

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

JAMES PINEO,
Appellant

v.

CITY OF QUINCY,
Respondent

Case No.: G1-13-294

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. The parties had thirty (30) 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 in part.

We concur with the Magistrate's conclusion that Mr. Pineo's failure to follow instructions on the written application, alone, justify the City's decision in this particular case to bypass Mr. Pineo, even without a further inquiry via an interview. We reject those parts of the Tentative Decision, however, which appear to suggest that an interview and other means of follow-up, in general, are not typically part of the reasonably thorough review required of Appointing Authorities. We find that conclusion contrary to recent precedent-setting judicial decisions as well as years of Commission decisions regarding this topic.

The decision of the City of Quincy to bypass Mr. Pineo is affirmed and his appeal under Docket No. G1-13-294 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on August 7, 2014.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

James G. Pineo (Appellant)

Janet S. Petkun, Esq. (for Respondent)

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

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals
1 Congress Street, 11th Floor
Boston, MA 02114
www.mass.gov/dala

James G. Pineo,
Appellant

v.

DALA Docket No. CS-14-149
CSC Docket No. G1-13-294

City of Quincy,
Appointing Authority

Appearance for Appellant:

James G. Pineo

Appearance for Appointing Authority:

Janet S. Petkun, Esq.
City of Quincy
1305 Hancock Street
Quincy, MA 02169

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF TENTATIVE DECISION

The City of Quincy was reasonably justified in bypassing James G. Pineo for the position of police officer based on his written application alone. I therefore recommend that the Civil Service Commission dismiss the appeal.

TENTATIVE DECISION

The petitioner, James G. Pineo, appeals the decision of the City of Quincy to bypass him for a position as a police office. I held a hearing on March 8, 2014, which I recorded digitally.

Mr. Pineo, testified, and called no other witness. Quincy called two witnesses: Police Captain Michael Miller; and Helen Murphy, Quincy's Director of Human Resources. I have accepted into evidence 12 exhibits.

Mr. Pineo relied on his prehearing memorandum as his post-hearing memorandum. The appointing authority submitted a post-hearing memorandum.

Findings of Fact

1. In Fall 2013, Quincy decided to hire more police officers. (Miller and Murphy testimony; Exs. 3 and 4; stipulations.)
2. Mr. Pineo was one of the candidates for the position of police officer. (Ex. 5.)
3. Based on his Civil Service examination score, Mr. Pineo ranked twenty-ninth on the list of candidates, tied with five others. (Stipulation.)
4. The application that Mr. Pineo filled out asked for various documents to be submitted with it. (Ex. 5.)
5. Among the documents that the application requested was "Automobile Excise Tax Receipts for 5 years." (Ex. 5, p. II.)¹
6. Mr. Pineo and his wife each owned an automobile. Mr. Pineo did not submit automobile excise tax receipts for his wife's automobile, because he did not think that this request covered them. He submitted only a single year's tax receipt for his automobile, because he had owned it for only one year. (Pineo testimony.)
7. Mr. Pineo did not explain these facts on his application, but simply placed a checkmark before "Automobile Excise Tax Receipts for 5 years." (Ex. 5, p. II.)

¹ Exhibit 5 consists of an application with pages I through V and pages 1 through 19; a Personal Declarations Supplement, with pages 1 through 7; and two unnumbered pages at the end. In this decision's citations, "Supp." refers to the Personal Declarations Supplement. Citations to "Ex. 5" without "Supp." are to the main application.

8. On his application, Mr. Pineo, under his employment history, reported that he left Athena Health because he had been “[t]erminated.” Under “Comments,” he wrote, “Conflict with Supervisor.” (Ex. 5, p. 7.)

9. Two pages later, the application asked, “Give full facts as to each discharge and forced resignation from any position....” (Ex. 5, p. 9)(capital letters reduced to lower case.) Mr. Pineo responded: “Terminated from Athena Health February 2013 – Conflict with Supervisor.”

10. Mr. Pineo was given a short space – two-and-one-half lines – to explain each discharge and forced resignation, but did not use the full space to discuss Athena Health. (Ex. 5, Pineo testimony.)

11. Mr. Pineo did not attach an explanation of his firing from Athena Health or otherwise provide further details. (Ex. 5, Pineo testimony.)

12. Mr. Pineo knew that the details of his having been fired from Athena Health were important because two questions later, the application asked, “Have you ever been denied employment with any law enforcement entity...?” (Ex. 5, p. 9)(capital letters reduced to lower case.) Mr. Pineo answered, “Dept of Correction – was not selected for Academy in early 2013 for ‘negative Employment History’ due to being terminated from Athena Health.” *See also* Ex. 5, p. 12 (Pineo was asked and answered similar question).

