

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

RYAN PORTER,  
*Appellant*

v.

Docket No.: G1-15-241

CITY OF PEABODY,  
*Respondent*

Appearance for Appellant:

*Pro se*

Appearance for Appointing Authority:

Donald L. Conn, Jr., Esq.  
Assistant City Solicitor  
City of Peabody  
34 Main Street  
Peabody, MA 01960

Commissioner:

Cynthia Ittleman<sup>1</sup>

**DECISION**

Pursuant to G.L. c. 31, § 2(b), the Appellant, Ryan Porter (“Mr. Porter” or “Appellant”) filed a timely appeal with the Civil Service Commission (“Commission”) from the decision of the City of Peabody (“Peabody” or “Respondent”) to bypass Mr. Porter for appointment to the position of reserve police officer. A pre-hearing conference was held on January 12, 2016 and a full hearing was held on February 19, 2016; both were held at the offices of the Commission.<sup>2</sup> At the hearing, witnesses were sequestered, with the exception of the Appellant. The hearing was

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Brendan Rimetz in the drafting of this decision.

<sup>2</sup> 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.

digitally recorded, with copies provided to the parties.<sup>3</sup> For the reasons stated herein, the appeal is denied.

## **FINDINGS OF FACT**

Based on Exhibits one (1) through eighteen (18), as well as the interview ratings provided by the Respondent post-hearing pursuant to my request at the hearing<sup>4</sup> (“(Respondent’s Post-Hearing Submissions”), and the testimony of:

*Called by the Appointing Authority:*

- Robert Church, Detective, Peabody Police Department (“PPD”)
- Thomas Griffin, Chief, PPD

*Called by the Appellant:*

- Ryan Porter, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences from the evidence, a preponderance of evidence establishes the following findings of fact:

### Background

1. Mr. Porter is a thirty-five year old man residing in Peabody, MA. He is married and has three children. (Testimony of Mr. Porter; Exhibits 4 and 5)
2. Mr. Porter is a graduate of Reading Memorial High School. After graduating from high school, Mr. Porter served in the Army National Guard for six years, during which time he was decorated for meritorious service. He was on active duty from August 2002 to February 2003 where he served in as a military police officer in Uzbekistan. He was decorated for

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<sup>3</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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.

<sup>4</sup> I also asked the Respondent if any of those who were hired in the hiring cycle involved here were related to members of the Peabody Police Department officers and the answer was no.

meritorious service and was honorably discharged in 2006. (Testimony of Mr. Porter; Exhibit 3)

3. After leaving the military, Mr. Porter took courses at Middlesex Community College but did not obtain a degree. He also worked at various jobs, which included armed security, loss prevention, and HVAC work. At the time of the Commission hearing, Mr. Porter was an investigator in a family-related business. (Testimony of Mr. Porter)
4. In 2005, Mr. Porter took an open examination for the position of police officer and appeared at the top of the certification list for the position of police officer for the Reading Police Department (“RPD”). (Porter v. Reading Police Department, 21 MCSR 43 (2007))
5. Mr. Porter was bypassed by the RPD and subsequently filed an appeal with the Commission. The Commission dismissed that appeal. (Porter, 21 MCSR 43)
6. In December 2007, Mr. Porter again applied to become a police officer in the RPD. He was hired and graduated from a police academy in August 2008. Mr. Porter then began working as a Reading police officer in August 2008. (Exhibits 3 and 4)

#### Termination from RPD

7. In the approximately ten (10) months that Mr. Porter was a Reading police officer, he was involved in four (4) motor vehicle accidents while operating a police department vehicle. In two (2) of the incidents, he was found not negligent and he was not disciplined. (Exhibits 17 and 18 (Mr. Porter’s reports)<sup>5</sup>)
8. Mr. Porter’s first accident occurred on November 14, 2008 when he was checking a golf course at 2:30 a.m. and he backed into a pile of dirt while turning around the struck a rock. As a result, the cruiser’s rear bumper had a “minor crack” in it. Mr. Porter was found not to

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<sup>5</sup> When testifying, PPD Det. Church did not recall if, in the course of his investigation, he had seen the RPD accident reports that Mr. Porter had submitted to RPD, including the one Mr. Porter filed belatedly for the fourth accident (Exhibits 7, 16, 17 and 18).

be negligent in that accident because it was dark and the vehicle he was driving had a faulty reverse lighting system. (Exhibit 17) The second accident occurred on February 10, 2009 when Mr. Porter was conducting building checks in the area he was assigned at around 2:40 a.m. Mr. Porter was surprised by a coyote that ran in front of his vehicle while he was driving, which caused him to veer off the roadway and strike the curb, causing two flat tires. The shift supervisor on duty during the February 10 accident wrote a report that found Mr. Porter's actions to be "... a result of normal reflex and reaction to a roadway obstruction. ..." (Exhibit 18) Mr. Porter was not disciplined. (Id.) The third accident occurred on April 7, 2009 at 6:45p.m. when Mr. Porter struck another vehicle at a red light. Mr. Porter stated that he was unaware that a new traffic light cycle gave the other driver the right of way. (Exhibits 9 and 18) There is no description in the record of the damage caused by this accident. (Administrative Notice). There is also no indication in the record if Mr. Porter was disciplined for this accident, although Lt. Garchinsky noted, "[t]here was no doubt as to who was at fault." (Exhibit 9)

9. Mr. Porter's fourth and final accident at RPD occurred on May 24, 2009. On that evening, Mr. Porter was working on the 4 p.m. to midnight shift for the RPD. At around 6:45 p.m. on May 24, 2009, it was still daylight and there were no obstructions. While driving through an empty parking lot as part of conducting a business check, Mr. Porter struck a concrete post with the right front bumper of his patrol cruiser ("Car 4") while making a U-turn in a parking lot. (Exhibit 7)
10. After making contact with the concrete post, Mr. Porter stopped Car 4 and got out to inspect the damage. The passenger-side front blinker light lens was cracked and the bumper in that area was scuffed. (Exhibits 7 and 8)

11. Mr. Porter did not report the accident to his shift supervisor because of his previous accidents as he was concerned that exposure of the accident could lead to his termination from the RPD.<sup>6</sup> (Exhibits 6 and 7)
12. Damage to Car 4 was brought to the attention of Lt. David Stamatis (“Lt. Stamatis”) of the RPD on June 2, 2009 by Officer Chris Picco (“Ofc. Picco”).<sup>7</sup> At the time, Ofc. Picco was the RPD’s Fleet Maintenance Officer. (Exhibit 8)
13. Along with the cracked front lens and bumper damage, Car 4 also had damage to a couple of the vehicle’s tires and there was a scrape that ran the length of the passenger side of the vehicle. (Exhibits 8 and 11<sup>8</sup>)
14. On June 3, 2009, at 10:30am, RPD Patrol Sergeant Mark O’Brien (“Sgt. O’Brien) wrote a memorandum stating, in part, as follows,

The following report is a summary of the facts regarding a conversation I had with Officer Porter about an unreported accident involving Reading Police unmarked vehicle #4. On the above date and time I was working the 7 AM to 7 PM shift as the street super visor. ... Part of my job is to supervise experienced senior patrol officers.

I had the occasion to speak with Lt. Stamatis in his office. Lt. Stamatis advised me that it was brought to his attention that an accident, which caused damage to the front end and passenger side of Car #4, went unreported.

