toward Mr. Pilling by the former father-in-law contributed to Chief Bradshaw's hiring and bypass recommendations or entered to the Council's decision not to appoint Mr. Pilling. (*Testimony of Appellant, Chief Bradshaw & Lt. Galligan*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31 for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment" 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.

The mechanism to ensure adherence to basic merit principles in hiring and promotion is the provision for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, which lists are then used by appointing authorities to make civil service appointments based on a "certification" of candidates from the applicable eligible list. G.L.c. 31, §§6 through 11, 16 through 27.

In general, positions must be filled by selecting one of the three most highly ranked candidates willing to accept the appointment, known as the "2n+1" formula. G.l.c.31,§27; PAR.09. In order to deviate from that formula, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L.c.31,§1,§27; PAR.08. The statement of reasons must "indicate all . . . reasons for bypass on

which the appointing authority intends to rely or might, in the future, rely 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(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, by a preponderance of evidence, the appointing authority made an “impartial and reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and that there was “reasonable justification” for the bypass. 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, 543 (2006); 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). See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (bypass reasons must be “more probably than not sound and sufficient”) The Commission's primary concern is to ensure that the action comports with “[b]asic merit principles.” G.L.c.31,§1. See Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 188 (2010); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997); MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), *rev.den.*,423 Mass.1106 (1996)

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. 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.” See City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (emphasis added) However, the governing statute, G.L.c.31,§2(b), 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 for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

ANALYSIS

Applying the applicable principles of law to the facts of this appeal, the preponderance of the evidence established that Taunton was reasonably justified to bypass Mr. Pilling for appointment to the position of a TFD Firefighter. Although some of the reasons stated for bypassing him were not based on the required reasonably thorough review and are not sufficient reasons under basic merit principles to disqualify him, the core reasons that Chief Bradshaw recommended against hiring Mr. Pilling, and the Council’s decision that he should not be appointed, meet the standards of reasonable justification for that decision.

First, TFD’s interview process did not meet the standards of basic merit principles. Public safety agencies are properly entitled, and often do, conduct interviews of potential candidates as part of the hiring process. In an appropriate case, a properly documented poor interview may justify bypassing a candidate for a more qualified one. See, e.g., Dorney v. Wakefield Police Dep’t, 29 MCSR 405 (2016); Cardona v. City of Holyoke, 28 MCSR 365 (2015). Some degree

of subjectivity is inherent (and permissible) in any interview procedure, but care must be taken to preserve a “level playing field” and “protect candidates from arbitrary action and undue subjectivity on the part of the interviewers”, which is the lynch-pin to the basic merit principle of civil service law. See e.g., Malloch v. Town of Hanover, 472 Mass. 783, 796-800 (2015); Flynn v. Civil Service Comm’n, 15 Mass.App.Ct. 206, 208, rev.den., 388 Mass. 1105 (1983). See also Strano v. Town of Mansfield, 30 MCSR 419 (2017) and cases cited (appeal pending); Conley v. New Bedford Police Dep’t, 29 MCSR 477 (2016); Phillips v. City of Methuen, 28 MCSR 345 (2015); Morris v. Braintree Police Dep’t, 27 MCSR 656 (2014); Absent documented evidence that the interview process was reasonably fair and objective and that the conclusions about candidates not overly subjective or arbitrary, the TFD’s preference for one candidate over another could not justify this bypass on the basis of interview performance.

Second, certain other reasons stated in Taunton’s bypass letter were not supported with evidence that demonstrated they had been made after a reasonably thorough review. Although some of Mr. Pilling’s early employment as a golf pro were unverifiable, Taunton was less than diligent in its efforts to inquire about his five years of military service, which formed an important part of his more recent employment history. Similarly, although the confusion about Mr. Pilling’s Army Reserve Unit is understandable, TFD could have resolved the mix-up with simple follow-up with Mr. Pilling. Further inquiry would also have been able to confirm Mr. Pilling’s experience with operating heavy-duty motor vehicle equipment, a factor that was used to distinguish him from other candidates that had such experience.

Third, despite the above deficiencies in the process, the remaining factors that Taunton cited as reasons for the bypass do justify the City’s decision. Mr. Pilling’s driving infractions in 2002, including his one and only surchargeable accident, nearly 15 years before his TFD application,

would not have been held against him, but his continued behavior evidences a pattern of disregard for the public safety in operating unregistered and uninsured motor vehicles, as well as driving while his license to operate was suspended. Mr. Pilling's evasive explanation to one officer about why his license was not in his possession, and the history of long periods of driving without a license (whether by negligence or knowingly failing to address his multiple default suspensions), reinforces this disregard.⁷ Similarly, Mr. Pilling's recent brushes with the law, in particular, his 2015 arrest, the related c.209A order, and his operating for months without a valid driver's license as recently as February 2017 (during the application process), provides Taunton with reasonable justification to believe that he posed an unacceptable present risk to serve as a TFD Firefighter. Mr. Pilling pointed to mitigating circumstances involved in all of these incidents. The issue for the Commission, however, is not whether Mr. Pilling was guilty of specific misconduct; Taunton has reasonable discretion to decide whether to take the risk of hiring him so long as that decision is based on a reasonably thorough and impartial investigation of the relevant facts. See, e.g., Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 187 (2010) I am satisfied that the police records and the credible testimony of Officer Cavanaugh, who responded to the 2014 assault and battery scene, meet that required standard for reasonable justification.

Fourth, I have considered Mr. Pilling's belief that the animosity between him and his former father-in-law, a TFD Deputy Chief, was a factor in the Council's decision to appoint six, rather than the initially expected seven candidates, and to reject him, the seventh potential hire. Mr. Pilling offered no specific evidence, however, other than from "anonymous" sources, to establish

⁷I do not credit Mr. Pilling's plea that his failure to rectify his defaults was due to his dire financial circumstances at the time and, therefore should mitigate his behavior, when it persisted for as extended a period of time as the facts here showed.

that such animus, if any, played a role in the ultimate decision to bypass him. I find no basis in the record to support the inference of any undue influence or bias in the hiring process.

In sum, Mr. Pilling's interview performance, delay in providing his high school diploma and the snafu regarding his employment and personal references, do not provide reasonable justification to bypass him; Taunton's reasonable perception of his pattern of other irresponsible and unlawful behavior presented reasonable doubt as to his present fitness to serve as a TFD Firefighter, however, and does provide such justification. To be sure, Mr. Pilling's military record and other positive attributes are clear and, perhaps, over time, he will be able to overcome the negative perception that prevented his current appointment.

CONCLUSION

In sum, for the reasons stated, this appeal of the Appellant, Thomas Pilling, is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 14, 2019.

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:

Thomas Pilling (Appellant)

Mark S. Gould, Esq. (for Respondent)

Melissa A. Thomson, Esq. (HRD)