

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

BALNI PIMENTEL,
Appellant

v.

G1-21-161

**BOSTON FIRE
DEPARTMENT,**
Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission and the parties had thirty days to provide written objections to the Commission. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate, thus making this the Final Decision of the Commission.

The Appellant's appeal is hereby *allowed*. Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

1. The state's Human Resources Division (HRD) shall place the Appellant's name at the top of any current or future certification for Boston firefighter until the Appellant has been appointed or bypassed.
2. If the Appellant is appointed, he shall receive a retroactive civil service seniority date the same as those candidates appointed from Certification No. 07374. This retroactive date is for civil service seniority purposes only and is not meant to provide the Appellant with any additional pay or benefits, including creditable service toward retirement.
3. Once the Appellant has been provided with the relief referenced above, the BFD shall notify the Commission. Upon verification that such relief has been provided, the

Commission will direct HRD to no longer place the Appellant's name at the top of future certifications.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney and Tivnan, Commissioners [Stein – Absent]) on February 9, 2023.

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:

Tony V. Blaize, Esq. (for Appellant)

Robert J. Boyle, Jr., Esq. (for Respondent)

James Rooney, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

Balni Pimentel,
Petitioner

v.

Docket No. G1-21-161
DALA No. CS-21-0493
Date: December 15, 2022

Boston Fire Department,
Respondent

Appearance for Petitioner:

Tony V. Blaize, Esq.
Law Office of Tony V. Blaize, P.C.
183 State Street, Suite 6
Boston, MA 02109

Appearance for Respondent:

Robert Boyle, Esq.
Labor Counsel
City of Boston Office of Labor Relations
Boston, MA 02101

Administrative Magistrate:

James P. Rooney

Summary

Appointing authority has not shown sufficient justification for its decision to bypass an applicant for a position as a Boston firefighter for failure to establish that he was a Boston resident for the year prior to the Civil Service exam he took. The evidence shows that he worked for his godmother in Boston in exchange for a basement apartment in her house and, that while he spent little money in Boston during the relevant year because his godmother provided him with room and board, the records of the money he spent in Providence where his girlfriend lived and whose lease he had co-signed show that he visited her on weekends and did not live there full time.

TENTATIVE DECISION

Applicants for firefighter positions are given preference if they have lived in the community where they seek such a position for “one year immediately prior” to the date of the

Civil Service exam they took. M.G.L. c. 31, § 3. Balni Pimentel timely appealed a decision of the Boston Fire Department to bypass him for a position as a firefighter because it had concluded that he had not lived in Boston for the year preceding the Civil Service examination he took. I held a hearing on behalf of the Civil Service Commission on March 3, 2022 at the Commission's offices at One Ashburton Place, Boston, Massachusetts.

I accepted 20 documents into evidence.¹ The parties also stipulated to some basic facts. I made a digital recording of the hearing. The Boston Fire Department presented the testimony of Brian T. Gill, a supervisor at Dominguez Investigations, and Deputy Fire Chief Gerard Viola, one of whose responsibilities is overseeing the firefighter hiring process. Mr. Pimentel testified on his own behalf and presented the testimony of [REDACTED], his godmother. The administrative record closed on May 31, 2022 when the parties filed post-hearing briefs.

Findings of Fact

Based on the exhibits, testimony, stipulated facts, and reasonable inferences drawn from them, I make the following findings of fact:

¹ Mr. Pimentel submitted 14 documents while the City submitted 8 documents. The City's Exhibit 6 and Mr. Pimentel's Exhibit 2 are the same, except Mr. Pimentel's exhibit had a printing error. He agreed to drop his Exhibit 2. Mr. Pimentel's Exhibit 3 and the City's Exhibit 7 are also the same, except that the City's exhibits is redacted. Mr. Pimentel agreed to withdraw his exhibit. Mr. Pimentel's exhibit 5 combines two documents. The first two pages list the exam rankings in the Civil Service exam Mr. Pimentel took. The City did not object to this portion of the exhibit. The other pages are a portion of an investigative report on which the Fire Department relied. The full report is the City's Exhibit 4. Mr. Pimentel agreed to drop that portion of his Exhibit 5. He moved to strike City Exhibits 7 and 8 that concern an earlier bypass of Mr. Pimentel by the Fire Department. The City urged that they be retained because they show that Mr. Pimentel's residence had been investigated one year before the bypass he is now appealing with the same result. I agreed to retain the exhibits with the assurance from the City that the only issue presently keeping Mr. Pimentel from being appointed as a firefighter in Boston was the residence issue, not any other issue raised in the prior bypass decision.

