COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

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

CHRISTOPHER R. QUIGLEY,
Appellant

v.

G1-16-9

TOWN OF AGAWAM,
Respondent

Appearance for Appellant: Christopher R. Quigley (Pro se)

Appearance for Respondent: Russell J. Dupere, Esq.
Dupere Law Offices
94 N. Elm Street, Suite 307
Westfield, MA 01085

Commissioner: Cynthia A. Ittleman

DECISION

Christopher R. Quigley (Appellant or Mr. Quigley) filed the instant appeal at the Civil Service Commission (Commission) on January 20, 2016 under G.L. c. 31, s. 2(b) challenging the decision of the Town of Agawam (Respondent or Town) to bypass him for appointment to the position of full-time permanent police officer. The appeal was timely filed.

An initial prehearing conference was held in this case on February 24, 2016 at the Springfield State Office Building and a second prehearing conference was held in Springfield on June 8, 2016. The Commission held a hearing[1] on the appeal on August 10, 2016, which included reports from three (3) physicians (Dr. B, Dr. H and Dr. A, in that order) about the Appellant.

[1] The Standard Adjudicatory Rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

The hearing was digitally recorded and the parties received a CD of the proceedings.[2] During the hearing, the parties indicated they would consider whether to pursue a fourth medical examination of the Appellant. If the parties agreed to a fourth medical re-examination, a second day of hearing would be scheduled. By email message from the Respondent dated September 13, 2016, the Appellant declined the offer to be re-examined by a fourth physician and no second day of hearing was held. Also on September 13, 2016, the parties submitted their respective recommended decisions.

Post-hearing, the Appellant was scheduled to see Dr. A for a follow-up appointment which was eventually held on November 23, 2016. I asked the parties to obtain an updated report from Dr. A following the November 23 appointment. The Respondent submitted written questions to Dr. A for him to answer in relation to the Appellant's November 23 appointment. On November 29, 2016, the Respondent submitted Dr. A's report about the November 23 appointment. The parties submitted written comments on Dr. A's report on December 5, 2016. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Based on the fifteen (15)[3] exhibits entered into evidence, as well as and the testimony of:

Called by Respondent:

- Eric Gillis, Agawam Police Chief
- Dr. B, Physician
- Jan Sapelli, Agawam Human Resources Assistant

Called by the Appellant:

- Trooper Kevin Packard, Appellant

[2] 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. If such an appeal is filed, this CD should be used to transcribe the hearing.

[3] The fifteen (15) Exhibits include Exhibits 1 through 10, 11A, 11B, and 12 through 14.

and taking administrative notice of all matters filed in the case including, without limitation, the parties' post-hearing submissions and email messages referenced herein; and pertinent caselaw, statutes, regulations and policies; stipulations; and reasonable inferences from the credible evidence; a preponderance of evidence establishes the following findings of fact:

1. The Appellant is a life-long resident of Agawam. He worked in security at an amusement park in Agawam, for approximately eight (8) years. For five (5) years, the Appellant was a supervisor at this amusement park. At the amusement park, the Appellant occasionally worked with the Agawam Police Department when it would arrive at the amusement park as needed. He has an associate's degree in Criminal Justice and subsequently took classes at a four-year college, where he has completed all but one semester toward a bachelor's degree. At the time of the hearing in this case, the Appellant was working at a tree service company pursuant to a contract with a utility company. (Testimony of Appellant; Ex. 4)
2. The Appellant took and passed the April 25, 2015 civil service police officer exam. On October 2, 2015, the eligible list was established. HRD sent Certification # 03358 to the Respondent on November 13, 2015. (Stipulation)
3. The Appellant completed an application for employment as a police officer in the Town on November 13, 2015. (Ex. 4)
4. The Appellant was interviewed by the Town on December 2 or 3, 2015. (Ex. 4)
5. By memo dated December 8, 2015, the Respondent extended a conditional offer of employment that required him to successfully complete a background check, CORI check, a physical exam at Occu-Health, psychological screening, Physical Aptitude Test and the police academy. (Ex. 2)

6. The Human Resources Division (HRD) Initial-Hire Medical Standards for Police and Firefighters 0f 2014 (Medical Standards) provide, in pertinent part,

> "Medical conditions listed in the Medical Standards are classified as 'Category A' or 'Category B' conditions. Category A conditions are considered absolutely disqualifying. For Category B conditions you are required to consider whether the particular examinee's condition would prevent him or her from safely and effectively performing the essential functions of the position. Both the Medical Standards and the Essential Functions are found in this Physician's Guide (pgs. 5-31 and 32 – 43, respectively). If you find an examinee not qualified, you will need to indicate whether the condition is Category A or Category B and cite the applicable section of the Medical Standards in the Medical Verification Section …."
> (Administrative Notice - Medical Standards, p. 3)(page 3 of the Medical Standards was included in the pages sent to Dr. A)

7. The Medical Standards further provide, in pertinent part,

> "Category A and Category B Medical Conditions:
> (a) A Category A Medical Condition is a medical condition that would preclude an individual from safely and effectively performing the essential job functions of a municipal police officer.
> (b) A Category B Medical Condition is a medical condition that, based on its severity or degree, may or may not preclude an individual from safely and effectively performing the essential job functions of a municipal police officer."
> (Administrative Notice – Medical Standards, p. 6)(page 6 of the Medical Standards was not included in the pages sent to Dr. A)

8. The HRD Medical Examination Form (Examination Form) contains General Instructions for Examining Physicians (Instructions). These Instructions provide, in pertinent part,

