

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

ERICK RAMIREZ-MARTINEZ,
Appellant

v.

CITY OF SALEM,
Respondent

Docket Number:	G1-24-018
Appearance for Appellant:	Erick Ramirez-Martinez, <i>pro se</i>
Appearance for Respondent:	James F. Wellock, Esq. Assistant City Solicitor City of Salem - Legal Dept. 93 Washington Street Salem, MA 01970
Commissioner:	Angela C. McConney

SUMMARY OF DECISION

The City of Salem has proven by a preponderance of the evidence that it had reasonable justification to bypass the Appellant for original appointment to the position of permanent reserve police officer based on errors and omissions of material facts during the application process.

DECISION

On February 10, 2024, the Appellant, Erick Ramirez-Martinez (Appellant or Mr. Ramirez-Martinez), pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) the December 20, 2023 decision of the City of Salem (City or Respondent) to bypass him for original appointment to the position of reserve police officer.

The Commission conducted a remote pre-hearing conference on April 2, 2024. On July 10, 2024, I conducted an in-person full evidentiary hearing at the offices of the Commission,

located at 100 Cambridge Street, Boston MA.¹ The hearing was recorded via Webex.² In August 2024, the Respondent filed a proposed decision, whereupon the administrative record closed.

FINDINGS OF FACT:

I admitted four exhibits from the Respondent Department (R. Exhibits 1-4). I admitted the Respondent’s background investigation report as R. Exhibit 5. Based upon the documents submitted and the testimony of the following witnesses:

Called by the Department:

- Chief Lucas Miller, Salem Police Department
- Sgt. Robert Monk, Salem Police Department

Called by the Appellant:

- Erick Ramirez-Martinez, the Appellant

and taking administrative notice of all pleadings filed in this case, plus pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence, I make the following findings of fact:

1. Erick Ramirez-Martinez is a resident of Salem, Massachusetts. (R. Exhibits 1 and 5; Testimony of the Appellant)
2. Mr. Ramirez-Martinez has worked for the United States Postal Service since November of 2015. (R. Exhibit 5; Testimony of the Appellant)
3. Mr. Ramirez-Martinez served his country in the United States Army as an

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² The Commission provided a link to the parties. Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission’s official recording.

infantry specialist from August 2010 until February of 2015. (R. Exhibit 5; Testimony of Appellant)

4. On March 23, 2023, the Appellant passed the civil service examination for the position of police officer with a score of 79. (Stipulated Facts)

5. On July 1, 2023, the state Human Resources Division (HRD) issued Certification #09328 to the City. Mr. Ramirez-Martinez's name appeared 1st on the certification. (Stipulated Facts)

6. The Salem Police Department (Department) assigned Sgt. Robert Monk to conduct Mr. Ramirez-Martinez's background investigation. Sgt. Monk is a ten-year veteran of the Department, and has been conducting background investigations for eighteen months to two years. (R. Exhibit 5; Testimony of Monk)

7. The background investigation included a review of Mr. Ramirez-Martinez's educational history, work history, criminal history, driving history, family members, information from other law enforcement agencies, and his personal and professional references. (R. Exhibit 5; Testimony of Monk)

8. As part of his background investigation, Sgt. Monk learned that Mr. Ramirez-Martinez had also applied to the Manchester, NH police department (Manchester police). From that application, he learned more about Mr. Ramirez-Martinez's background than was included in the Salem application. Sgt Monk found that while Mr. Ramirez-Martinez's background included some positive attributes, it also included workplace discipline at his current position, gang association and incidents of domestic violence. (R. Exhibit 5; Testimony of Monk)

9. Although Manchester police routinely uses polygraph examinations in its hiring process, Mr. Ramirez-Martinez's application did not reach that phase. (Testimony of the

Appellant)

10. On the Salem application, Mr. Ramirez-Martinez stated he had never been disciplined at work. (R. Exhibit 1)

11. However, Sgt. Monks learned from the Manchester police application that Mr. Ramirez-Martinez had been disciplined in his current position for wearing headphones on the job; for leaving the keys in the postal vehicle; and was suspended for an alleged threat to the union steward. (R. Exhibits 4 and 7; Testimony of Appellant).

12. Mr. Ramirez-Martinez testified that all of his workplace disciplines were reduced to “official discussions,” and that he had been promoted since then to closing supervisor. (Testimony of Appellant)

13. Sgt Monks also learned from the Manchester police application that Mr. Ramirez-Martinez was involved in a bar fight. (R. Exhibit 4)

14. Sgt. Monk also learned of Mr. Ramirez-Martinez’s alleged continuing friendship and association with members of the Cripps street gang from the Manchester police. (R. Exhibit 5; Testimony of Monk)

15. During Mr. Ramirez-Martinez’s sophomore year, he witnessed a violent incident at school, leading him to distance himself from most friends suspected of current or prospective involvement with the Cripps. Mr. Ramirez-Martinez made an exception for two friends, with whom he remains on friendly terms. (R. Exhibits 4 and 5; Testimony of Monk; Testimony of Appellant)

16. Mr. Ramirez-Martinez informed the Manchester Police that his most recent contact with a Cripps affiliated friend/associate was six or seven months before the October 6, 2020 interview. (R. Exhibit 4)

17. Mr. Ramirez-Martinez also disclosed several incidents of physical altercations with his romantic partners over the years to the Manchester police. (R. Exhibit 5; Testimony of Monk).