The cause of the accident was unknown, and no investigation had been set in motion. I went out and looked at car #4. The right front plastic housing which protects the head lamp was cracked. There appeared to be a scrape on the passenger side which ran the length of the vehicle. Both passenger tires (sic) rims had been dented. I could not determine if all the damage occurred from a single incident. ... The damage was significant. ... By policy, the accident should have been reported and investigated by the officer-in-charge, or his designee, on the shift the accident occurred. ...

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<sup>6</sup> It appears, although not established, that Mr. Porter submitted timely reports regarding his prior three (3) accidents.

<sup>7</sup> In his report on the incident, Lt. Stamatis stated that that Officer Picco had been on vacation the week prior to June 2, 2009 and therefore the damage to the vehicle was not brought to his attention until he returned to work on June 2, 2009.

<sup>8</sup> Exhibit 11 is a document typed by RPD Sgt. O’Brien. PPD Det. Church testified that the handwriting on Exhibit 11 is his. (Testimony of Det. Church)

As the Police Departments Field Training Program Manager, I had knowledge that Officer Porter ... had just recently undergone an Emergency Vehicle Operator Course (EVOC). It was common knowledge that Officer Porter had been involved in several accidents which prompted the training.

A month or so ago I had a conversation with Officer Porter ... I was off duty, and had a 'heart to heart' conversation with him. Officer Porter is a likeable officer that had kept bringing the wrong attention to him (sic), by getting involved in accidents. ... I told him that if he got involved in another accident that he was placing his job in jeopardy. ...

... I thought it was possible that Officer Porter could have been the operator of Car #4, and not reported the accident ... I asked Lt. Stamatis if he wanted me to speak with Officer Porter about the damage to Car #4. Lt. Stamatis agreed that it would be in Officer Porter's 'Best Interest', to come forward now before any investigation took place. If Officer Porter was involved, he would receive less punishment before an investigation occurred ...

On/or about 10:45AM I had the occasion to speak with Officer Porter ... I informed him that Car #4 was damaged and that it would be better for the party responsible to own up to it before an investigation ... Officer Porter stated to me that he was glad he 'was not involved', and that he had 'not driven the car in two weeks'. I told him that was in the 'time frame' when the accident occurred. Officer Porter stated, 'It wasn't me'.

Subsequent to the conversation with Officer Porter, I informed Lt. Stamatis that Officer Porter denied involvement in the damage to Car #4."

(Exhibit 11)

15. PPD Lt. Church made notes on Exhibit 11, including the following,

"... Porter stated the denial was for the heavy damage along the passenger side and to the passenger side tires. He admitted he had panicked about the minor damage to the headlight area, but didn't want to admit to damage he didn't cause. ..."

(Exhibit 11)

16. Lt. Stamatis and Patrol Sergeant Mark O'Brien ("Sgt. O'Brien") conducted an investigation into the damaged Car 4. (Exhibit 4) Lt. Stamatis inspected the damage to Car 4. RPD Police Chief James Cormier ("Chief Cormier")<sup>9</sup> then instructed Lt. Stamatis to begin speaking with all of the RPD police officers who used Car 4 between May 13

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<sup>9</sup> RPD Chief Cormier retired at the end of 2015. (Administrative Notice)

and June 2, 2009. When the investigation was completed, Lt. Stamatis wrote an eight (8) page, single-spaced report, dated June 11, 2009, to Chief Cormier. Lt. Stamatis' report states, in part,

“ ... Due to the fact that no one had come forward to report the damage, I had begun to gather all the cruiser check sheets in roll call so that we could narrow the scope of the search for potential operators of this vehicle. I further generated a matrix with the names, dates and times this vehicle had been driven up to the point the damage was reported. I went back as far as May 13, 2009 when reviewing these cruiser slips.... There were a total of 11 officers who used this cruiser between these dates for a total of 30 different shifts. ...

Once all the potential names had been identified and the time frame narrowed down, I presented this information to the Chief. At approximately 3:30pm on June 2, 2009, Chief Cormier instructed me to begin speaking with all the operators of car 4 ... in the matrix ...

At Approximately 10:16, am, Sergeant Mark O'Brien came into my office and spoke to me regarding the potential that Officer Porter could be involved in causing the damage in question to car 4. He informed me that he felt there as (sic) a substantial likelihood he could be involved due to his extremely poor driving history and the fact that he has already been involved in three cruiser accidents since his becoming a Reading Police Officer less than a year ago. He asked me at this time if I thought it would be prudent of him to go out into the square where Officer Porter was currently working a detail and ask him if he damaged the cruiser. I informed Sergeant O'Brien that putting the question to him would be fine, and that I had intended to go out into the square shortly myself to speak directly to him and [Officer M] who was also working a detail on West Street on this day. ...

At approximately 10:25am Sergeant O'Brien returned to my office and informed me that he had just spoke (sic) to Officer Porter ... Sergeant O'Brien stated to me that Officer Porter strongly denied being involved with any damage to car 4. ...

I left the station and proceeded (sic) to Officer Ryan Porter's location on detail in the square ... Officer Porter stated to me, 'Lieutenant, I never damaged car 4, I know everyone thinks I did because of my driving record, but I promise you, I did not damage that vehicle.' ... I then asked Officer Porter directly, 'Ryan, did you damage car 4 on any of the times you took it on patrol either on May 18<sup>th</sup> or during the A shift or May 24<sup>th</sup> during the A or C shifts?' Officer Porter replied, 'Lieutenant Stamatis, I swear to you that I did not damage that cruiser, I am not the one who damaged car 4 ...

At approximately 11:05am, I met with Officer [M] ... I asked Officer [M] if he recalled using car 4 while on patrol on May 21, 2009 during the C shift. Officer [M] replied, 'yes, I was in car 4 on that shift for car 4.' I asked him if he remembered seeing any damage

that was noteworthy (sic) or consistent with the damages currently on car 4. Officer [M] stated, 'I do recall checking for damage, I always do check. I do not believe there was any damage on car 4 when I checked it ... If you asked me how sure I was, I would say this, I am sure enough that I would bet money on it, but if I were asked to testify in court I would say I am not sure that I could say there was no damage to that cruiser when I checked it. ...' Lastly I asked Officer [M] if he recalled checking the exterior of car 4 for damage again at the end of his tour of duty ... Officer [M] stated, 'No, I did not check the cruiser again at the end of my shift.' ...

This day (Wednesday, June 3, 2009) being my last shift for the week, prior to my leaving for the day, I updated the Chief on the progress of this inquiry. ... I informed him that it would be my intention to look at the video footage preserved through our in-house camera system to try and ascertain a better idea as to when the damage actually occurred upon my return to work on Monday, June 8, 2009. Up to this point, I informed the Chief that all parties whom I had conversation with ... had denied any involvement. He instructed me to begin asking each involved operator who operated car 4 between May 17, 2009 and May 25, 2009 to write a detailed report ...

On June 7, 2009 at approximately 2:07pm, I received a call at home from [Officer M]. ... Officer [M] made the following statement: ... I was involved in a minor cruiser accident that resulted in potential damage to car 4.' I asked Officer [M] when he would be reporting to work next. He informed me that he was reporting to work on the midnight shift, Monday, June 8<sup>th</sup>. I informed him that I was back to work as well on this day and that I would be in my office at 7:00am. I told Officer [M] that we would discuss this matter further at that time. ...

