

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

RYAN PORTER,
Appellant

v.

G1-06-228

READING POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Pro Se
Ryan A. Porter
193 Lowell Street
Reading, MA 01867

Respondent's Attorney:

Nathan L. Kaitz, Esq.
Morgan, Brown & Joy
200 State Street: 11th Floor
Boston, MA 02109

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Ryan A. Porter, (hereafter "Porter" or Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the Town of Reading (hereafter "Appointing Authority", or "Town"), bypassing him for original appointment to the position of police officer. A pre-hearing conference was held on December 18, 2006; a status conference was held on August 15, 2007; and a full hearing was held on January 22, 2008 at the offices of the Civil Service Commission. One tape was made of the hearing.

FINDINGS OF FACT:

Twenty-three (23) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- James W. Cormier, Reading Police Chief;

For the Appellant:

- Ryan A. Porter, Appellant;

I make the following findings of fact:

1. The Appellant is a twenty-seven (27) year old male from Reading. He graduated from Reading Memorial High School in 1998. He is employed (and was at the time of his bypass) as a shipper / receiver for a local shipping company. (Testimony of Appellant)
2. While enrolled at Reading Memorial High School, he completed an internship with the Reading Police Department. (Testimony of Appellant)
3. Subsequent to graduating from high school, the Appellant enlisted in the Army National Guard and completed basic training in 1998. He then completed ten (10) weeks of military police training; was assigned to active duty from November 1998 to February 1999; followed by an annual commitment of 1 weekend per month and two weeks per year. (Testimony of Appellant)
4. From 1999 to 2001, the Appellant was employed as a loss prevention investigator at Filene's department store. (Testimony of Appellant)
5. From 2001 to 2002, the Appellant was employed as a loss prevention investigator at TJ Maxx department store. (Testimony of Appellant)

6. In February 2002, the Appellant, as a member of the Army National Guard, was deployed to Uzbekistan in the Afghanistan theater, where he served as part of the military police for 10 – 11 months. (Testimony of Appellant)
7. The Appellant took an open examination for the position of police officer in 2005. (Stipulated Fact)
8. On July 3, 2006, the Appellant's name appeared at the top of Certification 260682 for the position of police officer for the Reading Police Department. (Stipulated Fact and Exhibit 1)
9. The Reading Police Department filled 2 police officer positions from Certification 260682, both of whom were ranked below the Appellant. (Stipulated Fact and Exhibit 2)
10. On October 10, 2006, the Reading Police Department notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment and listed the positive reasons of the two candidates selected. (Stipulated Fact; Exhibit 2, Page 2)
11. The positive reasons proffered by the Town regarding both of the selected candidates included prior work experience and the fact that each of them had a bachelors degree in criminal justice. (Exhibit 2 & Testimony of Chief Cormier)
12. No reference was made to whether or not the selected candidates performed better during their interview than the Appellant. (Exhibit 2)
13. 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. PAR.08(3).

Prior Work Experience

14. During his testimony before the Commission on behalf of the Town, Chief Cormier acknowledged that, based on the Appellant's military experience combined with his experience as a loss prevention investigator, he would have to "give the nod" to the Appellant in regard to prior work experience. (Testimony of Chief Cormier)
15. Based on Chief Cormier's testimony, I find that the two selected candidates did not have stronger work experience than the Appellant. Hence, the issue of prior work experience, cited as a positive reason by the Town for hiring the two selected candidates, was not a sound and sufficient reason for bypassing the Appellant.

Education

16. Both of the selected candidates have a bachelors degree in criminal justice. (Exhibit 2)
17. As part of his Recruit / Candidate Information Form which he submitted to the Town in the summer of 2006, the Appellant stated that he was enrolled at Middlesex Community College from 2005 to the present. (Exhibit 9)
18. Upon further review, the Town discovered that the Appellant had subsequently withdrawn from summer classes at Middlesex Community College and had not enrolled in any other classes. (Testimony of Chief Cormier)
19. After being bypassed once before by the Town of Reading, Chief Cormier, at the Appellant's request, met with the Appellant to offer career advice. As part of that

meeting in 2005, Chief Cormier encouraged the Appellant to actively pursue a college degree. (Testimony of Chief Cormier)

20. Chief Cormier testified that he gives strong weight to whether an individual has a bachelors degree and believes, based on his experience and his research, that they are more likely to be better police officers than individuals who do not have a college degree. (Testimony of Cormier)

21. According to the Appellant's testimony, he has only completed three courses at Middlesex Community College. (Testimony of Appellant)

22. The Appellant offered several reasons for withdrawing from classes and/or not more aggressively pursuing a college degree including the difficulty of attending classes while working full-time. (Testimony of Appellant)

23. On October 24, 2006, HRD notified the Town and the Appellant that the positive reasons proffered by the Town regarding the two selected candidates were acceptable in regard to bypassing the Appellant. (Stipulated Fact; Exhibits 4 & 5)

24. The Appellant filed a timely appeal with the Civil Service Commission. (Exhibit 6)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by 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). G.L. c. 31, s. 2(b) requires that bypass cases be determined by a preponderance of the evidence. 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). ; G.L. c. 31, § 43.

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. City of Cambridge, 43 Mass. App. Ct. at 304.

Ryan Porter took and passed the civil service examination for the position of police officer in 2005. A long-time resident of Reading and a graduate of Reading Memorial High School, the Appellant is a likeable, well-mannered man with a sincere desire to serve his community as a police officer. Further, he is a member of the Massachusetts

National Guard and served on active duty in Uzbekistan shortly after the attacks on our country on September 11, 2001.

When all factors for selection are equal between a selected candidate and an Appellant bypassed ranked higher on a civil service list, deference should be given to the candidate with the higher score.

In this case, the Town proffered two overarching reasons for bypassing the Appellant: 1) prior work experience; and 2) education. Based on Police Chief Cormier's own testimony, the Appellant must be rated higher than the candidates selected when assessing the candidates' prior work experience.

However, the Town also considered the fact that the two selected candidates had a bachelors degree in criminal justice, as compared to the Appellant, who has only completed three courses at a community college. Further, the Town considered that the Appellant has, at times, enrolled, then withdrawn, from college courses. Finally, the Town considered that the Appellant, at the time of a prior bypass, was advised by the Police Chief that pursuit of a college degree would make him a stronger candidate. Despite this advice from the Police Chief, the Appellant failed to make any significant progress toward obtaining a college degree, which the Town gave strong weight when making the decision to select the two candidates with a bachelors degree in criminal justice.

After considering all the testimony and evidence in the record, I conclude that the Town of Reading, based on a comparative review of the candidates' educational background, had sound and sufficient reasons for bypassing the Appellant for selection as

a police officer and there is no evidence of inappropriate motivations or objectives that would warrant the Commission's intervention in this matter.

For all of the above reasons, the appeal under Docket No. G1-06-228 is hereby

dismissed.

Civil Service Commission

Christopher C. Bowman
Chairman

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman - YES; Guerin, Commissioner – YES; Henderson, Commissioner – NO; Marquis, Commissioner – YES; and Taylor, Commissioner - NO) on January 31, 2008

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:
Ryan A. Porter (Appellant)
Nathan Kaitz, Esq. (for Appointing Authority)
John Marra, Esq.