> " All health care providers who perform initial hire medical examinations for police officers … must read, understand, and apply the current Medical Standards approved by [HRD] … The purpose of this examination is to determine if the candidate is medically qualified to perform the essential job functions for the position of police officer … Each examinee must receive a comprehensive medical examination … If the examination is performed by a nurse practitioner or physician's assistant, a doctor of medicine or osteopathy must review the entire examination file and complete the Medical Verification Section.
> All diagnostic and laboratory tests required under the Medical Standards must be performed and documented in Section G …"

(Ex. 12[4])(Administrative Notice – Medical Standards, Appendix B)(Appendix B of the Medical Standards was sent to Dr. A)

9. The Medical Standards lists Municipal Police Officer Essential Functions, which include, in part, providing back-up to other officers; communicate with a hostage taker; appraise the situation, separate people and discuss grievances to restore order at a domestic dispute; operate a department vehicle at a high rate of speed and maintain public safety; respond to an alarm, secure the area and inspect for entry to protect life; provide immediate care to victims to prevent further injury; bodily serve as a barrier; display or discharge a department firearm to protect self and the public; search a building for individuals, weapons or contraband to protect self and the public; physically restrain or subdue a violent individual; and pursue a suspect on foot. (Administrative Notice – Medical Standards, pages 32-36)(pages 32-36 of the Medical Standards were not included in the pages sent to Dr. A)

10. On December 29, 2015, the Appellant was examined by MR, a Physician's Assistant in the office of Dr. B at Occu-Health[5] in East Longmeadow pursuant to the HRD Medical

[4] At the Commission hearing in this case, the Respondent offered what has been marked as Ex. 12, stating that it had sent Ex. 12 to Dr. A, the third physician to examine the Appellant, and that it contained the reports of Dr. B and Dr. H and the Medical Standards. However, during the hearing some confusion arose whether Ex. 12 included all of the pages of the Medical Standards and the exhibit was marked "Ex. 12 de bene", pending the Respondent's research post-hearing. By email dated September 16, 2016 (with attachment), the Respondent reported that only pages 3 – 5, 7 – 31, and Appendix B (the Examination Form) of the Medical Standards were sent to Dr. A. I have added the September 16, 2016 email and attachment to Ex. 12 and Ex. 12 is hereby entered into the record in full. As a result of this added information, the Respondent did not send Dr. A the expanded definition of a Category A medical condition on p. 6 of the Medical Standards, Appendix C of the Medical Standards, which describes the "Medical Appeal Process", nor the essential tasks of a police officer on pages 32 – 36 of the Medical Standards.

[5] I take Administrative Notice that the Occu-Health website states, in part, "Occu-Health in East Longmeadow, Massachusetts, provides customized occupational health services such as medical tests, physical exams, and vaccinations. We understand the testing requirements mandated by OSHA or the government and advise clients how they can comply with these requirements.
In business for more than 25 years, we specialize in occupational medicine for employers, individuals, and institutions. Since we do not provide urgent care, wait times are minimal. Our independent medical facility also develops a specialized test and conducts off-site and private services upon request as well." *See* http://www.occu-health.com/, July 7, 12017.

Standards. (Ex. 5) As indicated in her c.v., MR has been a Physician Assistant for nearly two (2) decades. (Ex. 10)

11. As indicated by Dr. B's curriculum vitae, he has been a physician for decades, he is licensed to practice medicine in Massachusetts and he is Board certified in Occupational Medicine and Internal Medicine. (Ex. 9; Testimony of Dr. B)
12. Dr. B has conducted medical exams for civil service police and firefighter initial appointments for approximately five (5) appointing authorities. However, he has not been involved in the medical exam appeal process prior to this case. He reported previously failing only (1) other candidate for having a Category A condition, which involved the candidate's vision. (Testimony of Dr. B)
13. Before issuing the medical report he issued following the Appellant's medical exam, Dr. B reviewed the applicable Medical Standards, including, *inter alia,* the description of a Category A Medical Condition, which gives the examiner no discretion to diverge from the significance of a Category A condition. (Testimony of Dr. B; Exs. 5 and 11A; Administrative Notice – Medical Standards)
14. At the December 29, 2015 medical exam, the Appellant reported that he had experienced syncope on occasions in the past. (Exs. 5, 9 and 11A)(emphasis added) The Appellant was asked to produce his medical history, which he did subsequently. His medical history indicates that on May 22, 2013, the Appellant was medically evaluated by a primary care physician because he fainted on an airplane the day before and that was the sixth time that the Appellant fainted. A progress note from the primary care physician's office indicates, in part,

> "Pt states he passed out on airplane yesterday regained consciousness after about a minute. Says its (sic) happened before. … Observed by 'nurse' on the plane

> unconscious with weak/threathy (sic) pulse 36 and 90/40 [Blood Pressure]. 10 min later BP returned 110/62 w/P 60. … Patient states that this has been going on since childhood and was 6th time that it happened. It lasted for < 1min. Patient noticed lightheadedness and 'feeling of passing out' prior to loss of consciousness while sitting in the chair of air plane but has happened before when not in the air plane. ... Patient also states that he got 2 hrs max sleep the night before, drinking, and lack of nutrition. … cardio/Neurology Referral/consult". …" (Ex. 11A)(emphasis added)

Because of the 2013 episode of syncope, the Appellant underwent an echocardiogram to test his heart and an electroencephalogram for a neurological exam and the results for both of the 2013 tests were normal. (Testimony of Dr. B; Exs. 5 and 11A)