Neither party submitted Mr. Pimentel's appeal letter. I have added it to his Exhibit 1.

1. Balni Pimentel was born in Boston, Massachusetts in 1994 and lived there until he graduated from high school. Thereafter, in 2012, he enlisted in the Marine Corps and spent the next four years mostly in California. He was honorably discharged in August 2016 and remains in the National Guard reserves. (Pimentel testimony; Pimentel Exs. 12 and 14; Boston Ex. 3.)
2. While Mr. Pimentel was in the Marines, his mother and his siblings moved from Boston to Providence, Rhode Island. When he was discharged, he spent one month with his mother in Providence and worked for that month at a warehouse in Pawtucket. He filed a 2016 Rhode Island non-resident tax return because of his warehouse income, on which he listed his residence as [REDACTED] Street in Mattapan. (Pimentel testimony; Pimentel Ex. 11; Boston Ex. 3.)
3. Mr. Pimentel then moved to [REDACTED] Street in Mattapan on September 22, 2016 and took a basement apartment in a house owned by his godmother, [REDACTED], who runs a day care at that location. In January 2017, they entered into a barter relationship in which she provided him with a place to live and meals to eat and he provided work at her day care.² They agreed that the value of the rental and of Mr. Pimentel's work was \$10,000 per year. In his 2016 Massachusetts state tax return, Mr. Pimentel listed his address as [REDACTED] Street in Mattapan. He listed the same address on his tax returns for the following two years. In 2017, Ms. [REDACTED] provided Mr. Pimentel with a 1099 form listing the \$10,000 he earned for his work at her daycare. He filed federal and state income tax returns for that year in which he listed his sole income as that \$10,000. He owed \$1,413 in federal tax and \$200 in state tax on that income. On his 2018 tax forms, he again listed \$10,000 he received from the work he performed

² Mr. Pimentel was not asked about whether he paid rent to [REDACTED] in 2016. I note that his Massachusetts tax return for 2016 reflects that he made \$20,000 that year, mostly from the military. (Pimentel Ex. 11.)

at the day care, and also listed \$6,068 he was paid on another job. Mr. Pimentel continues to live at [REDACTED] Street, but because he now has paid employment, he pays rent to his godmother.³ (Pimentel and [REDACTED] testimony; Pimentel Exs. 10 and 11; Boston Ex. 3.)

4. Aside from working at his godmother's daycare center, in 2017 and 2018, Mr. Pimentel was enrolled at night in the Spring semester both years at Bunker Hill Community College. His tuition was covered by the GI Bill, and he received \$3,000 per month in financial assistance from the federal government plus \$142 per month because of a military service-related disability. (Pimentel testimony; Pimentel Ex. 14.)

5. Mr. Pimentel started dating [girlfriend] in early 2017. At the time, she was living with her mother in Dorchester. When she decided to get her own apartment, Mr. Pimentel convinced her to move to Providence where the rent was cheaper. [Girlfriend] had poor credit. Her prospective landlord [Landlord], was reluctant to rent to a young couple, but agreed to it after Mr. Pimentel told her that he had been a Marine and agreed to co-sign a month-to-month lease with her. Mr. Pimentel recalled telling the landlord that he would be staying with [girlfriend] periodically. Because of [girlfriend]'s poor credit, he also agreed to have his name put on her Verizon land line bill. For the same reason, Mr. Pimentel's mother co-signed a car loan for [girlfriend]'s car. Starting in January 2017, Mr. Pimentel spent a few months helping [girlfriend] move in, mostly on weekends when he had free time, including days off. He also bought items for the apartment when he was in Providence. He thereafter continued to visit [girlfriend] and

³ His continued residence on [Redacted] Street was confirmed by one of his references, [Redacted], who he invited to Thanksgiving dinner in 2020. She went to [REDACTED] Street that day to have Thanksgiving dinner and reported that Mr. Pimentel saw an elderly and confused neighbor sitting on the sidewalk outside on that cold night and called 911 to get her help. (Pimentel Ex. 13.)

his own family on weekends. He helped [girlfriend] pay for rent, usually by giving her cash. He did not pay the landlord for rent. The couple broke up in the summer of 2017. [Girlfriend] kept the apartment for a total of eight or nine months.⁴ (Pimentel testimony.)