18. Chief Miller testified that one of the critical elements of being a police officer involves investigations of domestic violence, and that those with a domestic abuse background should not be entrusted with that responsibility. He testified that Mr. Ramirez-Martinez downplayed and dismissed the domestic incidents during the interview process and questioned whether he had the judgment and temperament to serve as a police officer. (Testimony of Chief Miller)

19. In a December 20, 2023 notice enclosing his appeal rights, the City informed Mr. Ramirez-Martinez of his bypass. In the letter, the City stated as reasons for bypass:

1. A history of domestic abuse;
2. Formal or informal affiliation with any group or organization whose character or actions espouse discriminatory practices against any person based on race, color, ethnicity, religion, gender, etc.

(R. Exhibit 1)

20. Mr. Ramirez-Martinez appealed to the Commission on February 10, 2024.

(Stipulated Facts)

Applicable Civil Service Law

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). *See also Brookline v. Alston*, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Original 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.

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 Serv. Comm’n*, 483 Mass. 461, 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012). *Beverly v. Civil Serv. 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, 543 (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”).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. *See, e.g., Falmouth v. Civil Serv. Comm’n.*, 61 Mass. App. Ct. 796, 801 (2004), citing *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997); *Police Comm’r v. Civil Serv. Comm’n*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

ANALYSIS

The Department has shown, by a preponderance of the evidence, that it had reasonable justification to bypass Mr. Ramirez-Hernandez for original appointment as permanent reserve police officer. After reviewing Sgt. Monk's process and adherence to procedure, I find that he conducted a reasonably thorough and detailed investigation.

First Bypass Reason – Domestic Violence

In certain circumstances, the Department may consider underlying behavior that does not involve law enforcement action, the court system or result in a conviction. Because Mr. Ramirez-Hernandez testified to the issues of domestic violence, they are undisputed.

Chief Miller testified that one of the most critical elements of being a police officer is addressing incidents of domestic violence in our society and that those with a background of domestic abuse should not be the ones investigating incidents of domestic abuse. The chief found troubling Mr. Ramirez-Martinez's downplaying and dismissiveness of the incidents as it raised doubt whether he had the judgment and temperament to serve as a permanent reserve police officer.

An appointing authority relies heavily on the information candidates provide in their applications to perform a thorough background check into whether they are both qualified and suitable to serve as a police officer. Sgt. Monk's investigation was reasonably thorough and detailed, and he provided Mr. Ramirez-Martinez with multiple opportunities to provide information and explain his statements on the application.

Mr. Ramirez-Martinez failed to disclose the incidents of domestic abuse in his Salem Police employment application, answering "NO" to question 29: "Have you been involved in a physical altercation with any other person within the last five years?" I find that Mr. Ramirez-Martinez lacked candor in his Salem application.

The Commission has consistently recognized that “a police officer must be truthful at all times,” and “failure to do so constitutes conduct unbecoming an officer.” *MacHenry v. Wakefield*, 7 MCSR 94 (1994). Indeed, there is a “strong public policy against employing police officers who are untruthful.” *Royston v. Billerica*, 19 MCSR 124, 128 (2006). To that end, the Commission has stated that “it is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.” *Garrett v. Haverhill*, 18 MCSR 281, 285 (2005). As such, allegations of untruthfulness ought to be made with an appropriate degree of seriousness, and investigated with sufficient diligence. *See, e.g., Morley v. Boston Police Dep’t*, 29 MCSR 456 (2016).

Second Bypass Reason – Formal/Informal Affiliation with Gang Members

As the second reason for bypass, the City cited Mr. Ramirez-Martinez’s continued affiliation with members of the Cripps street gang. Sgt. Monk discovered this affiliation during his background investigation when he accessed Mr. Ramirez-Martinez’s Manchester police application: Mr. Ramirez-Martinez had failed to disclose this contact in his Salem application. (Exhibit 4) At the Commission hearing, Mr. Ramirez-Martinez testified that the Manchester police misconstrued his statement about a friend going through a domestic situation, and that he cannot fathom how the Manchester police concluded that that friendship equaled an affiliation with the Cripps. He testified that he had no gang connection other than the incident of gang violence he witnessed as a juvenile.

Mr. Ramirez-Martinez was more forthcoming and more candid with the Manchester police about his background than he was with the Salem Police. He disclosed information to the Manchester police that he withheld from Salem, including discipline at his current job, a bar fight and being delinquent on credit accounts. These inconsistencies weigh heavily against Mr. Ramirez-Martinez’s credibility. Mr. Ramirez-Martinez asserts that at the time he filled out the

application, he had no disciplinary history. He explained the disciplines as work disagreements.

Mr. Ramirez-Martinez testified that he provided the information to Manchester police in anticipation of facing a polygraph,³ and so wanted to make sure it was complete and accurate.

CONCLUSION

For all the reasons discussed above, the Commission hereby denies the appeal of Erick Ramirez-Martinez filed under Docket No. G1-24-018 and affirms the decision of the City of Salem.

CIVIL SERVICE COMMISSION

/s/ *Angela C. McConney*

Angela C. McConney
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on December 19, 2024.

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 C.M.R. § 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 to:
Erick Ramirez-Martinez
James F. Wellock, Esq.

³ Mr. Ramirez-Hernandez testified that he did not take a polygraph during his application process with the Manchester police.