On June 8, 2008 (sic) at approximately 7:15am, I asked Officer [M] to come to my office ... Officer [M] stated that following his discussion with me last week on his detail he wanted to make sure that I was aware of a minor incident he was involved with while using car 4. He went on to tell me that since the time we have talked ... he had heard from several different officers that there was a potential for the department to use a lie detector test to get to the bottom of who was responsibility (sic) for the damage to car 4. Officer [M] stated that after some thought; (sic) he had recalled a minor incident that took place on the campus of the high school while he was driving car 4. ... He noticed a small child who was riding his bicycle and he begin (sic) to wave at him. Officer [M] turned his attention toward the child and waved back. It was not too long before he noticed that he was about to collide with a curb. He stated that he adjusted the wheel to the left immediately after realizing that he had drifted off course. He told me he thought initially he was going to avoid a collision completely but did make contact with the front right tire just barely skimming the curb.

Officer [M] informed me that he did not initially report this incident because he felt that it did not amount to a reportable situation ....

After hearing Officer [M's] explanation, I informed him that the damage I observed to the tire on car 4 could have been caused by a brief collision with a curb. The specific

damage to which (sic) that tire I observed on Tuesday, June 2, 2009 with Officer Picco. Moreover, the incident Officer [M] described while in my office could not have created the damage which I was inquiring about on Wednesday, June 3, 2009 at this detail, specifically, the right front passenger's side bumper and directional lense (sic).

Nevertheless, I expressed to Officer [M] the importance of reporting any incident such as the one he just described to me immediately to a supervisor upon it occurring. ...

At approximately 8:30am, I received a phone call from Chief Cormier requesting that I speak to him in his office. Upon meeting the Chief in his office, he informed me that Officer Porter had come forward and reported he caused the front passenger bumper and directional lense (sic) damage to car 4 ... Chief Cormier informed me that he had received a phone call from Officer Porter while he was home on Sunday, June 7, 2009. The Chief informed me that when Officer Porter called him at home, he did not tell him the purpose of his call but requested to speak with him on that day at the Police station and that it involved a very serious matter.

Chief Cormier informed me that he honored Officer Porter's request to speak with him. The Chief arranged to meet him at the Police station in his office during the afternoon hours of Sunday, June 7, 2009. The Chief informed me that it was at that time that Officer Porter revealed that he caused the damage to car 4, specifically the damage that I had questioned his involvement in on Wednesday of last week. According to Chief Cormier Officer Porter showed great remorse that he 'let me down' and what bothered him more than anything else was that he 'lied to Lieutenant Stamatis and Sergeant O'Brien.' ..."

(Exhibit 8; *see also* Exhibit 6)

17. After speaking with Chief Cormier, Mr. Porter filed an accident report regarding the damage to Car 4. In his report, Mr. Porter admitted to causing damage to the right corner of the front bumper and the crack in the lens of the right front headlight. (Exhibits 6 and 7)
18. On June 9, 2009, RPD Lt. Peter Garchinsky submitted to RPD Chief Cormier a summary of the four (4) cruiser accidents in which Mr. Porter had been involved. Lt. Garchinsky wrote that Mr. Porter was at fault for the April 7, 2009 accident, that in three (3) of the four (4) accidents, "carelessness seems to be the root cause." (Exhibit 9). Of the February 10, 2009 accident, Lt. Garchinsky wrote that while it was possible that accident occurred as Mr. Porter described, Lt. Garchinsky was "now doubtful" of Mr. Porter's explanation. With respect to

the November 14, 2008 accident, Lt. Garchinsky found that Mr. Porter should have been more cautious. Lt. Garchinsky added, "I must say that the majority of officers I have known in their probationary periods would and have exercised more care and better judgment than Officer Porter has done up to this point." (Exhibit 9). Finally, in view of the May 24, 2009 accident and Mr. Porter's untruthful denial about it, Lt. Garchinsky concluded,

"... After viewing his poor civilian driving record and the recent incidences of questionable driving resulting in collisions and his lack of good judgment during a probationary period, I feel extending this (sic) probationary period 6 month (sic) would not be unwise to protect the department and to see if this pattern continues.

Furthermore, I feel two separate written reprimands for conduct unbecoming of an officer for lying to a superior officer and failing to report damage to department property is also warranted."

(Id.)

19. On Jun 12, 2009, Chief Cormier wrote a four (4)-page memorandum, single-spaced, stating that Mr. Porter had phone him at home in the afternoon of Sunday, June 7, 2009, asking to speak with Chief Cormier. Chief Cormier called Mr. Porter back and agreed to meet Mr. Porter at the RPD station. They met at approximately 6p.m., where Mr. Porter said that he had damaged the passenger side marker light and/or headlight area, which he had not reported. Mr. Porter was remorseful and had not eaten or slept over concern about it. Mr. Porter described how the damaged occurred and that he believed that it wasn't too extensive. He had not reported it for fear of possible repercussions. By this time, Chief Cormier wrote, Lt. Stamatis and Sgt. O'Brien had reported that Mr. Porter denied that he caused the damage to the cruiser and Chief Cormier discussed their reports with them. Chief Cormier had also received a report from Lt. Garchinsky's that he had requested, regarding all of the car accidents in which Mr. Porter had been involved. In addition, Chief Cormier reviewed the Field Training Reports on Mr. Porter. (Exhibit 6)

20. Upon reviewing these reports and discussing them with RPD Lt. Stamatis and Sergeant Mark O' Brien ("Sgt. O'Brien"), RPD Chief Cormier decided that Mr. Porter should either resign or he (RPD Chief Cormier) could order a formal investigation that he believed would show that Mr. Porter was untruthful, damaged the cruiser and failed to report the damage, and that Mr. Porter's employment should be terminated. (Exhibit 6) Chief Cormier met with labor union representatives on June 10, 2009 so they could prepare to advise Mr. Porter. (Id.) Mr. Porter was advised by the union that probationary employees can be terminated and do not have the civil service rights of tenured employees; he called an attorney who told him the same thing. (Testimony of Mr. Porter)
21. On June 11, 2009, RPD Chief Cormier, two union representatives, Lt. Robbins and Lt. Stamatis met with Mr. Porter. At that time, Chief Cormier gave Mr. Porter the two options that he had considered, stating that if Mr. Porter did not resign, he would be placed on paid administrative leave until a complete investigation into the cruiser damage was conducted, with the most likely outcome being termination of Mr. Porter's employment. (Exhibit 6)
22. Mr. Porter chose to resign, effective immediately. (Exhibits 6 and 10)
23. Following his resignation from the RPD, Mr. Porter held a number of jobs and continued to pursue police work. In April 2011, he applied for employment at the U.S. Customs and Border Protection Agency and was not selected. In May 2011, he applied for employment at the UMass Boston Campus Police and that application was also not selected. (Testimony of Mr. Porter; Exhibit 3)

#### Application to PPD

24. PPD Chief Griffin, who testified here, was appointed Chief of Police in or about May 2015. Before being appointed Chief at the PPD, he worked next door in the Salem Police

Department for twenty-seven (27) years. In the Salem PD, he conducted pre-employment investigations in two (2) hiring cycles and conducted many other investigations. His predecessor at PPD was Interim Chief St. Pierre.<sup>10</sup> Prior to the certification at issue here, a certification was issued to Interim Chief St. Pierre but no one was hired from it. (Testimony of PPD Chief Griffin)

25. On June 15, 2013, Mr. Porter took the police officer Civil Service Exam. On November 1, 2013, an eligible list of applicants, including Mr. Porter, was established after Peabody requested a certification to fill fifteen (15) the reserve police officer positions. (Stipulated Facts)

26. On December 2, 2014, the state's Human Resources Division ("HRD") sent Certification 02478, which included Mr. Porter's name, to the Respondent. (Stipulated Facts)

27. Mr. Porter applied for the position of Permanent Reserve Police Officer at the PPD in December 2014. (Exhibit 3)

28. In the employment record section of his application, question number 20, which inquires if the applicant was fired from, quit a previous job, or left a job for other reasons "under unfavorable circumstances", Mr. Porter wrote,

"06/2009 ... Resigned position for personal reasons.  
Reading Police Department 15 Union Street, Reading MA 01867  
Resigned following an incident involving a cruiser causing minor damage to bumper & light. Instructed by Chief Cormier to resign my position for not reporting damage at end of shift."