6. On March 24, 2018, Mr. Pimentel took a Boston Firefighter Entry Level Exam. On December 1, 2018, the Human Resources Division (HRD) issued a certificate to the Fire Department in which it established an eligibility list based on the exam. After the Boston Fire Department submitted a requisition to HRD for six vacancies for a Spanish-speaking firefighter, on October 5, 2020, HRD established a list of eligible candidates with Mr. Pimentel ranked 9th on the list. (Pimentel Ex. 5; Boston Ex. 2.)

7. On October 6, 2020, Mr. Pimentel filled out an application to become a Boston firefighter. He listed his address as [REDACTED] Street in Mattapan and not [REDACTED] Avenue in Providence. With the application, he was required to (an eventually did) submit a valid Massachusetts driver's license, a birth certificate, proof of excise tax payments, car insurance, and federal and state tax returns for the three years preceding the Civil Service exam, military discharge papers called a DD-214 if claiming veterans status, a credit history report, and three personal references. Mr. Pimentel listed his residence as [REDACTED] Street in Mattapan from September 22, 2016 to the present. He noted that between June 3, 2017 and November 9, 2017, he lacked sufficient funds to pay tickets to reinstate his driver's license. His license was reinstated that November by the Registry of Motor Vehicles and by 2020, he had funds to pay

⁴ Mr. Pimentel and [girlfriend] have a daughter. (Pimentel testimony.) In its closing brief, the Fire Department urges that I conclude that it is more likely that Mr. Pimentel spent his time at "the [Redacted] Ave. apartment with his girlfriend and child" than by himself in a basement in Mattapan. The evidence is, however, that the daughter was born in September 2020, long after the relevant period. (Pimentel testimony.)

vehicle excise taxes for that year and prior years, as confirmed by a letter from the City of Boston's Treasury Department. He also paid old parking tickets by then, as reflected in a letter from the City of Boston parking office. He wrote that he had been attending Bunker Hill Community College from January 2017 to the present. (Boston Ex. 3; Gill testimony.)

8. On March 8, 2021, an investigator named Jay Brennan issued a report of his investigation into Mr. Pimentel's background. He spoke to Mr. Pimentel's supervisor in the Marines, his sergeant, and a corporal, all of whom said he was a great Marine. His current employer at [a local] Bank told the investigator that the Fire Department would be getting a "great guy for that job." (Pimentel Ex. 3; Boston Ex. 6.)

9. Part of Mr. Brennan's investigation concerned Mr. Pimentel's residence. He spoke to [REDACTED] and her son [REDACTED] both of whom live at [REDACTED] Street. They each confirmed that Mr. Pimentel lived there. Ms. [REDACTED] also confirmed that Mr. Pimentel worked at her day care in exchange for his room and food. Mr. [REDACTED] added that Mr. Pimentel "gets along with everybody on the street." The investigator met Mr. Pimentel in his basement apartment at [REDACTED] Street. He saw a bedroom, a small full bath, a bureau with Mr. Pimentel's clothing, and other personal items of his, including his Marine uniform. When asked about his finances, Mr. Pimentel said that he had between \$5,000 and \$10,000 to live on and that "to be honest, I'm struggling financially." Mr. Brennan also spoke to [REDACTED], who lives at [REDACTED] Street. She remembered that Mr. Pimentel was already living there in 2016 when she bought her home. Mr. Pimentel has cut her grass and shoveled her out since he moved to [REDACTED] Street in 2016. (Pimentel Ex. 3; Boston Ex. 6; Pimentel testimony.)

10. Mr. Brennan confirmed that the following documents produced by Mr. Pimentel listed his Mattapan address:

- a Massachusetts driver's license from 2019;
- a Geico statement from 2019
- a USAA auto insurance policy for July 2016 - July 2017;
- Navy Federal Credit Union statements from February 2017 - March 2018;
- 2017 and 2018 federal tax returns;
- and a 2018 W2.

