

COMMONWEALTH OF MASSACHUSETTS

Decision mailed: 4/23/10
Civil Service Commission *JB*

Suffolk, ss.

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

Ryan Polin,
Appellant,

vs.

DOCKET NO.: G1-08-266

Town of Randolph,
Respondent

Appellant's Attorney:

Pro Se

Respondent's Attorney:

Brian Magner, Atty.
Deutsch Williams Brooks DeRensis &
Holland, P.C.
One Design Center Place
Boston, MA 02210

Commissioner:

Daniel M. Henderson

DECISION

The Appellant filed his appeal, pursuant to the provisions of G.L. c. 31, § 2(b). The Appellant, Ryan Polin, (herein "Appellant" or "Polin") appealed the decision of the Respondent-Appointing Authority, Town of Randolph Fire Department, (herein "Town" or "Department") to bypass him from initial appointment as a firefighter to the Randolph Fire Department. The reasons stated by the Town for the bypass were his poor driving record and

his failure to disclose his North Carolina Driver's record despite being given the opportunity to do so.

The personnel administrator, Human Resources Division (herein "HRD"), pursuant to G.L. c 31§ 27, determined that the reasons provided by the Town were acceptable for bypass. The Appellant received notice of the bypass from the HRD on September 30, 2008, and he filed a timely appeal. A full hearing was held on January 16, 2009 at the offices of the Civil Service Commission. One audio tape was made of the hearing.

WITNESSES:

Charles Foley, Chief, Randolph Fire Department

James Hurley, Captain, Randolph Fire Department

Appellant, Ryan Polin

EXHIBITS:

1. Certification List – 280587
2. September 30, 2008 Notice from HRD
3. Certification List 270541
4. August 8, 2007 Notice from HRD
5. Copy of Massachusetts Temporary Driver's License
6. Application Packet, dated August 28, 2007
7. CORI Request Form
8. Authorization for Release of Information
9. Interview Questions
10. Driver's License Record, North Carolina
11. Driver's License Record, Massachusetts

12. Randolph Police Department Rap Sheet
13. Massachusetts Criminal Record
14. E-mails – re-signing extension date.

FINDINGS OF FACT:

Based on the documents entered into evidence, (Exhibits 1 through 14) and a stipulation of facts and the testimony of the Appellant, Ryan Polin, Fire Chief Charles Chief Foley and Fire Captain James Hurley,

I make the following findings of fact:

1. The Appellant, Ryan Polin, took a Firefighter Civil Service Examination on April 6, 2006. He passed said exam. (Exhibit 1)
2. The Town of Randolph Fire Department filed a requisition with HRD for a certified eligibility list for the appointment of two (2) full-time permanent firefighters. The Town received from HRD, certification No. 280587, dated June 26, 2008, with the directive to select 2 of the highest 5, who signed willing to accept appointment. The Appellant's name appeared first on the certification of those who signed willing to accept appointment. (Exhibit 1, stipulation)
3. The Appellant was bypassed for appointment as a firefighter, by persons who appeared lower on the certification list, (#280587). The Town reported its selections made, to HRD on September 24, 2008. (Exhibit 1, stipulation)
4. The Appellant was required to fill out the Town's standard employment application which asks each candidate to share his or her personal history. Such information includes

place of residence for the past ten (10) years, military record, level of education, employment history, personal references, and family history. It also includes a “Release of Information Agreement”, which is signed by the Appellant before a notary public (Exhibit 6, testimony of Foley)

5. Included in the application was an acknowledgement, signed by the Appellant, that states, “I further understand that any appointment tendered me will be contingent upon the results of a complete character and fitness investigation, and I am aware that willfully withholding information or making false statements on this application will be the basis for rejection of my application of [sic] dismissal from the Department.” (Exhibit 6, testimony of Foley)
6. Also included in the application was an “Authorization for Release of Information”, signed by the Appellant. That Authorization contains the statement, “I realize that the position of Firefighter is a sensitive public safety occupation and as such requires the highest levels of public confidence and public trust.” That Authorization also contains the statement: “I have read the above statement and fully understand its contents and meaning.” (Exhibit 8)
7. The Appellant’s name also appeared on Certification List # 270541. (Exhibit 3)
8. Chief Charles Foley is the Chief of the Randolph Fire Department and the Chief is the Appointing Authority for the Town of Randolph Fire Department. (Testimony of Foley)
9. The Appellant was added to Certification List # 270541 on August 8, 2007. The notice from the Commonwealth’s Human Resources Division stated that he had to appear before

the Chief or the Chief's designee to indicate his interest in being considered for a position by August 20, 2007. A representative from HRD informed the Chief that if the Appellant could not appear in person by August 20, 2007, he must indicate in writing by August 20, 2007 that he is willing to accept the position. The Appellant indicated on August 15, 2007 that he was willing to accept the position. (Exhibit 14, Testimony of Foley)