(Exhibit 3, p. 10)

29. RPD Lt. Stamatis submitted a letter of reference dated December 16, 2014 to PPD Chief Griffin in support of Mr. Porter's application to the PPD. Lt. Stamatis' letter states, in part,

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<sup>10</sup> Former Chief St. Pierre did not appear and testify at the Commission's hearing.

“ ... Ryan worked very hard to get on the Reading Police Department. He showed perseverance and determination in his pursuit to obtain a career in law enforcement. ... Ryan ... was always upbeat, positive and eager to learn. He enjoyed police work and was liked by his peers. Ryan was assigned to the Night Shift during his brief career with the Reading Police Department. Unfortunately, Ryan was immature and made some miscalculations ... which ultimately led to his stepping down from the Department.

Ryan has acknowledged over the years that he needed to take a more responsible bearing on his future, and that he has learned from his mistakes. He will call me from time to time to advise me of his pursuits and ambitions; he desperately wants a second chance. Perhaps through your background check, you may find that Ryan has the qualifications, character and qualities needed to fulfill the position he seeks on your Department, he certainly has demonstrated the perseverance and enthusiasm toward pursuing the position. ..

If you would like to speak further with me regarding Ryan, you are welcome to call my cell phone ....”

(Exhibit 14)

30. RPD Lt. Richard Robbins submitted a letter of reference dated December 15, 2014 to PPD in support of Mr. Porter’s application to the PPD. Lt. Robbins’ letter states, in part,

“ ... During [the time Mr. Porter worked at RPD], he was a very enthusiastic, driven individual who wanted to go out and do police work. He got along well with his colleagues and as I recall was generally like by his supervisors. However, I would characterize Ryan as immature during this time and he made some errors in judgement which ultimately led to his resignation ...

I have spoken with Ryan over the years and he has acknowledged that he has taken responsibility for and learned from these errors. I believe it was Lt. Cook that contacted me as part of Ryan’s background check and that someone also spoke with Chief Cormier. Ryan’s record with us speaks for itself. But in the 5 years since he resigned I am confident your background check has revealed that Ryan has matured and is worthy of consideration for your agency.

If you want to speak with me about Ryan, please call my cell ....”

(Exhibit 14)

31. PPD Officer Leo Cunha submitted a letter of reference dated June 12, 2014 to PPD in support of Mr. Porter’s application to PPD. Officer Cunha’s letter states, in part,

“ ... Ryan has served his Country as an M.P. in our armed forces, he has completed a certified Massachusetts Police Academy and worked as a police officer for a short time. I do believe that with what Ryan has to offer, this department will be better served if he had the opportunity to join this great department. I hope that you can consider him as a reserve officer.”

(Exhibit 13)

32. As part of its application process prior to employment, Peabody conducts background investigations on all police officer applicants. Mr. Porter’s background investigation was conducted by Detective Robert Church (“Det. Church”). Det. Church has been a detective for ten (10) years and he has conducted approximately two (2) dozen pre-employment investigations and many, many criminal investigations. (Testimony of Det. Church)
33. A pre-employment background investigation requires the investigating officer to review the information provided by the applicant in their application packet and to inquire about anything provided in the packet that warrants further investigation. Such inquiry involves speaking with past employers, neighbors, family members and former acquaintances about information provided by applicants in their application packet. Lt. Church did not speak with Mr. Porter’s neighbors or other prior employers because Mr. Porter listed recent employers, where he had worked briefly and/or he received unemployment benefits. Lt. Church did not speak to Mr. Porter’s current employer because Mr. Porter was working for his (Mr. Porter’s) brother-in-law in an investigation business. (Testimony of Det. Church)
34. The pre-employment investigation also includes a search of the applicant’s employment records, driving, criminal, litigation, credit and tax records, as well as the applicant’s social media presence, educational background, military history, and personal history. (Exhibit 4)

35. The pre-employment background investigation further includes a face-to-face meeting between the investigating officer and the applicant.<sup>11</sup> During such meetings the investigating officer can ask the applicant questions about information provided in the application packet and the applicant can clarify or explain any questions the investigating officer may have. (Testimony of Det. Church)
36. As part of his investigation, PPD Det. Church contacted the RPD to learn more about Mr. Porter's former employment at the RPD. Det. Church spoke with RPD Lieutenant Richard Robbins ("Lt. Robbins"). Lt. Robbins provided Det. Church with documentation of what happened at RPD, which included copies of the internal reports of RPD Lt. Stamatis and RPD Sgt. O'Brien, as well as a report from RPD Chief Cormier. (Exhibit 4; Testimony of PPD Det. Church)
37. PPD Det. Church reviewed Mr. Porter's driving record, criminal history, credit report and social media presence as part of his background investigation. Det. Church also conducted an online search of Mr. Porter's name, which revealed a Commission decision denying Mr. Porter's appeal challenging the RPD's decision to bypass Mr. Porter in 2006. (Exhibit 4) The Commission denied Mr. Porter's 2006 appeal of RPD's initial decision to bypass him for appointment. (Administrative Notice)
38. On June 11, 2014<sup>12</sup>, Det. Church met with Mr. Porter and asked him about his prior employment with the RPD and the incident involving Car 4. In his report on the investigation

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<sup>11</sup> In his testimony before the Commission, Det. Church described such meetings as "informal interviews" which allow the investigating officer to get a feel for the applicant. Formal interviews are conducted later, where appropriate.

<sup>12</sup> Although PPD Church met with Mr. Porter and conducted his background investigation in June of 2014, the certification from which Mr. Porter was considered and bypassed was not issued until December 2014, Mr. Porter submitted an application thereafter in December 2014, and the superior officers did not interview Mr. Porter (and most of the other candidates) until March 2015. Thus, it would appear that Mr. Porter was interviewed based on a previous certification from the 2013 exam. This does not affect the outcome here.

of Mr. Porter for his application for employment at PPD, Det. Church wrote the following, in part:

Porter explained that he had been involved in four cruiser accidents [at RPD], and reported all but the last one. He went on to explain that *after the third accident he had to complete another [emergency vehicle operator's course], which he passed. A short time afterwards, [Mr. Porter] stated he was involved in the fourth accident, which caused a crack in the front side light, and a small scuff in the paint. He admitted to panicking about the damage, and not reporting it out of fear for the repercussions. He also admitted to not being truthful during the resulting investigation, but stated the damage he had been asked about included the vehicle length scuff and the tire rim damage.*

(Exhibit 4)(*emphasis added*)

39. Following his meeting with Mr. Porter, Det. Church met with PPD Lieutenant William Cook (“Lt. Cook”), who informed Det. Church that he had recently spoken with a former Reading police officer who “in no uncertain terms” said that Mr. Porter had been “rail-roaded” by the RPD. (Exhibit 4) Lt. Cook provided Det. Church with the name and contact information of the former Reading police officer and Det. Church contacted him. (Id.)