(Pimentel Exs. 7, 8, 9, 10; Boston Exs. 4-6.)⁵

11. Investigator Brennan's search led him to a number of addresses with a possible connection to Mr. Pimentel.⁶ He noted that when Mr. Pimentel separated from the Marines in 2016 his address was listed as Whitney Street, which had been his mother's address in Boston. There was also an address on Shandon Street in Dorchester. Mr. Pimentel told the investigator that this was an ex-girlfriend's address and that he had never lived there. (Boston Ex. 3.)

12. The investigator also learned that the [REDACTED] Avenue address in Providence had a connection to Mr. Pimentel from April 30, 2017 to January 2021. Mr. Pimentel told the investigator that this was also an ex-girlfriend's apartment. Investigator Brennan also learned that the utilities for this residence were in Mr. Pimentel's name. He spoke to Mr. Pimentel's ex-girlfriend, [girlfriend] who told him that because of her poor credit score, she could not rent the

⁵ In 2020, the Boston Board of Election Commissioners certified that Mr. Pimentel was registered to vote in Boston from 2012 to 2020. (Pimentel Ex. 6.) It is not clear whether this information was presented to the Fire Department.

apartment in Providence by herself and that Mr. Pimentel therefore agreed to co-sign the lease and to have his name on the utility bill.⁷ She told the investigator that she lived there from April 2017 to February 2018. She said Mr. Pimentel would visit her on the weekends and sometimes during the week, but that he did not live there. Mr. Brennan also spoke to the landlord of his ex-girlfriend's apartment on [REDACTED] Avenue in Providence. She no longer had a copy of the lease and she could not recall how long the apartment had been leased for, but she thought the rental was from June 2017 until early 2018 and that Mr. Pimentel moved out in early 2018 after they broke up. The landlord was not asked where she lived or asked how often she had seen Mr. Pimentel. (Pimentel Ex. 3; Boston Ex. 6.)

13. Mr. Brennan reviewed Mr. Pimentel's credit union statements and concluded that, from March 25, 2017 to May 24, 2017, most of Mr. Pimentel's transactions were in Rhode Island, and after a summer of inactivity, only by September 2017 were most of Mr. Pimentel's transactions in Boston. (Boston Ex. 6.)

14. The Navy Federal Credit Union statements Mr. Brennan reviewed begin on February 25, 2017. They show that in the previous month, Mr. Pimentel had deposited over \$5,000 and spent

⁶ Mr. Brennan obtained information about possible addresses for Mr. Pimentel based on a background check conducted by a company known as Trans Union that produces a "TLO report." (Boston Ex. 4.)

⁷ [REDACTED] made written statements in support of Mr. Pimentel on October 26, 2020 and March 9, 2021. The statements are similar. In the longer October, 26, 2020 statement, she declared that Mr. Pimentel:

helped me get the apartment by putting himself in the lease because my credit score was not good enough to be approved for the apt. At the time, we was dating, but he always has lived at [REDACTED] St., Mattapan, MA 02126. He would visit me on weekends, and stay over when he was not in school or work. He spent most of his time in Boston because he always wanted to study and take care of his responsibilities at his residence.

somewhat more than he deposited. On February 25, 2017, he had \$223.48 in his checking account. The statements reflect both the date the items were processed by the bank and the date of the transactions.⁸ The initial statement showed that between Thursday, February 23, 2017 and Saturday, February 25, 2017, Mr. Pimentel paid for meals at two restaurants in Rhode Island and bought something at a Dollar General in that state. On Tuesday, February 28, 2017 and Wednesday, March 1, 2017, Mr. Pimentel was active in both Massachusetts and Rhode Island. On both days, he made purchase at a gas station in Charlestown, Massachusetts.⁹ On Tuesday, in Rhode Island, he transferred \$700 to Ms. Soto and bought something at an H&M store in Providence and at a Dunkin Donuts. On Wednesday, he again stopped at a Dunkin Donuts in Providence. The next day, he made five purchases at Rhode Island stores. On Saturday and Sunday, March 4 and 5, 2017, he was in Yonkers and the Bronx, New York, making eleven purchases there. He returned to Providence on March 5, 2017 and made two purchases that day. He made another Dunkin Donuts stop in Providence on Monday, March 6, 2017 and made no more purchases in Rhode Island until the end of the month. (Boston Ex. 5.)

