

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

EFRAIN RAMIREZ,
Appellant

v.

G1-21-141

TOWN OF SOUTHBRIDGE,
Respondent

Appearance for Appellant:

Pro Se
Efrain Ramirez

Appearance for Respondent:

David C. Jenkins, Esq.
Jared M. Collins, Esq.
KP Law, P.C.
101 Arch Street: 12th Floor
Boston, MA 02110-1109

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On August 9, 2021, the Appellant, Efrain Ramirez (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Southbridge (Town) to bypass him for original appointment as police officer in the Town’s Police Department. On September 7, 2021, I held a remote pre-hearing conference which was attended by the Appellant and counsel for the Town. As part of the pre-hearing conference, the parties stipulated to the following:

- A. On March 23, 2019, the Appellant took and passed the civil service examination for police officer.

- B. On September 1, 2019, the Appellant's name appeared on the eligible list for Southbridge Police Officer.
- C. On March 10, 2021, HRD sent Certification No. 07618 to the Town from which the Town appointed one (1) police officer.
- D. The successful candidate was ranked below the Appellant.
- E. On June 25, 2021, the Town notified the Appellant of the reasons for bypass, listing alleged negative reasons related to the Appellant and positive reasons related to the selected candidate.
- F. On August 9, 2021, the Appellant filed a timely appeal with the Commission.

At the pre-hearing, the Appellant reported that:

- a. He is a 30-year-old Hispanic male currently living in Virginia with this girlfriend and child.
- b. He graduated from high school in Springfield and has an associates degree in criminal justice and has received 118 credits at Westfield State University.
- c. He successfully completed the reserve / intermittent police officer academy.
- d. He has been employed in Holyoke and Springfield for non-profit organizations in positions such as Substance Abuse Counselor & Employment Coordinator and Human Rights Officer.
- e. He has been employed for just under one year as a correction officer in Virginia.
- f. He has volunteered in several capacities, such as being a youth mentor in Holyoke.
- g. He has received letters of recommendations from various officials, including current police officers and the former Mayor of Holyoke.

At the pre-hearing conference, the Town reported that, as part of the background investigation regarding the Appellant, multiple issues surfaced regarding the Appellant that provide valid reasons for bypassing him for appointment, including but not limited to: a 2019

incident at MGM Casino in Springfield in which the Appellant is allegedly observed on videotape punching another person in the face with his closed fist and falsely identifying himself as a police officer; multiple domestic abuse allegations from 2009 to 2014 and the issuance of a related restraining order for one year.

Prior to deciding the procedural next steps of this appeal, I requested that the Town provide me, with a full copy of the following for an in camera review: the background investigation completed of the Appellant, including, but not limited to, the video of the incident at MGM Casino in Springfield, the one-year restraining order and any related affidavits completed by the person who sought the order (with her name and personal information redacted); and any documentation verifying that the Appellant's license in Massachusetts was recently suspended.

The Town subsequently submitted the requested information, which I have reviewed in its entirety, including the video of the relatively recent incident at MGM Casino in Springfield.

After review, I made the following additional orders:

- I. The Town shall, if such request is made by the Appellant within 10 days, facilitate the Appellant's review of the information provided to the Commission.
- II. The Appellant had 10 days thereafter to notify the Commission if he wished to withdraw his appeal from the Commission.
- III. If the Appellant chose not to withdraw his appeal, the Town would have 30 days to submit a Motion for Summary Decision and the Appellant would have 30 days thereafter to submit a reply / opposition.

The Appellant did not withdraw his appeal with the Commission; the Town submitted a Motion for Summary Decision and the Appellant did not submit a reply.

Motion for Summary Decision Standard

When a party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he or she is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense. 801 CMR 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law - i.e., "viewing the evidence in the light most favorable to the non-moving party", the substantial and credible evidence established that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case", and has not rebutted this evidence by "plausibly suggesting" the existence of "specific facts" to raise "above the speculative level" the existence of a material factual dispute requiring evidentiary hearing. See e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). Accord Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, (2008). See also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635 36, (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (factual issues bearing on plaintiffs standing required denial of motion to dismiss).

Applicable Civil Service Law and Rules

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, §1. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001);

MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev.den., 423 Mass. 1106 (1996).

Original and promotional appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G.L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law’”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

The governing statute, G.L. c. 31, gives the Commission's de novo review "broad scope to evaluate the legal basis of the appointing authority's action" and it is not necessary that the Commission find that the appointing authority acted "arbitrarily and capriciously." City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). The commission ". . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority" but, when there are "overtones of political control or objectives unrelated to merit standards or neutrally applied public policy," then the occasion is appropriate for intervention by the commission." Id. (*emphasis added*). See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission's jurisdiction to enforce basic merit principles under civil service law).

Law enforcement officers are vested with considerable power and discretion and must be held to a high standard of 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).

Analysis

I have thoroughly reviewed the background investigation completed by the Chicopee Police Department when the Appellant applied to that department two years earlier, which, along with all supporting documentation, was relied upon by the Town in bypassing the Appellant. Even when viewing the evidence in the light most favorable to the Appellant, he has no reasonable expectation of prevailing in this appeal. Although I have reviewed the entire reports, this matter can be decided on the most recent problematic incident. The Chicopee investigator's

report, which is corroborated by the video evidence submitted by the Town states: “Candidate was involved in incident at MGM Springfield on 9/29/19. Video shows candidate walk into Commonwealth Bar inside MGM and punch a patron in the face. MGM Security as well as Springfield Police Gaming Enforcement Unit and State Police later located candidate escorted him out, and trespassed him from the property.”

Since this one incident, standing alone, is a valid reason to bypass the Appellant, and because the *selected candidate* appears to have a stellar background with no similar incidents, and because a review of the other unrefuted incidents related to the Appellant cited in the reports would only serve to harm this pro se Appellant, there is no need to detail the full extent of the various incident and other reports.

Conclusion

The Town’s Motion for Summary Decision is allowed and the Appellant’s appeal is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 24, 2022.

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

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

Efrain Ramirez (Appellant)

David Jenkins, Esq. (for Respondent)

Jared Collins, Esq. (for Respondent)