40. At the time that Det. Church spoke with the former RPD officer, the former RPD officer was a superior officer in the Boston Police Department. Det. Church wrote that he gathered the following from his conversation with the former RPD officer, in part:

“... [The former RPD officer] spoke with me at length and made it very clear that he believed [Mr.] Porter’s resignation was not only forced, but unjustified. He reiterated many of the facts surrounding the [Reading Police Department’s] investigation, and the politics involved, and stated [Mr.] Porter’s resignation was the culmination of several factors.

[The former RPD officer] went on to explain that he has known Chief Cormier for many years and understands his way of thinking. He described the rank and file structure at [the Reading Police Department] as the “good ole boy network,” and stated if you didn’t fit in you were subsequently targeted...

[The former RPD officer] continued by stating that Porter’s demise began before he was even hired, back when he brought Chief Cormier before the Civil Service Commission. According to [the former RPD officer], that challenge left a bad

taste in certain people's mouths, including Chief Cormier's.... [The former RPD officer] concluded by stating there was no question Porter did the wrong thing by not reporting the accident, but given the circumstances, he believed the actions taken against [Mr. Porter] were unwarranted. ..."

(Exhibit 4)

41. PPD Det. Church's background investigation report indicates that he reviewed RPD reports regarding Mr. Porter's accidents and adds, in part,

"... After reviewing these reports I continued my investigation with a review of Porter's driving record. It showed a surchargeable accident in July 2013 and one in January 2007. All of his other accidents occurred back in the late 90's. His driving record also showed some suspensions from failure to pay citations, and that his current license was active ..."

(Exhibit 4)

42. Det. Church's background investigation report also indicates that RPD Off. [M] "too had lied during the investigation and was responsible for the remaining damage", that "[RPD] Lt. Stamatis documented that he informed [RPD] Off. [M] he was more interested in the damage done to the front headlight, not the damage he [Off. M] had caused" and that "[n]o disciplinary action was ever documented in the reports for Off. [M]." (Exhibit 4) At the time of these events, RPD Officer M was a probationary officer of four (4) months. (Exhibit 4) There is no indication that Officer M had previously damaged a cruiser and failed to report it, had previously been disciplined in any regard, or had a questionable civilian driving record. (Administrative Notice)

43. Det. Church's report concludes, in part:

"In light of all the information gathered to date, I must admit, my opinion of [Mr.] Porter has changed considerably ... after reading the reports thoroughly, and getting a different perspective from other officers in the know, I believe there is more to [Mr. Porter's] departure [from the RPD] than meets the eye. Although I understand his actions may have violated department policy, per se, and that he was not truthful about certain facts during the investigation, I do believe the outcome was excessive given the fact that no other prior disciplinary steps were documented.

... I believe he is worthy of further consideration.”

(Exhibit 4)

44. On June 14, 2014, Det. Church presented the findings of his background investigation to then Interim Chief Robert St. Pierre. (Exhibit 4)

45. PPD Lt. Cook sent PPD Interim Chief St. Pierre a memorandum on June 30, 2014 regarding

Mr. Porter’s candidacy. In this memorandum, Lt. Cook wrote,

“I spoke to Chief James Cormier of the Reading Police Dept. about reserve candidate Ryan Porter. ... I asked Chief Cormier if Ryan Porter would be a good candidate for Peabody Police. Chief Cormier related that Ryan was not a bad guy but was immature when he had worked for him. He said that he did a good job for him when he worked there and was an active officer. The only problem was the accident with the cruiser ... Chief Cormier felt that he would be fine if he learned from his mistakes of the past.”

(Exhibit 12)

46. PPD conducted interviews of most of the candidates, including Mr. Porter, on March 3, 2015<sup>13</sup>. Interviewed candidates were all asked four questions by teams of two, apparently, including Captain DeRosa and Lt. Cook or Captain Bonaiuto and Lt. Richards. There is only one (1) rating sheet for each interviewed candidate because the two interviewing superior officers submitted combined assessments for each interviewee. (Respondent’s Post-Hearing Submissions; Testimony of Chief Griffin) None of the interviewers testified here. (Administrative Notice). The four (4) questions each interviewed candidate were:

1. “When looking at a uniformed police officer, in your opinion what is the most important part of the police officer’s uniform? Why? (Character)
2. As a sworn police officer you observe a friend use illegal drugs at a party, what actions if any would you take? Why? (Integrity)

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<sup>13</sup> One candidate was interviewed on April 2, 2014, nearly one year prior to the interviews of the other candidates who were interviewed. (Respondent’s Post-Hearing Submissions) Since a previous certification had been issued following the 2013 exam, perhaps the candidate interviewed in 2014 was on it. However, this is speculation and not necessary to the decision here.

3. As a sworn police officer you will be required to work holidays, weekends, and night shifts, are you willing to meet these demands and explain how you will adapt to this schedule. (Work ethic)
4. As a sworn police officer you observe a fellow police officer commit a violation of police department rules or regulations. What action if any would you take? (Ethics)

Assessors must score each candidate response from 1 (low) to 5 ((high). After interview assessors shall discuss individual scores and agree within 3 points for each category then total all scores. ...”

(Respondent’s Post-Hearing Submissions; *see also* testimony of Chief Griffin)

The areas to be rated were communication skills, command presence, reasoning ability, decision making and professional aptitude. (*Id.*) It is unknown if the “assessors” asked Mr. Porter about his resignation from the RPD. (Administrative Notice) Mr. Porter was rated 3 for all categories except reasoning ability, for which he was rated 2. Of the candidates who were selected, two of them had ratings similar to Mr. Porter; ratings for other selected candidates were higher than Mr. Porter’s. (*Id.*)

47. By memorandum dated May 14, 2015, PPD Det. Church wrote to PPD Chief Griffin regarding Mr. Porter’s application, attaching his June 11, 2014 background investigation report to then-Chief St. Pierre and the brief June 30, 2014 memorandum from Lt. Cook to then-Chief St. Pierre regarding Mr. Porter. Det. Church’s May 14, 2015 memorandum states, in part,

“ ... This memo is simply to update you on any pertinent information that has changed since that original investigation last year.

I reviewed Mr. Porter’s application and met with him for an interview at the station as part of the new application process. During the interview it was revealed that Mr. Porter and his wife have since had twins, and had purchased a new home at ... in Peabody. ... His current employment also remains the same performing private investigation work for his brother’s firm.

Mr. Porter’s situation is unique, in that he was employed as a Reading police officer but failed to complete his probationary period – resigning instead. The circumstances surrounding his resignation were investigated at length by myself and Lt. Cook, and are documented fully in his folder. I have no reason to change

my findings submitted with his last background investigation and I am still recommending he be given further consideration.”