15. Mr. Pimentel returned to Providence on Friday, March 31, 2017, and made a variety of transactions over the next three days there, including renting a UHaul. He was back in East Boston on Tuesday, April 4, 2017 ordering a pizza. He then made purchases in Rhode Island on

(Pimentel Ex. 13.)

⁸ The credits union statements usually show that processing occurred the day following a transaction unless the transaction was on a weekend, when it would be processed on the following Monday. For example, a purchase Mr. Pimentel made at a McDonald's on Friday March 31, 2017 was processed on Monday, April 3, 2017, and a purchase he made at a CVS Pharmacy on Saturday, April 8, 2017 was processed on Monday, April 10, 2017. (Boston Ex. 5.)

⁹ The credit union statements lists the date of Mr. Pimentel's transactions, but not the time. Hence, I cannot tell whether Mr. Pimentel made two separate trips to Charlestown or just one.

Thursday, April 6, Saturday, April 8, and Tuesday, April 11, 2017. His next Rhode Island expense was at a restaurant on Friday, April 30, 2017. Over the next few days, he made a number of purchases in Rhode Island, with the last one coming on Tuesday, May 3, 2017. He made a cash withdrawal from a bank in Providence on Thursday, June 1, 2017 and bought coffee in Cranston, Rhode Island on Thursday, June 8, 2017. (Boston Ex. 5.)

16. The Navy Federal Credit Union statements show no purchases made by Mr. Pimentel during the summer of 2017. What they show instead are numerous returned item fees, that is, charges imposed by a financial institution for bounced checks. The Credit Union ultimately froze his checking account on August 24, 2017 when he exceeded his \$500 credit limit. By early October, Mr. Pimentel again had a positive balance in his checking account. On Monday, October 16, 2017 he made purchases both in Boston and in Rhode Island. He made no further purchases in Rhode Island that year. The few purchases he made were in Massachusetts and were for gas or food. He made more purchases during early 2018, particularly after depositing on January 31, 2018 nearly \$1,400 he received from the federal government. All the purchases he made thereafter until March 24, 2018 were in Boston or in other locations in Massachusetts. (Boston Ex. 5.)

17. In his report, Mr. Brennan treated Mr. Pimentel's residence as "questionable" given the evidence he had found concerning Mr. Pimentel's contacts with Rhode Island. He meant by this that he could not say for certain either that Mr. Pimentel did or did not live in Boston during the relevant period. (Gill testimony; Boston Ex. 5.)

18. On July 28, 2021, the Boston Fire Department sent a letter to Mr. Pimentel telling him he had been bypassed because he did not meet the Boston residency requirement.¹⁰ (Boston Ex. 1; Pimentel Ex. 1.) Four candidates ranked below him were selected. (Stipulated Facts.) The letter explained that firefighter candidates for the City of Boston must live in Boston for one year preceding the exam. For the 2018 Firefighter Entry Level Exam this meant that candidates had to live in Boston from March 24, 2017 to March 24, 2018. The Fire Department expressed skepticism that Mr. Pimentel lived in Boston for the entire year prior to the exam. This skepticism was based in part on his co-signing a lease on an apartment in Providence where his then girlfriend lived and in part on his credit union statements.¹¹ As to the latter, the Fire Department explained:

According to the credit union statements that you submitted for the period of February 25, 2017 through March 24, 2018, you had nine (9) transactions in the City of Boston. Five (5) of those transactions were on the same day. Your bank statements that covered March 25, 2017 through March 25, 2017 through April 25, 2017, April 26, 2017 through May 24, 2017, and May 25, 2017 through September 25, 2017 indicate that the majority of your transactions were in the Providence, Rhode Island area. It was not until September 25, 2017 through October 24, 2017 that your transactions began to consistently be in the City of Boston. Factors that indicated one's residence usually

¹⁰ This was the second hiring round the Boston Fire Department made off of the list generated after the 2018 entry level exam. On June 30, 2020, Mr. Pimentel had received a similar letter stating that he was bypassed because the Department did not have "confidence that you fully lived in the City of Boston for a full one year period." (Boston Ex. 8.) The letter also mentioned concerns that some of his post-Marine employment was short-term and that he had attendance issues at work and at the EMT course he had been taking. *Id.* The July 28, 2021 letter expressed no such concerns. (Boston Ex. 1.)