15. During the December 29, 2015 medical exam, the Appellant completed a form regarding his medical history. He answered "yes" to the form question that asked if he had experienced "Fainting, blackouts or dizzy spells". (Ex. 11A)(emphasis added) Handwritten notations[6] on the medical history form that the Appellant filled out indicate that the Appellant said that he had such incidents mostly before high school, they were random events, and once it occurred when he was at a police station with his family obtaining a gun permit for his brother. (Exs. 5 and 11A)

16. At the December 29, 2015 medical exam, a blood sample was taken from the Appellant and he fainted twice. Since the Appellant had fainted, the required tuberculosis test and pulmonary function test were postponed to another time.[7] The Appellant received a physical examination which checked his skin, vision, hearing, nose, mouth, throat, speech, neck, thyroid, heart, pulse, abdomen, spinal mobility and alignment, upper and lower extremities, muscle strength and tone, his gait, balance, coordination, reflexes,

[6] Since MR, a Physician Assistant at Occu-Health, examined and spoke with the Appellant and the notations indicate what the Appellant reported to her, I infer that MR wrote the notations on the medical history form.
[7] There is no indication that the Appellant was subsequently tested for tuberculosis and for pulmonary function.

cranial nerves and mental status and urine, among other things. The Appellant has received appropriate vaccinations. (Ex. 11A)(emphasis added)

17. Initially, Dr. B did not consider the Appellant's fainting (twice) in connection with the blood test during MR's examination to constitute syncope. A second fainting episode can be related to the first fainting episode. In addition, it is not uncommon for people to faint when they are given a blood test. However, after reviewing the Appellant's medical history, Dr. B found that he had fainted on six (6) previous occasions since childhood, each of which appeared to have occurred in different circumstances. For example, the Appellant fainted when he accompanied a family member to a police station to apply for a gun license and in 2013 the Appellant fainted while seated in a plane. As a result, Dr. B concluded that the Appellant has a pattern of syncope. (Testimony of Dr. B)

18. On December 31, 2015, having reviewed MR's report, the Appellant's medical history, and spoken to the Appellant by phone, Dr. B signed a Medical Verification Form, verifying the information therein. The Medical Verification form contains various instructions, including,

> "Review the medical history, physical examination documentation, diagnostic test results, and laboratory reports in relation to the applicable public safety position Medical Standards and make a determination (regarding)(sic) whether the examinee meets all requirements of the Medical Standards. Conditions classified under Category A in the Medical Standards preclude an examinee from work in the public safety position. Conditions listed under Category B … require careful individual consideration and may require further evaluation to determine whether the condition would preclude this individual from safely and effectively performing the essential functions of the public safety position. If there is uncertainty regarding an examinee's health status or functional abilities which could be resolved with additional information, the examinee should be offered the opportunity to provide medical records, reports from medical specialists or any other relevant information in order to determine passed or failed status. … *If an examinee fails an initial medical examination, he or she is eligible to undergo a reexamination within 16 weeks of the date of the failure of the initial examination.*

If the examinee opts for a reexamination, he or she must arrange it with the municipal authority…."
(Ex. 5)(emphasis in original)

19. Dr. B signed the Verification Form certifying that Mr. Quigley failed the medical examination. Specifically, Dr. B determined "Section Failed (6)(f)1.a.viii Category A"[.] (Ex. 5)

20. Section (6)(f)1.a.viii of the Medical Standards provides that "recurrent syncope" is a Category A disqualification. (Administrative Notice – Medical Standards, page 1) "Syncope" is defined as "loss of consciousness resulting from insufficient blood flow to the brain : FAINT". (https://www.merriam-webster.com/dictionary/syncope; June 28, 2017)

21. Dr. B further found in his December 31, 2015 "Clinic Note" relating to the Appellant,

> "Chart review and phone interview with candidate: Candidate had 2 syncopal episodes at the time of his physical exam here in 12/29/15. These occurred a few minutes after venipuncture. In 2013, the candidate had a syncopal episode while on a plane. [Appellant's primary care physician's] notes indicate that the candidate had 5 prior episodes of syncope. Mr. Quigley states that the episode prior to 2013 was in 2006. He tuned (sic) his head, felt a pain in his neck, and blacked out. He says that he was evaluated by a neurologist and cardiologist in 2013 and was told everything was normal. We do not have the full records from those evaluations but a 24-hour EEG and an echocardiogram were normal. Comment: The candidate has documentation of recurrent syncope. This is a Category A condition under the MA Police Medical Standards [(6)(f)1.a.viii]. I informed the candidate of this determination and that he should discuss with the [Respondent] whether an appeal process is available to him. I spoke to Jan in Agawam and the Town will decide whether to have the candidate return to complete his evaluation (PFT, PPD), which were deferred due to the syncopal episodes he had during his initial evaluation."
> (Ex. 5)(emphasis added)

22. Police Chief Eric Gillis knew the Appellant from the Appellant's work at the amusement park, where the Chief had occasion to be aware of the way in which the Appellant interacted with people at the park and that he was a good candidate for the position of police officer. When Chief Gillis was informed of Dr. B's report that the Appellant had

syncope and that it is a disqualifying category A condition under the Medical Standards, he realized that he had no choice but to bypass the Appellant because police are in regular contact with people committing crimes, police are armed, and they drive cruisers with a semi-automatic shotgun and a long gun in their cruisers. It presents a huge risk if the weapons fall into the wrong hands if the Appellant has an episode of syncope. The Appellant's inability to maintain consciousness puts him, fellow officers and the public in jeopardy. While the Appellant had a good work record at the amusement park, conditions at the park are different from the general public in that people enter the park after going through security, and the park security staff are unarmed and they have no power of arrest. While it is true that the Appellant has a license to carry a firearm, the issuance of such a license does not require a medical exam unlike the application for employment as a police officer. (Testimony of Gillis)