(Exhibit 5)

48. Prior to submitting information to Mayor Bettencourt, the appointing authority, about the candidates, PPD Chief Griffin also reviewed the documents that the PPD had obtained from the RPD pertaining to Mr. Porter and Mr. Porter’s reference letters. (Testimony of Chief Griffin; *see* Exhibits 6, 8, 9 and 11) Chief Griffin recommended that the Mayor bypass Mr. Porter because of the number of accidents Mr. Porter had while at the RPD and because Mr. Porter had been untruthful in regard to one of the accidents. Chief Griffin was not then aware that a second probationary officer (Officer M) at the RPD was untruthful about damage to a cruiser at the same time that Mr. Porter had been untruthful about damage to the same cruiser, that the other officer was not disciplined, and that Mr. Porter was found not at fault for two (2) of the four (4) accidents he was in while at the RPD. (Testimony of Chief Griffin)

49. By letter dated October 29, 2015, Mr. Porter was notified by Peabody Mayor Edward Bettencourt, Jr. (“Mayor Bettencourt”) that he was being bypassed for the position of reserve police officer. The letter stated, in part, that Mr. Porter was being bypassed for the following reasons,

“ ... Following a comprehensive background investigation conducted by the Peabody Police Department and working with their recommendations during the evaluation process, I have found that you do not meet the requirements for this position for the following reasons:

Bypassed due to resigning from the Reading Police [Department] while under investigation for lying.

This decision is also made due to poor performance as a driver as you had four cruiser accidents in a short period of time.

The events for which the [police] must respond require good judgment and a thorough sense of the responsibility for the obligations of this position, which is not adequately evidenced by your actions....”

(Exhibit 2)

50. Fifteen (15) candidates were selected from the Certification. All fifteen (15) candidates selected were ranked below Mr. Porter. (Stipulated Facts)

51. On December 24, 2015, Mr. Porter filed the instant appeal of the Respondent's decision to bypass him. (Administrative Notice)

## DISCUSSION

### *Applicable Law*

This appeal involves a bypass of the Appellant for promotion to a permanent civil service position. This process is governed by G.L. c. 31, § 27, which provides, in part,

“ ... If an appointing authority makes an original or promotional appointment from certification of any qualified person other than the qualified person whose name 37 appears highest [on the certification] . . . the appointing authority shall immediately file . . . a written statement of his reasons for appointing the person whose name was not highest....”

(Id.)

PAR.08(4), promulgated by HRD to implement this statutory requirement, provides, in part:

“Upon determining that any candidate on a certification is to be bypassed, as defined in Personnel Administration Rule .02, an appointing authority shall, immediately upon making such determination, send to the Personnel Administrator, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reason or reasons for selecting another person or persons, lower in score or preference category. Such statement shall indicate all positive reasons for selection and/or negative reasons for bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission....”

(Id.)

Pursuant to G.L. c. 31, s. 5(l), the Personnel Administrator (now Chief Human Resources Officer) of HRD authorizes HRD. “[t]o delegate the administrative functions of the civil service system, so far as practicable, to the various state agencies and cities and towns of the commonwealth. Id. Through an August 7, 2009 memorandum, HRD began delegating the civil service appointment and promotion approval process to municipalities effective September 1, 2009. Administrative Notice.

Ordinarily, candidates are selected according to their place on a “certification” which ranks them by competitive written examination scores, administered by HRD, along with certain statutory credits and preferences. In order to deviate from the order, an appointing authority must prove specific reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify picking a lower ranked candidate. G.L. c. 31, §§1, 27. *See, e.g.,* 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); Mayor of Revere v. Civil Serv. Comm’n, 31 Mass.App.Ct. 315, 321 n.11, 326 (1991). *See also* MacHenry v. Civil Serv. Comm’n, 40 Mass.App.Ct. 632, 635(1995), *rev.den.*, 423 Mass.1106 (1996)(HRD review of bypass [now delegated] (and Commission oversight) means not “formally to receive bypass reasons” but to evaluate them “in accordance with [all] basic merit principles”); *See also*, Stavely v. City of Lowell, 71 Mass.App.Ct. 400,407-408 (2008)(Commission has “broad . . . oversight responsibility)

Upon a bypass appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. Brackett v. Civil Serv. Comm’n, 447 Mass. 233, 241 (2006). Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when

weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Comm’rs of Civil Serv. v. Mun. Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. *See* City of Beverly v. Civil Serv. Comm’n, 78 Mass.App.Ct. 182, 189 (2010). “In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” *Id.* at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous decision of the appointing authority, but rather decides whether 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.” *Id.* at 824 (quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983)).

In deciding an appeal, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was reasonable justification” shown. Beverly, at 188. An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone as a new... [employee] than in disciplining an existing tenured one.” *Id.* at 191. *See* City of Attleboro v. Mass. Civil Serv. Comm’n, C.A. BRCV2011-00734 (MacDonald, J.)(citing Beverly at 191). The appointing authority does not have to prove its valid justification is correct so long as it is supported by credible evidence. Beverly, at 187. The Commission is charged with ensuring that the system operates on “[b]asic merit principles.”

Mass. Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, at 259 (2001). “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Id. (citing Sch. Comm'n of Salem v. Civil Serv. Comm'n, 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm'n of Health & Hosps. of Bos. v. Civil Serv. Comm'n, 23 Mass.App.Ct. 410, 413 (1987)).

Police are held to a high standard of conduct. In Zorzi v. Town of Norwood, 29 MCSR 189 (2016), the Commission noted,

“An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion.” McIssac v. Civil Service Comm'n, 38 Mass.App.Ct. 473,475 (1995)(negligent off-duty handling of firearm). When it comes to police officers, the law teaches that there is a special ‘trust reposed in [a police officer] by reason of his employment .... Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.’ Police Comm'r v. Civil Service Comm'n, 22 Mass.App.Ct. 364, 371, *rev. den.*, 398 Mass. 1103 (1986).”

(Id.)

This standard of conduct extends, of course, to truthfulness. Police officers are required to truthfully report events and testify in court on matters within their knowledge. In Gonzalves v. Falmouth, 25 MCSR 231 (2012), Gonzalves v. Civil Service Commission and Town of Falmouth, Suffolk Superior Court, C.A. No. 12-2655G (2014) *aff'd*, the Commission articulated the importance of an officer’s obligation to be truthful in that case and as established previously, stating,

“The most serious charge proved against Officer Gonsalves involved his untruthfulness. He left a trail of evasive, incredible and inconsistent statements that began on December 20, 2008, with his original denial to the Oscar 11 Officer that he had pulled 27 into the

Granite City Electric parking lot while the officer and Ms. A were meeting. It continued through the FPD investigation and was on display during his two days of testimony at the hearing before the Commission. On these grounds, alone, Falmouth is fully justified to terminate a police officer who repeatedly demonstrates his inability to tell the truth. *See City of Cambridge v. Civil Service Comm'n*, 43 Mass. 300, 303 (1997)('The city was hardly espousing a position devoid of reason when it held that a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.') *See also Phillips v. Town of Hingham*, 24 MCSR 267 (2011)(police officer terminated for untruthfulness about inappropriate "horseplay" with civilian employee while on duty); *Desharnais v. City of Westfield*, 23 MCSR 418 (2010)(officer damaged cruiser in "cowboyish" spins and then untruthfully denied his antics); *Mozeleski v. Chicopee*, 21 MCSR 676 (2008)(lying to cover-up inappropriate conduct during a late-night traffic stop); *Rizzo v. Town of Lexington*, 21 MCSR 634 (2008)(police officer failed to report use of force and later misrepresented level of force used); *Layne v. Town of Tewksbury*, 20 MCSR 372 (2007)(police officer denied using profanity directed to accident victims)."

Given the importance of truthfulness of police officers, appointing authorities making hiring decisions are well within their authority to consider candidates' truthfulness.