10. Chief Foley interviewed the Appellant for the Firefighter position on August 31, 2007. Captain James Hurley and a fire department clerk were present for the interview. Chief Foley used the same list of questions for all firefighter candidate interviews. (Exhibit 9, testimony of Foley)
11. Chief Foley asked the Appellant question #10 from his predetermined list of questions, which states, "You presented a current valid Massachusetts Drivers License as part of the application process. Please share any and all information regarding your driving history?" In response to this question, the Appellant mentioned that he had a problem with his driving record when he was younger, but that once he entered the military, it was resolved. (Testimony of Foley, Exhibit 9)
12. In the background investigation, the Chief learned that the Appellant had a Driver's record of moving violations in the state of North Carolina, while he was in the military. The records obtained by the Chief showed that he was cited for 3 separate charges of speeding, and that he was also cited for reckless driving. The citation dates for the speeding charges were: 8/05/06, 9/16/06 and 10/29/06. The citation date for the reckless driving charge was 5/13/06. The Driver's record also includes a statement of "Driver Conviction" with a date of 12/24/07 on a citation date of 12/24/06 and a "Driver

Conviction Text: Probation, Two Convic. Of Speeding over 55 MPH in 12 Months.”

This information contradicted the Appellant’s statement at his interview that: “I had a little bit of a driving record problem earlier in life but it ended when I entered the military”. It is noted that the Appellant’s North Carolina conviction occurred after his 8/31/07 interview but that all of the citation dates occurred well before the interview and were pending. (Testimony of Foley, Exhibit 10)

13. The Appellant’s driving history also shows a very extensive Driver’s Record of citations in Massachusetts from 1998 to 2004, 7 and half pages. The history includes, among other offenses, speeding and revocation of a driver’s license, surchargeable events and operating without a license. He was also charged numerous times as a habitual traffic offender for which he had hearings, (1999-2003) and apparently became enrolled in remedial RMV driving programs in 2001, 2002 and 2003. (Exhibit 11)
14. During the interview process. Chief Foley provided the Appellant more than one opportunity to describe and explain his driving record. Chief Foley had the Appellant’s North Carolina Driver’s Record, Massachusetts Driver’s Record, CORI record and his Randolph Police Department record at the time of the interview. Even after being given multiple opportunities and specifically being asked during the interview about his driving record; he failed to disclose any information about his North Carolina driving record. (Exhibits 7, 10-13, testimony of Foley, Hurley and Appellant)
15. The Appellant admitted during the hearing that he told Chief Foley that he had no infractions in North Carolina. The Appellant did not believe that his infractions in North Carolina would be disclosed as part of the background investigation. However, the

Appellant understood that he was required to answer questions truthfully and his failure to truthfully admit to the North Carolina infractions displays a failure to be forthcoming and a willingness to evade the truth. The Appellant was asked to provide any and all information about his driving record, in writing on the application and orally, specifically regarding his North Carolina driver's record, at his interview. The information about the driving infractions in North Carolina would have been responsive to the question and was clearly relevant to the position of Firefighter. (Exhibit 10, testimony of Appellant, Hurley and Foley)

16. The Appellant was asked several times during the formal interview, Question #10 (Ex.9) about his driver's record in North Carolina. He responded that he didn't have a record there. Then, at a second informal interview, within one week at Captain Hurley's office he was again asked by Chief Foley about any North Carolina driver's record. He again denied having any. Finally, Chief Foley thrust the North Carolina record in front of him. The Appellant then responded: "I didn't think that counted because it was not found guilty" (Exhibit 10, testimony of Hurley and Foley)
17. The Appellant admitted he was asked the question about his driving record in North Carolina. However, he claimed he misunderstood his obligation to answer; he believed that he did not have to reveal anything that was not criminal and not a conviction or a guilty finding. The Appellant claims to sincerely want to be a Firefighter and that it has been a life-long desire. He believes that he would be an asset to the Department.
(Testimony of Appellant)

18. The Appointing Authority subsequently selected other candidates from Certification No. 270541 and bypassed the Appellant. The Appointing Authority provided its reasons for the bypass to the Human Resources Division on September 14, 2007. (Exhibit 3). The reason provided was:

Ryan M. P. . . . failed to provide complete information on his application regarding his driving history. Upon investigation, Ryan's background showed a poor driving record prior to and during his military service. Ryan did acknowledge his poor driving record prior to entering the military, but stated that he had not had any infractions after entering military service. During his interview, Ryan was asked if there were any other driving occurrences subsequent to entering the military he wished to disclose. Despite two opportunities during which he was given to offer an explanation for any subsequent occurrences, Ryan deliberately omitted disclosure and failed to provide any information regarding his outstanding driving issues during his time in the military. This omission was deliberate and intentional which displays a lack of honesty. Ryan was given multiple chances to disclose his driving citations and failed to do so. The assumption by the public of a Firefighter is one of honesty, trust and loyalty with a keen desire to preserve and protect their trust. Lying is a dishonorable action and does not instill confidence and trust. A Firefighter must be honest and truthful, other members of his team rely on this trust with their lives. Public trust is essential in the fire service, of which honesty is an important characteristic. Ryan's failure to completely disclose his driving record is a failure which indicates his dishonesty. Therefore, it is in the best interest of the Randolph Fire Department to bypass this candidate.

19. The Appellant's name appeared on Certification # 280587, dated June 26, 2008. (Exhibit 1)
20. Chief Foley bypassed the Appellant again in 2008, based on the same stated reasons he had previously bypassed the Appellant in 2007. (Exhibit 2, testimony of Foley)
21. The Appointing Authority notified the Human Resources Division of the reasons for bypass on September 24, 2008, and the HRD informed the Appellant of the reasons and

its determination that those reasons are acceptable on September 30, 2008. (Exhibit 2, testimony of Foley)

22. The two appointed candidates were also asked the same ten questions during their interviews. They each disclosed “any and all information regarding their driving history” in answer to question #10. (Exhibit 9, testimony of Hurley)
23. Driving is an important part of a firefighter’s duties. Firefighters drive large, expensive apparatus through busy streets at all times of day or night and in all weather conditions. It is important that a Firefighter has exhibited good driving ability, respect for the law, honesty and good judgment in his past experience. Lives and property are at stake. It is also important that co-workers and the public trusts the character and driving skills of fire fighters who operate such equipment. (Testimony of Foley and Hurley, administrative notice)
24. The Appointing Authority has the obligation to choose the best qualified candidates for the available positions, and the interview process can play an important role in determining the best qualified candidates. A candidate’s driving record, respect for the law and honesty are important factors in choosing the best qualified candidates. (Exhibits, testimony, administrative notice)
25. The two Town witnesses: Chief Foley and Captain Hurley were professional and appropriate in all aspects of their demeanor, presentation and testimony. They were direct, unhesitant and responsive in their answers. They maintained eye contact and their body language was consistent with straight-forward answers. They did not expand or extend their answers for greater effect. They corroborated each other’s testimony in key

aspects. They did not appear to have any ill feeling toward the Appellant. If anything, they each appeared to have somewhat of a lenient attitude toward him. I find that they are both credible and reliable witnesses. (Evidence, testimony, and demeanor of Foley and Hurley)

CONCLUSION:

In a bypass appeal, the Commission must decide whether, based on a preponderance of the credible evidence before it, the Appointing Authority sustained its burden of proving there was "reasonable justification" for the bypass. City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 303 (1997). It is well settled that reasonable justification requires that the Appointing Authority's actions be based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind guided by common sense and correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

In determining whether the Appointing Authority had reasonable justification to take the action of bypassing the Appellant, the Commission must consider the fundamental purpose of the Civil Service System which is "to protect against overtones of political control, objectives unrelated to merit standards and assure neutrally applied public policy." If the Commission finds that there are "overtones of political control or objectives unrelated to merit standards or neutrally applied public policy," then it should intervene. Otherwise, the Commission cannot substitute its judgment for the judgment of the Appointing Authority. City of Cambridge at 304. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has 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 Commission, 31 Mass. App. Ct. 315 (1991). The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001).

All candidates must be adequately and fairly considered. The Commission will not uphold the bypass of an Appellant where it finds that "the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons." Borelli v. MBTA, 1 MCSR 6 (1988).