23. The Respondent sent the Appellant a letter, dated January 14, 2016, stating, in pertinent part, that he had been "bypassed due to a Category A condition under the MA Police Medical Standards. Please note you have a right to appeal this information to the Civil Service Commission …" (Ex. 5) Attached to the bypass letter were Dr. B's signed Medical Verification and his Clinic Note regarding the Appellant's examination. (Id.)
24. The Respondent selected approximately eight (8) candidates for appointment, four (4) of whom were ranked below the Appellant on the Certification. (Stipulation)
25. The Appellant timely filed the instant appeal. (Administrative Notice)
26. The Medical Standards, in the General Information section, provide, in pertinent part,

> "… An examinee who fails the medical examination is permitted one re-examination under the Initial Medical Standards Program. The subsequent re-examination should focus on the standards not met by the candidate in the initial examination and should entail a specialist examination. … the outcome of the

subsequent re-examination will take precedence over the outcome of the initial examination in determining whether a candidate meets the initial-hire medical standards. …"
(Administrative Notice – Medical Standards, page 2)(emphasis added)

27. The Medical Appeal Process section of the Medical Standards provides, in pertinent part,

> " … If a candidate fails his/her initial medical examination, s/he is eligible to complete re-examination within 16 weeks of the date of the failure …
> Any re-examination will focus on the particular standard(s) not met by the candidate in the initial examination and should entail examination by a Board certified specialist in the appropriate specialty …
> Any physician/specialist selected to perform a re-examination must consult with HRD's medical consultant prior to conducting the re-examination to ensure that the physician/specialist understands the focus of the follow-up examination and gives proper consideration to the essential functions of the relevant position. Prior to issuing a determination, the physician/specialist is encourage (sic) to contact HRD's medical consultant for a follow-up discussion as needed …."
> (Administrative Notice – Medical Standards, Appendix C)(emphasis added)(Appendix C of the Medical Standards was not included in the pages sent to Dr. A) [8]

28. The Commission conducted a prehearing conference in this case on February 24, 2016. At the prehearing conference, it was agreed that the Appellant would contact his primary care physician to be referred to appropriate specialists (cardiologist, neurologist) for a re-examination. The specialists would review Dr. B's report, issue their own decisions as to whether the Appellant suffers from syncope, and then consult Dr. B, who may or may not want to adjust his own opinion. Responding to an email inquiry from the Appellant to the Commission (copied to the Respondent) on February 25, 2016, the Commission wrote, in part, "[t]he goal here is to ensure ACCURATE information to determine if you indeed have this Category A medical condition. …" (Administrative Notice)(EMPHASIS in original)(emphasis added)[9]

[8] As indicated to the parties in a February 25, 2016 email message, this provision of the Medical Standards does not preclude the physician and specialists from communicating. (Administrative Notice)
[9] As further indicated to the parties in the February 25, 2016 email message, this arrangement is not inconsistent with the requirement of the Medical Standards that a different physician is to conduct the re-examination.

29. The Commission held a second pre-hearing conference on June 8, 2016 to discern the status of the Appellant's re-examination and the parties' positions regarding the re-examination. The Appellant had been referred by his primary care doctor to Dr. H, a cardiologist in Chicopee but Dr. H had not yet issued a report regarding the Appellant's re-examination. As a result, the Commission ordered that the Appellant be re-examined by a physician specialist to be selected by the Respondent. (Administrative Notice – email February 25, 2016)

30. Dr. H has been licensed to practice medicine in the state since 2009, she is Board certified in Internal Medicine and she has a subspecialty in Cardiovascular disease. She has been involved in a variety of cardiac research activities and in publishing several cardiac articles. (Exs. 11B; Dr. H's c.v. (submitted post-hearing by email September 15, 2016)) It is unclear what documents the Respondent sent Dr. H in order to perform a re-examination of the Appellant but she appeared to be familiar with his medical history and aspects of the Medical Standards. (Administrative Notice)

31. Prior to issuing her report, Dr. H requested that the Appellant be given a "tilt-table" test. The test was administered on March 31, 2016 in Springfield by Certified Family Nurse Practitioner PH. On March 31, 2016, PH found, in pertinent part, that,

> "… The patient was brought to the Radiology Department in fasting state and placed onto the tilt table. He was connected to continuous noninvasive EKG and blood pressure monitoring. An intravenous line was inserted with normal saline …
> Baseline blood pressure of 115/77 with heart rate of 62. After a 5-minute wait, the table was tilted to a 70-degree upright position. <u>About 20 seconds after tilting to the position, the patient became abruptly symptomatic, diaphoretic, pale and syncopal. His heart rate very quickly dropped from the 70s down to 4 seconds of asystole. He did have some brief tonic-clonic seizure-like movement as the table was returning to the flat position</u>. The patient did receive 500 ml of IV normal sinus with quick stabilization of heart rate and blood pressure. He awoke almost immediately upon returning to a flat position and was asymptomatic at that point

> in time. He did realize that he had passed out. First blood pressure flat was 105/60 with a heart rate of 60.
> IMPRESSION
> Vasovagal syncope. Recommendations are for him to increase his fluid and salt intake. He does have a followup appointment scheduled with [Dr. H] for 04/11 and if he is still symptomatic with increased fluids and sodium, she could consider midodrine or Florinef [medications] at that point in time."
> (Ex. 6)(emphasis added)[10]

32. Four (4) seconds of asystole indicates that the Appellant's heart did not beat for four (4) seconds. (Testimony of Dr. B)