#### *Analysis*

The issue before the Commission is whether or not Peabody's decision to bypass Mr. Porter for the position of reserve police officer was reasonably justified as shown by a preponderance of the evidence. I find that it was. In an October 29, 2015 letter addressed to Mr. Porter, Peabody Mayor Bettencourt wrote that he was bypassing Mr. Porter because he had resigned from the Reading Police Department "while under investigation for lying" and because Mr. Porter had four (4) cruiser accidents in a short period. The Mayor's letter further states that, "The events for which the [police] must respond require good judgment and a thorough sense of the responsibility for the obligations of this position, which is not adequately evidenced by your actions." (Exhibit 2) As this is a bypass appeal, the Commission examines the reasons provided by the appointing authority for the bypass and whether it conducted a reasonably thorough review in that regard, not to determine whether the RPD had just cause to discipline Mr. Porter, as might be done if this were a disciplinary appeal, which it is not. As noted above, the

appointing authority need not prove its valid justification is correct so long as it is supported by a preponderance of the evidence.

There can be little doubt that the Respondent conducted an impartial and reasonably thorough independent review of the matters on which it relied to bypass Mr. Porter. PPD Det. Church conducted Mr. Porter's background investigation. As part of his investigation, PPD Det. Church obtained from RPD copies of RPD documents relating to Mr. Porter's accidents including then-RPD Chief Cormier's memorandum<sup>14</sup>, RPD Lt. Stamatis' investigation report, RPD Lt. Garchinsky's report about the four (4) accidents Mr. Porter had had, and RPD Sgt. O'Brien's report of his conversation with Mr. Porter about the fourth car accident. In addition, PPD Det. Church reached out to others with knowledge of the events at RPD as well as Chief Cormier's decision making process and how the RPD operates. One such alternate source, who was now working at another police department, stated that it appeared that Mr. Porter have been treated unfairly and had been "rail-roaded". (Exhibit 4). Det. Church further considered the allegation that then-RPD Chief Cormier was biased against Mr. Porter since Mr. Porter challenged the RPD's decision to bypass him previously. However, the Commission denied Mr. Porter's previous appeal, ruling in favor of the RPD appointing authority so the effect of the previous appeal was likely to be limited. Det. Church also updated his initial background investigation, given the passage of time since he conducted the background investigation. In addition, PPD Lt. Cook spoke to then-RPD Chief Cormier and wrote a memorandum about their

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<sup>14</sup> PPD Lt. Cook spoke to then-RPD Chief Cormier and Lt. Cook wrote: "... Chief Cormier related that Ryan was not a bad guy but was immature when he had worked for him. He said that he did a good job for him when he worked there and was an active officer. The only problem was the accident with the cruiser ... Chief Cormier felt that he would be fine if he learned from his mistakes of the past." Exhibit 12. However, Lt. Cook also wrote that Chief Cormier stated, "While he [Mr. Porter] worked for the dept, he damaged tires on cruisers. Numerous cruiser tires where (sic) damaged and undocumented. The damage to tires stopped after Mr. Porter was no longer employed there." *Id.* There is no evidence in the record that Mr. Porter caused damage to "numerous cruiser tires". Mr. Porter timely reported the damage to RPD cars in first three (3) accidents, only one (1) of which involved damage to tires.

conversation. Further, Det. Church met with Mr. Porter and discussed his resignation from the RPD with him. Thus, Lt. Church clearly and carefully pursued and received information from sources who supported Mr. Porter's candidacy at the PPD as well as those who did not. In light of all the information that Det. Church obtained, he even recommended that Mr. Porter be given further consideration. However, as Det. Church noted, he was not the appointing authority.

It was under the supervision of PPD Chief Griffin that Det. Church and Lt. Cook obtained information about Mr. Porter's problems at the RPD. Before making his hiring recommendation to Mayor Bettencourt, Chief Griffin testified that he received the PPD background investigation and the RPD reports and/or memoranda regarding Mr. Porter's record at the RPD, as well as the letters of reference that the PPD received from RPD Lts. Stamatis and Robbins and PPD Officer Cunha.<sup>15</sup> Thus, Chief Griffin contributed to the reasonably thorough review conducted by Det. Church and Lt. Cook. Although Chief Griffin had seen these documents, he apparently was unaware of, or did not recall that, at the same time that Mr. Porter was an RPD probationary officer, damaged car 4, failed to report the damage, denied he caused the damage, later admitted he had caused at least some of the damaged and was asked to resign or face termination, RPD Officer M did the same but was not disciplined. However, Chief Griffin also testified that although Mr. Porter and Officer M may have engaged in the same misconduct, the two matters may otherwise be different. Indeed, all we know about Officer M is that he had been on the force for only four (4) months at the time, less than half the time Mr. Porter had been on the force. Thus, there is no information in the record, for example, indicating whether this was Officer M's first such misconduct, whereas by that time Mr. Porter had had

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<sup>15</sup> While it is noteworthy that the RPD superior officer who investigated the damage to car 4 and another RPD superior officer wrote positive letters of reference for Mr. Porter, the letters also mention Mr. Porter's misconduct at the RPD but suggest that he acted out of immaturity at the time, that he has taken responsibility for his actions, and that Mr. Porter may be worthwhile considered for hiring now. Exhibits 13 and 14.

four (4) car accidents at the RPD. Chief Griffin also testified that he did not know that Mr. Porter was found not responsible for two (2) of the four (4) car accidents he had at the RPD. However, that does not mean that the accidents did not occur. Given that Mr. Porter had four (4) car accidents in less than one year, the Respondent had reasonable justification to bypass Mr. Porter based on his driving record as an RPD police officer.

Clearly, Mr. Porter's fourth car accident at the RPD and the fallout thereafter provided significant concern for the Respondent. Specifically, Mr. Porter failed to report the fourth car accident during the shift on which it occurred, in apparent violation of RPD policy. Since no one had reported the damage, an investigation ensued at RPD. The detailed RPD investigation report written by Lt. Stamatis that PPD Det. Church obtained in his background investigation of Mr. Porter states, in part, that,

“ ... Officer Porter stated to me, ‘Lieutenant, I never damaged car 4, I know everyone thinks I did because of my driving record, but I promise you, I did not damage that vehicle.’ ... I then asked Officer Porter directly, ‘Ryan, did you damage car 4 on any of the times you took it on patrol either on May 18<sup>th</sup> or during the A shift or May 24<sup>th</sup> during the A or C shifts?’ Officer Porter replied, ‘Lieutenant Stamatis, I swear to you that I did not damage that cruiser, I am not the one who damaged car 4 ....’”

(Exhibit 8)

RPD Sgt. O'Brien reported receiving a similar response from Mr. Porter. Mr. Porter argued that he was not untruthful, rather he was not forthcoming. Specifically, he asserts that he believed he was being asked about all of the damage to the cruiser since, in addition to the damage to the bumper and light that he had caused, there was also damage to the tires and a car-length scratch on the passenger side of the vehicle. However, the report of RPD Lt. Stamatis indicates that Mr. Porter was asked whether he had caused any damage at all. If Mr. Porter knew that he caused some damage to the car, it was untruthful for him to deny causing “any damage” to the car. While the failure to report the damage he caused might be characterized as not forthcoming, the

RPD found during its investigation that Mr. Porter's statements were untruthful, having told two (2) superior officers that he did not cause any damage when, in fact, he had. I note that the RPD investigation information obtained by the PPD indicated that Officer M may have caused the tire damage, it did not indicate who caused the car-length scratch on the passenger side. There is no indication that Mr. Porter caused the scratch damage. Nonetheless, Mr. Porter denied having caused any damage, only to later admit that he had (on the bumper and corner light). While it is laudable that Mr. Porter expressed remorse to the RPD Chief, it was not until the investigation. Regardless, Mr. Porter now denies that he was untruthful when he told his two superiors he did not cause any damage to car 4. This provided reasonable justification for Mr. Porter's bypass by the PPD. Further, I note that on his PPD application, Mr. Porter reported that he resigned from the RPD after "an accident" and that the RPD Chief ordered him to resign "for not reporting damage at end of shift", failing to mention that there was more than one accident in a short period of time at the RPD and another reason the RPD Chief provided for asking for Mr. Porter's resignation was that he was untruthfulness about the accident in question. (Exhibit 3, p. 10)

As noted above, the importance of truthfulness for police officers cannot be overstated. Their reports must be accurate and their credibility as witnesses must be beyond reproach to effectuate the goals of law enforcement. The PPD having obtained significant information from the RPD, as well as other sources in this regard, the Respondent was reasonably justified in relying on it to bypass Mr. Porter.