Dominguez Investigations had conducted a separate investigation in connection with this round. The investigator, Dave Chapman, spoke to [girlfriend] who told him that, because of her bad credit, Mr. Pimentel had co-signed a lease on the [REDACTED] Avenue apartment and agreed to have his name on the utility bill. (Boston Ex. 7.)

¹¹ The letter also stated that "the investigation also indicated that the utilities were also in your name." (Boston Ex. 1.) Mr. Brennan's report stated that the TLO report declared that the utilities were in Mr. Pimentel's name. (Boston Ex. 6.) The TLO report, under a category it called utilities, mentioned only a Verizon landline. (Boston Ex. 5.)

include, among certain indicia, where your most important family, social, economic, political and religious ties. That the majority of your transactions during a large part of the critical one-year time frame coupled with the corresponding lack of Boston transactional activities that one should find in every day transactions leads to the logical inference that you did not reside in Boston for the full one-year period from March 24, 2017 to March 24, 2018.

(Boston Ex. 1; Pimentel Ex. 1.) Consequently, the Fire Department concluded that the documents it had reviewed did not “confidently and unequivocally” show that Mr. Pimentel had lived in Boston during the year preceding Mach 24, 2018. *Id.*

19. According to Deputy Chief Viola, what the Fire Department looks for is the location of an applicant’s permanent home. If a candidate has proof of paying rent for an apartment in Boston, then this would be adequate proof to meet the Department’s strict standard. If such proof is unavailable, the Department then considers bank statements to see where the applicant is spending money and, in the typical case, assumes that where a person usually spends money is where that person lives. The Deputy Chief participated in the Department’s interview of Mr. Pimentel. He does not remember pressing him on the [REDACTED] Avenue address. (Viola testimony.)

20. Mr. Pimentel filed a timely appeal of the bypass determination. (Pimentel Ex. 1.)

Discussion

The issue in this appeal is whether the Boston Fire Department was justified in bypassing Balni Pimentel based on its conclusion that he was not eligible for a preference given to those who resided in Boston for one year prior to the March 24, 2018 Boston Firefighter Entry Level Exam. *See* M.G.L. c. 31, § 58. As with all bypass appeals, the Fire Department must prove by a preponderance of evidence that its decision was justified. M.G.L. c. 31, § 2(b). That is, the appointing authority must have “established that the reasons assigned for the bypass of an

Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Service Com'n*, 31 Mass. App. Ct. 315 (1991); *see* M.G.L. c. 31, § 43. The issue before the Civil Service 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).

The Civil Service Commission has looked to a definition of residency adopted by the Supreme Judicial Court, which treated a residence as “the physical location of the [applicant’s] house or other dwelling place.” *Doris v. Police Comm’r of Boston*, 374 Mass. 443, 448 (1978); *see Layton v. Somerville*, 24 MCSR 440 (Aug. 25, 2011). I note that the Boston Fire Department did not assert that it had definitive proof that Mr. Pimentel lived somewhere other than in Boston; its bypass letter stated only that the documents it had reviewed did not “confidently and unequivocally” show that Mr. Pimentel had lived in Boston during the year preceding March 24, 2018. (Finding 18.)

The main sticking point for the Fire Department was that Mr. Pimentel’s name was on an apartment lease in Providence during the relevant time period and his credit union statements also showed transactions mainly in Rhode Island for some of that period. Department witnesses acknowledged that Mr. Pimentel had lived most of his life in Boston, but were unwilling to accept his word, standing alone, that he lived in Boston essentially rent free in 2017 and not in Providence with his girlfriend, at least during the spring of 2017 when his credit union statement shows considerable activity in Rhode Island.