33. At Dr. H's request, Nurse Practitioner PA examined the Appellant. On April 11, 2016, PA reported, in part, that,

> the Appellant is a " … Male with recurrent syncopal episodes. He has had about 5 syncopal episodes over his lifetime. As a part of the workup for his syncope, he had an EEG on 11/18/2013 at Baystate Medical Center which showed no epileptiform activity or persistent focal asymmetries. He had an echocardiogram at Hampden County Physician Associates on 6/12/13 which revealed an EF of 65%, no significant valve abnormalities, and essentially normal echo. The first episode occurred when he was in elementary school playing at recess-he doesn't really remember specifics. The second episode occurred when he was standing at the license bureau with his brother. He got very lightheaded and passed out. His third episode occurred in high school when he turned his head quickly and felt a popping in his neck. He suddenly then became lightheaded and passed out. The fourth episode occurred while he was on an airplane. He hadn't eaten much that day and on (sic) drinking the night previous. He got very lightheaded mid flight and passed out for a few minutes. The final episode occurred several weeks ago when he was getting blood drawn. Again he got very lightheaded and passed out. He is applying to the police academy and they would not accept his application until he got evaluated by a cardiologist. Overall, these episodes have been spaced out by 4 or 5 years each. He is generally able to work out 4-5 days a week doing cardio and weight training without any difficulty on regular basis.
> He had further workup with an ETT [11] exercised for 12 minutes and 13 seconds of a standard Bruce protocol, achieving a heart rate of 188 beats per minute and a blood pressure of 158/80. Resting heart rate was 80 and resting blood pressure was 122/80. There were no arrhythmias noted. The patient did not have any symptoms. The exercise EKG does not exhibit ST changes suggestive of ischemia. The test was stopped due to fatigue.

[10] "Asystole" is the weakening of the contraction of the heart. (Administrative Notice - https://www.merriam-webster.com/medical/asystole (July 7, 2017)
[11] ETT is an "exercise tolerance test". (Administrative Notice - http://medical-dictionary.thefreedictionary.com/ETT, July 12, 2017)

> Tilt table – positive for vassal vagal syncope within 20sec (sic) of tilt his heart rate went from 70 to 4 sec asystole, recovered quickly when repositioned the table flat. Pt has not had any recurrent episodes or prodrome symptoms. He has increased his fluid intake and sodium. …
> … Case reviewed with [Dr. H]. …" (Ex. 6)

34. Before Dr. H issued her report, Dr. B called her and left a message about wanting to discuss the matter and to suggest that she contact the HRD medical consultant as required by the Medical Standards but there is no indication that Dr. H did so. (Ex. 11B)

35. Prior to issuing her report, Dr. H called Dr. B and informed him that she found that the Appellant has syncope but that with increased fluids and sodium, the Appellant should be able to work as a police officer. Dr. B reviewed with Dr. H the essential job functions of a police officer under the Medical Standards. Dr. H told Dr. B that she had not adequately considered the police officer job functions and that she could not say for certain that the Appellant would not experience syncope under the high risk job of a police officer. (Testimony of Dr. B)[12]

36. On June 8, 2016, after the prehearing conference at the Commission, the Respondent received the report of Dr. H. (Exs. 11B; Dr. H's c.v. (submitted post-hearing by email September 15, 2016))

37. In her June 8, 2016 report, Dr. H found, in pertinent part,

> "I saw and evaluated Mr. Quigley in my cardiovascular clinic. It is my opinion that he has neurocardiogenic syncope that is triggered by specific situations. This generally is a benign condition that does not require specific treatment other than adequate hydration and recognition of prodromal symptoms to avoid fainting. However, given that Mr. Quigley is applying for a potentially high intensity, high risk job, I cannot say for certainty that a high risk situation would not trigger his syncope or fainting. There is really no way to prevent this condition from happening with medications/etc with certainty. … "

[12] Dr. B's notes indicate that the Appellant called him about his decision to medically disqualify him and told the Appellant that he "had a call into [Dr. H] to discuss this + suggest that she should discuss case w/ Kris Arnold, MD (medical consultant to the HRD) as detailed in the 2014 HRD policy." (Ex. 11B)

(Ex. 6) [13]

38. The Appellant was further re-examined by Dr. A, D.O.[14] Dr. A has been licensed to practice medicine in the state for nearly two (2) decades, he is Board certified in Internal Medicine and he has a subspecialty in Cardiovascular disease.[15] (Administrative Notice - http://profiles.ehs.state.ma.us/Profiles/Pages/PhysicianProfile.aspx?PhysicianID=1224, July 12, 2017)

39. The Respondent sent Dr. A copies of the reports of Dr. B and Dr. H, the Appellant's medical history and certain pages of the Medical Standards (*see* fn 4) so that he could evaluate the Appellant. A June 16, 2016 cover letter to Dr. A from the Town Personnel Director, stated, in pertinent part,

> "I have scheduled an appointment for Christopher Quigley who was (sic) applied for the position of Police Officer with the Town of Agawam (sic) the appointment has been scheduled for Wednesday July 13, 2016 at 9:00 a.m… (sic) This position is a Civil Service position and Mr. Quigley went for his initial physical at Occu-health … Mr. Quigley meet (sic) with Dr. [B] and [MR] at the conclusion of the exam failed Mr. Quigley due to Category A (sic) Mr. Quigley appealed the decision and went to his specialist [Dr. H] who did not follow the HRD [medical] standards but did send a letter stating due to the high intensity, high risk job she cannot say for certain that a high risk situation would not trigger his syncope or fainting.
> The Civil service (sic) Commission has requested a third medical opinion and that the specialist follow the HRD Medical Standards which I have attached for you along with the medical notes from [Dr. B and Dr. H]. The Town of Agawam is requesting that you state whether you agree with the initial decision to disqualify Mr. Quigley based on category A condition recurrent syncope. I have attached the medical standards for police officers and will send the hardcopy in the mail. …"
> (Ex. 12)

[13] Although it was the Appellant's primary care physician who referred the Appellant to Dr. H for re-examination, the Appellant has indicated that he does not rely on Dr. H's report. (Administrative Notice – email August 5 and 8, 2016)

[14] The initials "D.O." after Dr. A's name on his report regarding the Appellant indicates that Dr. A is a Doctor of Osteopathic Medicine. (Administrative Notice - http://www.osteopathic.org/osteopathic-health/about-dos/what-is-a-do/Pages/default.aspx, July 12, 2017.