13. When the application asked Mr. Pineo to list “all traffic citations, ticket[s], and fines from any state or country, “including “verbal and written warning[s],” (Ex. 5, p. 9)(capital letters reduced to lower case), he listed five citations: January 12, 2013 in Ludlow for speeding; April 20, 2013 in Watertown for failing to stop; February 28, 2005 and December 8, 2004 in Auburn for speeding; and August 5, 2004 in Brockton for speeding. He did not fill in the “disposition” column after each citation.

14. When the application asked Mr. Pineo, “Has your privilege to drive, your license, permit, or registration ever been suspended or revoked, in this state or any other state or

country?” (Ex. 5, p. 11)(capital letters reduced to lower case), he answered, “Suspended for 5 surcharg[e]able events in 2005. Took driver[?]s retraining course, and paid fine.”

15. Mr. Pineo did not know many of his neighbors. (Pineo testimony.)

16. When the application asked him to list the name, address, and telephone numbers of “three abutting neighbors from the past three years,” Mr. Pineo provided the requested information for one neighbor. He provided the requested information for a second neighbor, except for the last name, which he did not know. He left the space blank for a third neighbor, because he did not know a third neighbor. (Ex. 5, p. 11; Pineo testimony.)

17. On his application, Mr. Pineo did not explain why he had not provided all of the requested information. (Ex. 5.)

18. The application asked:

Chronologically, list all your residences for the past ten years...If applicable, identify and include the name and current address of at least two of the following for each address: roommates, landlords, realty company, mortgage company, etc.

(Ex. 5, p. 14)(all capitals reduced to lower case.)

19. For November 2006 to June 2008, a period of one-and-one-half years, Mr. Pineo answered, “Not available,” without further explaining. (Ex. 5, p. 14.)

20. The application asked Mr. Pineo to provide the name, address, and phone number of five references. Mr. Pineo did not provide the addresses of his five references. He did not explain why he had left them out. (Ex. 5, p. 16.)

21. Although the instructions specified not to use a relative as a reference, Mr. Pineo made a mistake and listed his father-in-law. (Ex. 5, p. 16; Pineo testimony.)

22. The directions to the Personal Declarations Supplement state:

[F]ill out this form completely. Do not skip any questions.....A “YES” answer to these questions will not necessarily disqualify you from consideration[;] however, you will need to provide additional information. If so, attach your response to this form on a separate sheet.

(Ex. 5, Supp. p. 1.)

23. A warning on the first page of the Personal Declarations Supplement states:

Complete responses to each and every question is mandatory. Include all incidents. Omission of any/all information may be cause for disqualification and your name may be removed from Civil Service eligibility.

(Ex. 5, Supp. p. 1.)

24. Mr. Pineo signed a statement that he had read and understood the requirements of the Personal Declarations Supplement. (Ex. 5, Supp. p. 1.)

25. The application, specifically the Personal Declarations Supplement, asked Mr. Pineo again about traffic infractions. (Ex. 5, Supp. p. 2.)

26. When asked to “[l]ist all written warnings...from a Police Officer,” Mr. Pineo listed a warning in 2012 from the State Police regarding an inspection sticker. (Ex. 5, Supp. p. 2.)

27. When asked to “[l]ist all tickets, citations, and fines that you have received from a Police Officer,” Mr. Pineo listed one in 2004 from the Brockton Police Department for speeding; two in 2005 from the State Police for speeding; one in 2012 from the Watertown Police Department for failing to stop; and one in 2013 from the State Police for speeding.

28. When asked if he had “[b]een disciplined by an employer for any reason,” Mr. Pineo circled “Yes.” That part of the application did not ask for an explanation and Mr. Pineo did not provide one. (Ex. 5, Supp. p. 3.)

29. At the end of the Personal Declarations Supplement, Mr. Pineo signed a statement, “I solemnly swear that each and every answer is full, true and correct in every respect.” (Ex. 5, Supp. p. 7.)

30. Captain Miller and three other high police officials screened approximately 30 applications, including Mr. Pineo’s. (Miller testimony.)

31. Captain Miller considers the application itself be a test. In his opinion, a candidate whose application is incomplete is apt to write incomplete police reports, and accurate reports matter, because police reports affect defendants – who can go to prison – and victims.

Officers need to pay attention to details in writing reports and observing crime scenes. Therefore, it is not acceptable for a candidate to turn in a sloppy or incomplete application. (Miller testimony.)