Mr. Pimentel's name on a lease for a Providence apartment shows a connection with Rhode Island, one he readily acknowledged. It was he who convinced his new girlfriend to rent an apartment in Providence when she moved out of her mother's home in Dorchester. Both Mr. Pimentel in his testimony and [girlfriend] in her written statements asserted that it was [girlfriend]'s poor credit that caused Mr. Pimentel to add his name to the lease because the landlord would not rent to [girlfriend] alone. (Findings 5 and 12.) It is not altogether surprising that a young person just moving out of her parent's home would not have sufficiently reliable credit to rent an apartment on her own, and that she would need someone with more reliable credit to co-sign the lease. Mr. Pimentel's signing of the lease does not, by itself disclose how much time he spent in Boston or Providence or which one he considered his permanent address. The information the landlord revealed to Investigator Brennan is unrevealing on this question. She thought the lease ran from June 2017 to February 2018, by which time Mr. Pimentel had left. (Finding 12.) The date range appears incorrect as Mr. Pimentel's bank records show activity relating to moving [girlfriend] into the apartment in early 2017 (such as a UHaul rental in March 2017), which is consistent with his testimony that [girlfriend] moved in by January 2017 and stayed for around eight or nine months. (Finding 15.) And while the landlord seemed to have some knowledge of Mr. Pimentel's relationship – she knew that he was no longer there after they broke up – the statement she gave to Investigator Brennan did not reveal how often she had an opportunity to see Mr. Pimentel or whether she had enough knowledge to say whether he was simply an occasional weekend guest or lived there full time. I note as well that Mr. Pimentel's Navy Federal Credit Union records do not reflect any payments to the landlord. The only payment that seems clearly related to rent was his transfer on February 28, 2017 of \$700 to

[girlfriend], which is consistent with his testimony that he gave her money toward the rent she paid. (Finding 14.)

As for Boston, there is a variety of evidence that he lived there. His godmother testified that he lived at a basement apartment at her address and that he helped out at her daycare in lieu of rent. His godmother's son, who lived at the same address, and her neighbor confirmed to Investigator Brennan that Mr. Pimentel lived in his godmother's house. Investigator Brennan visited him in his basement apartment and saw that his clothes and his uniform were there. Mr. Pimentel filed tax returns for 2017 and 2018 that list a Mattapan address. The City of Boston confirmed that he was registered to vote at that address during that time, and his Navy Federal Credit Union statements were sent to him at that address. Although this information had been sought by the Fire Department and had been key to prior Civil Service decisions,¹² the Fire Department expressed reluctance to rely on these pieces of documentary evidence because Mr. Pimentel did not have any cancelled rent checks to prove that he rented from his godmother.

¹² When an issue arose as to whether a Holyoke Firefighter actually lived in that city or in Easthampton during the one-year period prior to the civil service exam, the Civil Service Commission concluded that the firefighter:

produced none of the usual documentary indicia of residence. In particular, he did not provide any of the following information: (a) motor vehicle registration, excise tax bills, or insurance policies showing that he registered and insured his motor vehicle as a Holyoke resident during the requisite one year period; (b) evidence to show that he was registered to vote in Holyoke, that he was not registered to vote in Easthampton and did not continue to vote in Easthampton during the requisite one year period; and (c) billing records or other mail, including but not limited to mail sent by HRD, to show that he was receiving such mail in Holyoke, not at a residence in Easthampton, during the requisite one year period.

Holyoke Residency Investigation, I-19-137 (November 19, 2020). See also *Layton v. Somerville* (two brothers properly terminated respectively from positions as permanent and reserve

That is why the Department turned to Mr. Pimentel's credit union statements to see whether they shed light on Mr. Pimentel's permanent address was in Mattapan or Providence.

The credit union reports are significant as they show why the Department thought they were proof that he might have been living in Providence in early 2017. Those reports must, however, be read against the background provided by his 2017 tax returns. These returns show only one source of income – the \$10,000 he received from his godmother for work at her daycare.¹³ Because this income was part of a barter arrangement, Mr. Pimentel never received any cash from his godmother, and so he was “struggling financially” as he told Investigator Brennan. But there was a difference between his struggles in Boston and his struggles in Providence. In Boston, his room and board were provided by his godmother; in Providence, that was not the case. Thus, when he was in Providence, he had to pay for his meals, which explains the numerous food-related purchases reflected in his credit report. In Boston, he simply did not have to do so. For example, in the summer of 2017 when he had exceeded his credit limit and could not and did not make any credit card purchases for four months, he must have been living in Boston then because it was the only place he could get by without purchasing items.

What this means is that analyzing Mr. Pimentel's credit union statements is much different than analyzing the bank statement of a typical person with a steady income. A great deal can be told about where that person lives because one would expect that most of that person's purchases would be made near where he lived. But Mr. Pimentel, who was cash poor,

firefighters because they had no documentation whatsoever that they lived in the city for the year prior to the civil service exam).