[15] I repeatedly asked the Respondent to obtain Dr. A's c.v. but Dr. A failed or refused to provide one. The information herein about Dr. A is public information on the website for the Massachusetts Board of Registration in Medicine.

40. On July 13, 2016, Dr. A examined the Appellant and issued a report stating, in pertinent part,

> " … I had the pleasure of seeing Christopher in the office. As you know he has had at least 2 episodes of syncope. He saw a cardiologist and had a tilt table test and echocardiogram. The tilt table test was abnormal the echocardiogram showed no structural heart disease. At this time he is not on any beta blockers … along with increased salt and water intake. He says that he is (sic) already been doing this at this time I would like to start atenolol 25 mg daily and see him in September. Since March he has not had any symptoms of dizziness palpitations near syncope or syncope he has no chest pain with exertion he had a stress test which was essentially normal. …
> Assessments
> Syncope and collapse …
> Treatment
> … Syncope and collapse
> Start Atenolol Tablet, 25 MG, 1 tablet, Orally, Once a day, 90 day(s), 90
> Notes: positive HUTT [heads up tilt table test[16]] with a normal echo and stress test … see him in September, hopefull he will have no recurrences with increased salt and water intake and the small dose of beta blocker …"
> (Ex. 7)(sic)(emphasis added)

41. Dr. A did not perform any tests on the Appellant. (Ex. 12; Testimony of Dr. B and Sapelli)

42. Medical research indicates that medication and increased water and sodium intake are not likely to control syncope. (Testimony of Dr. B)

43. When Ms. Sapelli, Human Resources Assistant to the Town Personnel Director, received Dr. A's report she had questions about it and called Dr. A's office to request clarification. (Testimony of Sapelli)

44. The Appellant was informed that the Respondent required clarification from Dr. A. Consequently, the Appellant called Dr. A and requested clarification that he could be employed by the Respondent. (Testimony of Appellant; Ex. 14)

[16] Administrative Notice - http://medical-dictionary.thefreedictionary.com/HUTT, July 12, 2017.

45. On August 2, 2016, Dr. A wrote, in pertinent part,

> "To whom it may concern:
> I seen (sic) Christopher in my office on July 13, 2016 for his syncope episode in the past. At this time I have medically cleared him for employment. Christopher has had no symptoms and testing done for me to make this decision. …"
> (Ex. 8)

46. There is no indication that Dr. A consulted Dr. B, as the Commission had ordered. (Administrative Notice)

47. The Commission held a hearing on the appeal on August 10, 2016. (Administrative Notice)

48. After the hearing, the Appellant had a follow-up appointment with Dr. A in September, 2016. I asked the parties to obtain an updated report from Dr. A at the Appellant's November 23 appointment. The Appellant rescheduled the appointment and was seen by Dr. A on November 23, 2016. On or about October 28, 2016, the Respondent sent Dr. A a letter posing questions about his July 13, 2016 exam of the Appellant and for the forthcoming appointment with the Appellant, including whether Dr. A read certain provisions of the Medical Standards, whether the Appellant has a Category A condition (syncope) in regard to his application to be a police officer, whether he had called the HRD medical consultant as required (providing him with the consultant's phone number) and whether he was aware of the medical research that medication is not likely to control syncope. (Administrative Notice – email messages September 20, October 4, 13, 15, 17 and 19, 2016)

49. Dr. A issued his post-hearing report on the Appellant's November 23, 2016 appointment on the day of the appointment. Dr. A wrote, in pertinent part,

> "… As you know [the Appellant] carries a diagnosis of neurocardiogenic syncope. Since being put on atenolol 25 mg daily he has not had any syncopal or

> near syncopal episodes. I feel that this is the correct diagnosis and has responded to the treatment. At this time I feel that he is a very low risk of having any recurrent episodes whatsoever. 12 point systems otherwise were reviewed and are negative (sic) … I will see him again in 6 months follow-up (sic) I am going to leave him on the atenolol 25 mg daily. …"
> (Administrative Notice - Post-Hearing email November 29, 2016)

50. Dr. A did not indicate whether he read the Medical Standards, whether the Appellant has a Category A disqualifying condition, or otherwise answer the questions in the Respondent's October letter. (Id.; Administrative Notice)

51. There is no indication that Dr. A contacted the HRD medical consultant with regard to either his July 13, 2016 or November 23, 2016 examinations of the Appellant.[17] (Exs. 7, 8 and 13; Post-Hearing email November 29, 2016; Administrative Notice)

Relevant Civil Service Law

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." Cambridge v. Civil Service Comm'n, 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, § 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 a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for

[17] There is no indication that Dr. A discussed his findings with Dr. B, as ordered by the Commission at the initial prehearing conferences but there is also no indication that the Respondent conveyed that order to Dr. A. Dr. H did discuss her findings with Dr. B, as the Commission ordered.

the bypass of an appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315 (1991). G.L. c. 31, § 43.