Also, Basic merit principles as defined in G.L. c. 31, §1 require that employees be selected and advanced on the basis of their relative ability, knowledge and skills, assured fair and equal treatment in all aspects of personnel administration and that they are protected from arbitrary and capricious actions. See Tallman v. City of Holyoke, G-2134 Cotter, et al v. City of Boston, et al., United States District Court of Massachusetts, Civil Action Number 99-1101, (Young, CJ).

The appointing authority, in circumstances such as those before us, may not be required to appoint any person to a vacant post. He may select, in the exercise of a ***sound discretion***, among persons eligible for appointment or promotion or may decline to make any appointment. (Emphasis added) See the following line of cases as quoted in Goldblatt vs. Corporation Counsel of Boston, 360 Mass 660, 666, (1971); Commissioner of the Metropolitan Dist. Commn. v. Director of Civil Serv. 348 Mass. 184, 187-193 (1964). See also Corliss v. Civil Serv. Commrs. 242 Mass. 61, 65; (1922) Seskevich v. City Clerk of Worcester, 353 Mass. 354, 356

(1967); Starr v. Board of Health of Clinton, 356 Mass. 426, 430-431 (1969). Cf. Younie v. Director of Div. of Unemployment Compensation, 306 Mass. 567, 571-572 (1940). A judicial judgment should "not be substituted for that of . . . [a] public officer" who acts in good faith in the performance of a duty. See M. Doyle & Co. Inc. v. Commissioner of Pub. Works of Boston, 328 Mass. 269, 271-272."

In the instant case, the Town exercised sound discretion, based on sound and sufficient reasons related to basic merit principles in bypassing the Appellant for appointment. The Appellant's ability or skill to perform a basic function of a Firefighter, driving legally and responsibly has been shown to be seriously lacking. Furthermore, the Appellant's judgment, honesty or understanding has also been shown to be very questionable. There is no evidence of any bias, favoritism or political overtones involved in this selection process.

It is well established that honesty and good character are essential qualifications for the positions such as fire fighter, as they affect the lives and property of the public. The Appellant failed to establish the requisite honesty by his failing to disclose his driving offenses while he was in North Carolina. Even after multiple opportunities to admit to violations in North Carolina, the Appellant chose not to be forthcoming. The questions asked by Chief Foley were relevant, regarding driving skill and law abidance and it should have been clear to the Appellant that Chief Foley was looking for any and all information about his driving record. The Appellant knew about the driving infractions in North Carolina, but admitted that he did not mention them because he did not believe they would be discovered during the background investigation. The Appellant was hoping that Chief Foley would not learn the full extent of his driving record, when he should have been concerned with being as honest and forthright as possible, especially given his stated desire for the job. The Appellant was hoping to portray his past poor driving record as

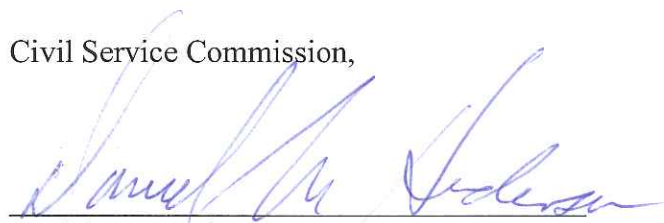
ending when he joined the military, when it actually had not. The Appellant's attempts to evade the question do not portend well for his ability to deal forthrightly with other members of the fire department. As the job of a fire fighter is extremely important, it is as important for the Appointing Authority to select the best candidates for these positions. Clearly, it was reasonable for Chief Foley to have concerns about the Appellant's ability to relate to fellow members of the fire department and the public in an honest manner. The public relies on the honesty and integrity of members of the fire department, as well as their knowledge and skill. The position is too important to appoint an individual who was not forthright about an important and relevant matter in the hopes he would not "get caught."

A good driving record is also important for fire fighters, and the Appellant's driving record is very poor. The driving record includes infractions in both Massachusetts and North Carolina, and both before the Appellant entered military service and after he entered the service. While it is not essential that the driving record be perfect, the Appellant's driving record is extensive, and it is reasonable that the extent of it would cause the Appointing Authority to be concerned about the Appellant's abilities to safely operate the equipment.

Based on his very poor driving record and his dishonesty about his driving record, the Appointing Authority had reasonable justification to bypass the Appellant.


For all of the above stated reasons, the appeal on Docket No. G1-08-266 is hereby *dismissed*.

Civil Service Commission,


Daniel M. Henderson,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Marquis, Henderson, Stein and Taylor, Commissioners), on April 22, 2010.

A True Record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:

Ryan Polin
Brian Magner, Atty.
John Marra, Atty. (HRD)