¹³ It is worth noting that Mr. Pimentel, although he received no money for the work he performed for his godmother, paid taxes on this income in 2017 and 2018. This is not what might have been expected if this were merely a ruse on his part to establish Boston residency.

traveled between two different worlds – one in which he needed cash to get by and one in which he didn't. The absence of purchases over a given period of time would tend to prove that he was in Boston where he did not need to spend money to live. But because he could not do the same in Rhode Island without participating in the cash economy, the absences of purchase in Rhode Island during a period of time show that he was not there then.

In that light, what then do the credit union reports show? Investigator Brennan noticed that from March 25, 2017 to May 24, 2017, most of Mr. Pimentel's transactions were in Rhode Island. That is true, but when one considers the dates of those transactions, what they show, most generously, is that Mr. Pimentel spent three long weekends in Providence between March 24, 2017 and the end of May: Friday, March 31, 2017 to Monday, April 3, 2017; Thursday, April 6, 2017 to Tuesday, April 11, 2017; and Sunday, April 30, 2017 to Wednesday, May 3, 2017. Spending 14 days out of a 68 day period in Providence is consistent with Mr. Pimentel's testimony that he spent weekends in Providence, and is not consistent with him making Providence his permanent residence during this period.

That spring, Mr. Pimentel was enrolled in Bunker Hill Community College in Charlestown. If he were actually living full time in Providence, one would not only have expected more economic activity during the week in Providence, but also evidence that he was going back and forth between Providence and Bunker Hill. That can be seen during the last week of February and the first week of March 2017, when it appears that Mr. Pimentel took a week off from the day care, but still attended his classes.¹⁴ Between Thursday, February 23,

¹⁴ I take note that Bunker Hill Community College was in session the last week of February 2017. Its spring break was in mid-March and classes ended mid-May. <https://www.bhcc.edu/academic-calendar/academiccalendar-spring2017/>.

2017 and Monday, March 6, 2017, Mr. Pimentel made purchases in Providence, Yonkers, and the Bronx. On Tuesday and Wednesday, February 28, and March 1, 2017, he seems to have made one and possibly two trips back to Massachusetts, as on both days he made purchases in Providence and at a gas station in Charlestown, Massachusetts. (Finding 14.) Had he been living in Providence between late March and May 2017 and traveling back and forth to Bunker Hill Community College to attend night classes, I would have expected to see more such weekday purchases at gas stations in Massachusetts. The credit union statements do not reflect this. This makes it much more likely that Mr. Pimentel was commuting to class from Boston, not from Providence.

In sum then, in the spring of 2017 during the period in which the Fire Department was skeptical as to whether Mr. Pimentel resided in Boston, the preponderance of the evidence shows that he spent the majority of this time in Boston, worked there for his godmother during the day, attended classes at Bunker Hill Community College at night, and visited his girlfriend and his family members in Rhode Island over three long weekends. He was registered to vote at the address in Mattapan where he lived. He received mail there, including his Navy Federal Credit Union statements, and he paid federal and Massachusetts state taxes based on the income he made from working for his godmother in Mattapan. As for the remainder of the year prior to the Civil Service exam date, there is no evidence that he lived anywhere other than at [REDACTED] Street, an address at which he still lives today.

I do not question the Fire Department's general approach to look first for rent checks to determine where a candidate lives and, failing that, to then look where that person spends his money and to assume that this is where the person most likely lives. That no doubt works in

most cases. What is unusual about this situation is the barter arrangement between Mr. Pimentel and his godmother that makes his situation the mirror image of the typical one because he spent money not where he lived but, of necessity, away from where he lived.

CONCLUSION

For the reasons stated above, the appeal of Balni Pimentel is allowed. Based on the powers of relief inherent in Chapter 310 of the Acts of 1993, I recommend that the Commission order that the Massachusetts Human Resources Division and/or the City of Boston in its delegated capacity take the following action: (1) Place the name of Balni Pimentel at the top of any current or future Certification for the position of Firefighter with the Boston Fire Department until he is appointed or bypassed after consideration consistent with this Decision. (2) If Mr. Pimentel is appointed as a Boston Firefighter, he shall receive a retroactive civil service seniority date which is the same date as the first candidate ranked below him appointed from Certification No. 07374. This retroactive civil service seniority date is not intended to provide Mr. Pimentel with any additional pay or benefits including, without limitation, creditable service toward retirement.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney
First Administrative Magistrate

Dated: December 15, 2022