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. City of Beverly v. Civil Serv. Comm'n, 78 Mass.App.Ct. 182, 188 (2010) 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'r of Health & Hosps. of Bos. v. Civil Serv. Comm'n, 23 Mass.App.Ct. 410, 413 (1987)).

With regard to medical testing of police candidates, G.L. c. 31, §61A provides in pertinent part,

> The administrator, with the secretary of public safety and the commissioner of public health shall establish initial health and physical fitness standards which shall be applicable to all police officers and firefighters when they are appointed to permanent, temporary, intermittent, or reserve positions in cities and towns or other governmental units. Such standards shall be established by regulations promulgated by the administrator after consultation with representatives of police and firefighter unions, and the Massachusetts Municipal Association. . . .
> Id.

The state's Human Resources Division (HRD) promulgated Medical Standards pursuant to G.L. c. 31, §61A with the Legislature ratifying. *See* Carleton v. Commonwealth, 447 Mass. 791, 808 (2006). HRD effectively updated the Medical Standards in 2014, submitting the updated document to the Legislature and posting a regulation filing in that regard with the Secretary of the Commonwealth pursuant to G.L. c. 31, s. 61A. The regulation filing states, in part, that

"[t]hese standards have been revised to incorporate findings from medical professional (sic) who have conducted considerable research into the areas of job and task functionality and the way in which an individual's medical and physical condition aligns with his or her specific job tasks." Id.

Additionally, the section 61A provides,

> " … No person appointed to a permanent, temporary or intermittent, or reserve police or firefighter position after November first, nineteen hundred and ninety-six shall perform the duties of such position until he shall have undergone initial medical and physical fitness examinations and shall have met such initial standards. The appointing board or officer shall provide initial medical and physical fitness examinations. If such person fails to pass an initial medical or physical fitness examination, he shall be eligible to undergo a reexamination within 16 weeks of the date of the failure of the initial examination. If he fails to pass the reexamination, his appointment shall be rescinded. No such person shall commence service or receive his regular compensation until such person passes the health examination or reexamination…."
> Id.

Thus, section 61A makes it clear that police officers and fire fighters cannot begin to perform their duties of their position until they have successfully taken an initial medical and physical fitness examination and have met the initial medical standards.

The Medical Standards divide medical conditions into two categories, Category A and Category B. Category A conditions are considered automatic disqualifiers to becoming a municipal police officer or fire fighter. A reexamination is offered to a candidate if he or she fails the initial medical examination and must be requested within sixteen (16) weeks of the initial examination. The statute is clear that if the candidate fails to pass the reexamination, the conditional offer of appointment must be rescinded. *See* Diiorio v Worcester, 27 MCSR 413 (2014)(Motion to Dismiss granted where candidate had Category A medical condition (vision) disqualifying her from police employment). *See also* Tran v Boston Police Department, 25 MCSR 105 (2012)(appointing authority had reasonable justification to bypass candidate who

failed two tests because of limited peripheral vision); Miller v Worcester Fire Department, 9 MCSR 109 (1996)(bypass reasonably justified when candidate lost peripheral vision from a congenital cataract. *Cf.* Reilly v. Town of Belmont, 14 MCSR 186 (2001)(bypass appeal of police officer candidate allowed where bypass for lack of visual depth perception based on a report by a physician who was not an ophthalmologist, did not examine the candidate and was not familiar with all components of depth perception test).

Analysis

The Appellant argues that his professional experience makes him well prepared to be a municipal police officer. He asserts that Dr. H's re-examination report should not be considered since she did not follow the Medical Standards. Rather, he relies on Dr. A's letters that he asserts clears him for employment as a police officer. Any shortcomings in Dr. A's reports, he argues, are not the fault of Dr. A but the Respondent, which failed to send Dr. A the Appeal Process page, a list of the police job tasks and a broader definition of Category A medical conditions of the Medical Standards when it asked him to re-examine the Appellant. Further, the Appellant avers that Dr. A's reports indicate that he has been treated and he has not had any further syncope episodes. He also argues that the Medical Standards Appeal Process indicates that the report of a physician who conducts a re-examination takes precedence over that of an initial physical examination. He also argues that Dr. B should not have spoken to Dr. H to discuss her conclusion under the Medical Standards. For these reasons, the Appellant asserts that the Commission should rule in his favor.

The Respondent argues that it extended a conditional offer of employment to the candidate because he was a desirable candidate but that it had to bypass him based on his Category A disqualifying medical condition (syncope). It avers that the Appellant has a long

history of syncope – the most recent of which are the two instances of syncope that the Appellant experienced at his examination at the request of Dr. B and the syncope he experienced during the tilt table test performed at the request of Dr. H. Dr. A's examination, the Respondent argues, did not comply with the Medical Standards because he did not determine if the Appellant has a disqualifying Category A medical condition (syncope), he did not contact the HRD medical consultant, and he prescribed a medication which Dr. B indicated would not effectively prevent the Appellant from having future syncope episodes. It avers that Dr. A's reported mere "hope" that with the prescribed medication and increased salt and water intake the Appellant will have no recurrences of syncope is not sufficient and a Category A condition either exists or it does not exist. The Respondent finds that it is unfortunate that a "strong candidate" who the Town "wishes to hire" has such a medical condition but the Medical Standards are there to protect the candidate and the public. For these reasons, the Respondent states that the Commission should rule in his favor.