32. In this early stage, these reviewers rejected approximately eight candidates, including Mr. Pineo, based on their applications. The candidates were not interviewed. (Miller testimony.)

33. Captain Miller and/or the other reviewers were particularly concerned about the following:

A. Pineo skipped some answers, answered some incompletely, or did not follow instructions. This was especially true on the question about neighbors. (Miller testimony.)

B. Athena Health had fired Mr. Pineo. (Miller testimony.)

C. The Department of Correction had rejected Mr. Pineo. (Miller testimony.)

D. Mr. Pineo's license had been suspended, he had committed moving infractions, and he had committed recent infractions. Although a candidate's driving history alone won't disqualify him or her, a pattern of infractions in combination with other factors can do so.

Mr. Pineo did not appear to be learning; he was still committing driving infractions in his 20s. (Miller testimony.)

34. On November 19, 2013, Ms. Murphy, the Director of Human Resources, sent to Mr. Pineo an undated letter by Captain Miller to Mr. Pineo. (Ex. 2.)

35. Captain Miller's letter stated that the Quincy Police Department had rejected Mr. Pineo's application and bypassed "him for the following reasons:"

- Termination for Conflict with Supervisor at Athena Health
- Bypassed by Department of Correction for Negative Employment History
- Five job changes in 7 years
- Six residential moves in 10 years

- Driving Record to include 4 suspensions; one suspension for 5 surchargeable events, others for non-payment, total of thirteen moving violations for speeding, failure to stop, and accidents most recent as of 1/2013
- Incomplete answer to questions 46, 57²
- Question 59 states do not use Relatives for Personal References, you used your Father-in-Law
 - Failure to provide addresses for References
 - College record 1.98 GPA
 - Credit report shows a rating of 633 Fair, with approximately \$46,000 debt for cars, credit cards, personal and student loans two accounts have been more than 120 days late.
- Provided only 1 Automobile Excise Tax Receipt (5 requested)

(Ex. 2.)

36. In addition to Captain Miller's letter, Ms. Murphy sent to Mr. Pineo a list of successful candidates for the position of Quincy Police Department Officer and the reasons they were selected. (Ex. 2.) Although Mr. Pineo was not bypassed by all candidates on that list (Miller testimony; stipulation), he was bypassed by the following seven candidates (identified by initials) with the following traits:

(A) S.O. was a life-long Quincy resident; had a stable work history; had trained as an emergency medical technician; and had received all very positive remarks from references, coworkers, and neighbors. (Ex. 2.)

(B) E.M. had strong local ties; was active in the community; had graduated *summa cum laude* from Syracuse University; had graduated sixth in her class from New England School of Law out of 212 students; had served for three years as an Assistant District Attorney; had received all positive reviews, in her personal and professional life; had no criminal history; had no adverse driving history; had been an editor and published author in her law review; had received the 2013 Spotlight Award from the Massachusetts District Attorneys Association; and was a certified Zumba instructor.

(C) S.F. had received solid personal and professional references, including solid references from three current police officers. He had seven years of managerial experience in a local restaurant.

(D) J.B. had a Bachelor of Science degree in emergency management from Massachusetts Maritime Academy; had received solid professional and personal references; was a trained correction officer; had no criminal record; and was a life-long Quincy resident.

(E) M.H. had a Bachelor of Arts degree in criminal justice; had been trained at a police academy; had worked for five years as a Harvard University police officer; was a certified basic emergency medical technician; had been a sexual assault investigator and RAD (rape aggression defense) instructor; had no criminal record; and had received positive recommendations by employers and references.

(F) T.L. had an Associate's Degree in fire science; had no criminal record; and speaks Vietnamese.

(G) J.R. had a Master's Degree in criminal justice; had no criminal record; had worked for six years as a probation officer; had worked for 11 years as an FBI intelligence analyst; had positive recommendations from employers and references; and was well known to and recommended by numerous Quincy police officers.

37. Toward the end of the selection process, two other high-ranking police officials joined the four officials who were selecting candidates. (Miller testimony.)

38. Not every rejected candidate went through the full selection process, which included an interview. It became readily apparent to the reviewers that interviewing candidates whose applications did not interest them would not have been the best use of their time, especially considering the press of time to complete the selection and considering that some candidates' applications did not raise any issues about their candidacies.

39. Quincy's mayor accepted or rejected the recommendations of Captain Miller and the other reviewers; the mayor ultimately decided which candidates to offer employment to. (Miller and Murphy testimony.)