In an effort to refute the RPD's findings that he was untruthful, Mr. Porter argued that after his resignation, the RPD compensated him for testifying in some criminal cases. If the RPD paid him to testify after he resigned, he averred, his truthfulness could not have been impaired. To this end, he adduced Exhibit 15, entitled, "Town of Reading Detail Check History (by

employee name) 06/01/2009 to 1/11/2016” on which he highlighted a check issued to him on 7/9/2010 for \$363.70 and another issued on 4/29/2011 for \$121.23. However, there is no information on the document indicating what the payments were for. It was not proved by a preponderance of the evidence that Mr. Porter was paid by the RPD to testify after his employment was terminated there. Even if the RPD compensated Mr. Porter for his testimony on the two (2) dates cited, that does not undermine the RPD’s determination that he had been untruthful, nor does it undermine the PPD’s reliance thereon to bypass him.

As a result of having failed to report the damage he caused and having been untruthful to two (2) RPD superior officers, Mr. Porter was given two (2) options by RPD Chief Cormier: resign or Chief Cormier would initiate proceedings to terminate Mr. Porter’s employment. While it is true that RPD Lt. Garchinsky recommended extending Mr. Porter’s probationary period by six (6) months and by issuing him two (2) written reprimands, that recommendation does not preclude the PPD from relying on RPD Chief Cormier’s decision providing reasonable justification to bypass Mr. Porter.<sup>16</sup>

Mr. Porter’s untruthfulness and resignation to avoid termination at the RPD was not the sole reason he was bypassed by the Respondent. His poor driving record at RPD was also given as a reason for the bypass at PPD. In a matter of approximately ten (10) months as a probationary officer at the RPD, Mr. Porter was involved in four accidents while operating a police vehicle, including the last incident that led to his resignation. Patrol officers often spend a significant amount time in their Department vehicles and must be able to operate their vehicles

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<sup>16</sup> If this were a disciplinary appeal, Mr. Porter would have no civil service remedy since he was still within his twelve (12)-month probationary period, and not a tenured employee at the time of his fourth car accident and the related untruthfulness, as he acknowledged at the Commission hearing. See G.L. c. 31, §§ 41-45, 61.<sup>16</sup> Even if Mr. Porter had been a tenured employee when he resigned, the Commission has ruled repeatedly that it has no jurisdiction when a tenured public employee resigns when facing termination. See, e.g. Crowell v. City of Woburn, 14 MCSR 167 (2001); Olisky v. East Longmeadow, 27 MCSR 277(2014); cf. Champion v. Weymouth, 25 MCSR 223 (2012).

safely when responding to calls, which can involve high rates of speed. While the damage Mr. Porter caused was relatively minor in all four (4) of his accidents, the fact that he has had so many in such a short period of time is concerning and further provides reasonable justification for bypassing Mr. Porter.

The final reason for the Respondent's bypass of Mr. Porter was that he did not use good judgment or show responsibility for his actions at RPD. The RPD policy required officers to file car accident reports during the shift on which an accident occurs. (Exhibit 11) Mr. Porter did not file a report on May 24, 2009, the day of his fourth accident, starting the chain of events that led to his resignation. Police officers are regularly faced with difficult situations requiring them to make good judgments. Their actions can have profound consequences for themselves and their department, as well as the public at large. Therefore, it's imperative that police officers make sound decisions and take responsibility for those decisions. Instead of owning up to his fourth accident, Mr. Porter denied responsibility, hoping that he would not get caught. Mr. Porter argued that he feared he would lose his job if he disclosed that he had had a fourth vehicle accident. Failing to report the accident and being untruthful about it shows that, at the time, Mr. Porter lacked good judgment and failed to take responsibility for his actions, choosing to do what he thought was in his own best interest over what was right. Although Mr. Porter did not take responsibility for his actions until the RPD investigation was in progress and he denied causing any damage to car 4, I note that RPD Lieutenants Robbins and Stamatis wrote reference letters to the PPD for Mr. Porter. Both acknowledged that Mr. Porter had been "immature" and that he made "errors in judgement" at the RPD but in the years since his resignation from the RPD Mr. Porter has told them that he takes responsibility for his actions. Mr. Porter is to be commended for this but he did not do so at the RPD.

## Conclusion

For all of the above stated reasons, the bypass appeal of Ryan Porter, under Docket No.

G1-15-241 is *denied*.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman

Commissioner

By vote of the Civil Service Commission (Camuso, Ittleman, Stein and Tivnan, Commissioners [Bowman, Chairman - ABSENT) on May 12, 2016.

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:

Ryan Porter, *Pro Se*

Donald L. Conn, Jr. Esq. (for City of Peabody)

John Marra, Esq. (HRD)

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

RYAN PORTER,  
*Appellant*

v.

Docket No.: G1-15-241

CITY OF PEABODY,  
*Respondent*

**CONCURRING OPINION OF COMMISSIONER STEIN**

I concur, with some reluctance, in the Decision to affirm the bypass in this appeal. The record appears to leave considerable ambiguity, in my view, as to whether or not the reasons underlying Chief Griffin’s recommendation to bypass Mr. Porter, and Mayor Bettencourt’s acceptance of that recommendation, are grounded in fact, as opposed to a mixture of well-founded information combined with problematic stale third hand evidence and even some misinformation about the underlying misconduct that forced then Officer Porter to leave his position as a Reading Police Officer for failing to report a minor cruiser accident and then being less than truthful about it. I am also troubled by what I find to be the firmly held opinion of the background investigator, after his thorough review, that there were significant mitigating factors, including potential bias and disparate treatment (stemming, in part, from Mr. Porter’s exercise of his civil service rights of appeal to this Commission), which opinion appear to be given little, if any, consideration or weight in the bypass recommendation and decision. That said, however, under the constraints of the judicial precedent under Beverly v. Civil Service Comm’n 78 Mass.App.Ct. 182 (2010), I agree that the City’s burden in a bypass case for appointment as police officer is not to prove that the reasons for the bypass were true or to weigh the pros and cons of the risk presented, but, merely, to satisfy the Commission that the City’s decision was

based on its good-faith suspicion that, if true, the allegations presented reasonable justification for the City's conclusion that it would be taking an unwarranted risk by hiring the candidate for such a sensitive public safety position. I have been concerned that this standard sets the bar for justification of a bypass far lower than basic merit principles of the civil service law intended and this case may illustrate that concern. I concur that, although reasonable minds might differ here, under existing precedent, the City has met its burden to show a reasonable justification to bypass Mr. Porter at this time.

*/s/ Paul M. Stein*

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Paul M. Stein  
Commissioner  
May 12, 2016