The Appellant does not deny that he has syncope. Rather, he argues that Dr. H, to whom he was referred by his own primary care physician, and Dr. A, to whom he was referred by the Respondent, indicate that it is treatable with increased water and sodium intake (Dr. H and Dr. A) and a prescription (Atenolol) (Dr. A). Further, the Appellant argues that Dr. A cleared him for employment. In addition, he avers that Dr. H's re-examination "takes precedence" over the earlier report of Dr. B under the Medical Standards and that Dr. B improperly persuaded Dr. H to find that he was not suitable for employment as a police officer.

The Respondent has established by a preponderance of the evidence that it had reasonable justification to bypass the Appellant based on his syncope. When the Appellant failed the physical examination by Dr. B, he was afforded a re-examination (with Dr. H)

pursuant to the Medical Standards. However, he was also afforded a second re-examination (which was performed by Dr. A), which is not provided under the Medical Standards. The Appellant was examined by three physicians (one internist with an occupational specialty and two cardiologists). While their reports vary in some respects, all three determined that he has syncope, as the Appellant himself acknowledges. As Dr. B noted, syncope is a disqualifying Category A condition for a police officer candidate. The Medical Standards make no exceptions from disqualification in order for a candidate to obtain treatment of Category A conditions. Even if the Medical Standards made such exceptions, there is no indication that the recommended treatments would prevent the Appellant from experiencing additional syncope episodes.

Although the three physicians concurred that the Appellant has syncope, the reports of Dr. H and Dr. A do not otherwise properly reflect the Medical Standards. While Dr. H specifically addressed the Appellant's syncope, reviewing the reports submitted to her, the test results and the Appellant's medical history, her June 8, 2016 letter does not refer to syncope as a category A condition in the Medical Standards that disqualifies the candidate for employment as a police officer. Instead, her letter refers to syncope as a "benign condition that does not require specific treatment other than adequate hydration and recognition of prodromal symptoms to avoid fainting" and that she could not "say for certainty that a high risk situation would not trigger his syncope or fainting." Although Dr. H consulted Dr. B as ordered by the Commission, she did not contact the HRD medical consultant as required by the Medical Standards. Thus, these comments and shortcomings indicate that Dr. H failed to properly address the Medical Standards for re-examination.

Despite having been sent the Medical Standards and the reports of Dr. B and Dr. H and a detailed cover letter explaining the information that was required, Dr. A found that the Appellant

has syncope but disregarded the fact that the Medical Standards disqualify a police officer candidate with such a condition. There is limited reference to the Appellant's medical history in Dr. A's comments (in fact, he states that the Appellant had two (2) or more episodes of syncope when he has had six (6)), he did not conduct any tests of the Appellant, he did not contact the HRD medical consultant as required, he did not consult Dr. B as ordered by the Commission, and he cleared the Appellant for employment without any indication that the employment position at issue was a police officer position. Dr. A's November 23, 2016 letter even asserts that the Appellant has not had a syncope episode since he put him on a beta blocker prescription when the Appellant's history indicates that without any medication the Appellant had not had episodes of syncope for much longer intervals. In addition, Dr. A failed or refused to provide his c.v. so that the Commission could assess his background and experience with re-examinations for employment as a police officer. While it is true that the Respondent did not include the broader definition of a Category A medical condition on page 6 of the Medical Standards, Appendix C of the Medical Standards (a one-page document describing the Medical Appeal Process), nor the essential tasks of a police officer (pages 32 – 36 of the Medical Standards) in the information it sent to Dr. A to re-examine the Appellant, the Respondent did include other pages of the Medical Standards that more than adequately informed Dr. A that he was to determine whether the Appellant has syncope and whether that is a disqualifying Category A medical condition for a police officer candidate. In addition, the Respondent sent Dr. A two (2) detailed letters before each of Dr. A's examinations of the Appellant, indicating that Dr. A was to determine whether the Appellant has syncope and whether syncope is a disqualifying Category A medical condition under the Medical Standards and he ignored them. In the second letter, the Respondent even provided the phone number of the HRD Medical

consultant that Dr. A was to contact – to no avail. As a result, Dr. A failed to properly address the Medical Standards. Under these circumstances, the reports of Dr. A and Dr. H cannot "take precedence" over Dr. B's report under the Medical Standards.

The Appellant has had episodes of syncope since childhood. While it appears that these episodes have occurred years apart, they have occurred under a variety of conditions, making them unpredictable and unavoidable. Although the episodes themselves appear to be short-lived, their durations vary. For example, during the syncope episode on the plane in 2013, the Appellant's medical history states that it took him ten (10) minutes to recover. When he fainted during the tilt test, he recovered much quicker but with the aid of intravenous saline fluids. Further, the Appellant's recovery rate appears to vary with each episode and may or may not require assistance, medical or otherwise. Police officers must be able to react immediately, under highly stressful conditions and as safely as possible, as indicated by the Municipal Police Officer Essential Functions contained in the Medical Standards. The Medical Standards state explicitly, and without exception, that someone with a Category A condition is disqualified from public service as a police officer. As practical matter, if the Appellant faints on the job as a police officer, he could expose himself, his fellow officers and the public to significant harm, as Police Chief Ellis indicated. There is no evidence that treatment could effectively prevent additional episodes, if that were permitted by the Medical Standards, which it is not. Having established, by a preponderance of the evidence, that the Appellant has a Category A condition that disqualifies him from employment as a police officer, the Respondent had reasonable justification to bypass him. Finally, I find no evidence of bias or other inappropriate motive on the part of the Respondent in bypassing the Appellant that might undermine the reasonable justification established here.

Conclusion

For all of the above stated reasons, the appeal of Mr. Quigley, under Docket No. G1-16-9, 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 [Bowman, Chairman - absent]) on August 3, 2017.

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:
Christopher R. Quigley (Appellant)
Russell J. Dupere, Esq. (for Respondent)