40. On December 27, 2013, Mr. Pineo timely appealed his bypass. (Ex. 1.)

² Question 46 was about traffic citations, tickets, and fines; Question 57 was about neighbors.

Discussion

Mr. Pineo testified that when he asked various people if they could use him as references, they agreed but did not want their addresses used. Hence, he did not list his references' addresses in his application. (Pineo testimony.)

He testified that at Athena Health, he and a coworker filed grievances about their supervisor's lack of professionalism, inability to lead the team, and poor judgment. Both he and his coworker were dismissed. (Pineo testimony.)

He testified that each of his job changes was for a particular reason. For example, he left an ambulance company because the salary was too low and he needed more money after he got married. (Pineo testimony.)

As for his residential moves, Mr. Pineo testified that before 2006, he lived with his mother. When she moved, he moved. In 2006, he moved in with one sister. When she had a second child and needed the room he was renting, he moved in with another sister. He moved from one rental apartment, because the landlord sold the building. He noted that he has lived in one place for six years. (Pineo testimony.)

Mr. Pineo testified that most of his debt was for his wedding and for loans for two cars, one each for his wife and him, so that they could drive to work. (Pineo testimony.)

Mr. Pineo conceded that his driving record was "fairly undesirable" and that when he was 19 or younger, he had not made the best decisions. He testified that he had only two infractions as an adult, one in 2012 and one in 2013. Of these two infractions, he received one citation because the light had turned red while he was waiting to turn on a green light. He received the other citation after being caught in a speed trap, he testified. (Pineo testimony.)

He explained that he had a poor academic record because at 19, he did not make good decisions, lacked direction, and did not pick an apt subject to major in. (Pineo testimony.)

Mr. Pineo argued at the hearing that his residential moves did not reflect on his qualifications to be a police officer and that his debt was not extravagant. He argued that the

following should not disqualify him: his error in listing his father-in-law as a reference; his lack of familiarity with his neighbors; and the Department of Correction's rejection of his application, especially since that department reconsidered and has since agreed to hire him.

The issues before me are not whether Mr. Pineo is personable, presents himself as a decent person, would be an effective police officer, or deserves to have his Athena health history and driving history disregarded or weighed. I make no determinations on those non-issues. The issue before me is also not whether the Quincy Police Department should have interviewed Mr. Pineo to learn more about the factors on his application. No authority precludes the Quincy Police Department from using a paper application to screen job candidates. No authority required the Quincy Police Department to use both a paper application and an interview as its initial method of screening job candidates.

Another issue that is not before me is whether Athena Health's decision to fire Mr. Pineo was correct. The fact that Mr. Pineo received unemployment compensation after Athena Health fired him does not mean that its decision to fire him was incorrect. It means that the Division of Unemployment Assistance determined that Mr. Pineo did not engage in

deliberate misconduct in wilful disregard of the employing unit's interest, or...a knowing violation of a reasonable and uniformly enforced rule or policy of the employer.

G.L. c. 151A, §25(e)(2). *See Jones v. Director of Division of Employment Security*, 392 Mass. 148, 150 (1984) ("When a discharged worker seeks compensation, the issue before the board is not whether the employer was justified in discharging the claimant...").

The Quincy Police Department established by a preponderance of the evidence that it was reasonably justified in bypassing Mr. Pineo. *City of Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 187 (2010). Mr. Pineo's paper application raised many flags in the appointing authority's mind. It was allowed to use his paper application as most, if not all, employers do: as an initial screening mechanism.

The appointing authority was not, as I said, required to interview him to allow him to discuss its concerns, especially when it had limited time. No government agency and no appointing authority has unlimited time to conduct its affairs, and the Quincy Police Department in this selection process was so short of time that it involved more police officials toward the end.

Had the appointing authority interviewed him, Mr. Pineo might have allayed some of its concerns, such as about his residential moves. He might or might not have allayed its concerns about his driving record. But even an interview might not have allayed some of its concerns, such as Mr. Pineo's leaving some answers incomplete. The appointing authority was reasonably justified in viewing his incomplete answers – without accompanying explanations – as throwing into doubt his ability to function as an effective police officer whose duties include writing complete reports.

The Quincy Police Department reasonably chose to bypass Mr. Pineo for other highly qualified candidates. I cannot “substitute[] [my] judgment for that of the city.” *Id.* at 192.

Conclusion and Order

The City of Quincy was reasonably justified in bypassing James G. Pineo for the position of police officer based on his written application alone. I therefore recommend that the Civil Service Commission dismiss the appeal.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth Bresler
Administrative Magistrate

Dated: