

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

ANGEL L. RAMOS,

Appellant

G1-22-155

v.

MASSACHUSETTS PAROLE BOARD,

Respondent

Appearance for Appellant:

Angel L. Ramos, *Pro Se*

Appearance for Respondent:

Keara L. Kelley, Esq.

Counsel

Massachusetts Parole Board

12 Mercer Road

Natick, MA 01760

Commissioner:

Shawn C. Dooley

SUMMARY OF DECISION

The Commission has determined that the appeal filed by the Appellant was not timely filed. Further, the Commission affirms the decision of the Massachusetts Parole Board to bypass the Appellant for appointment as a full-time Field Parole Officer A/B due to disciplinary action in the Appellant's employment history.

DECISION

On November 15, 2022, the Appellant, Angel Ramos (Appellant), pursuant to the provisions of G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission), contesting the decision of the Massachusetts Parole Board (Respondent) to bypass him for

original appointment to the position of permanent, full-time Field Parole Officer A/B.¹ On December 20, 2022, the Commission Chair held a remote pre-hearing conference. On March 14, 2023, I presided over a remote full hearing. The hearing was recorded via Webex and both parties received a link to access the recording.² Both parties submitted proposed decisions. The Commission concluded that the appeal was not timely filed and must be dismissed for that reason. Even if the appeal had been timely filed, the evidence shows that there was reasonable justification to bypass the Appellant for appointment.

FINDINGS OF FACT

The Appellant entered no exhibits into evidence and the Respondent entered 15 exhibits into evidence (numbered 1-15, Bates Stamp R001 – R0215). Further, at my request, the Respondent submitted the following documents, which have been marked accordingly as post hearing (PH) exhibits: PH Exhibit 1: Interview Evaluation Sheet, PH Exhibit 2: Interview Evaluation Sheet – Final Score Sheet.

Based on the documents submitted and the testimony of the following witnesses:

Called by the Respondent:

- Angelo Gomez, Deputy Chief of Field Services;

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² Should either party file a judicial appeal of this decision, the plaintiff 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, electronic copy of the hearing recording, previously sent to the parties, should be used to transcribe the hearing.

Called by the Appellant:

- Angel Ramos, Appellant;

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

1. The Appellant has an Associate of Science degree in Criminal Justice, a Bachelor of Science degree in Criminal Justice, and a Master of Science in Forensic Psychology. (R0085-R0086)
2. The Appellant served in the United States Army. (R0085)
3. From 1998 to 2019, the Appellant was employed as a Police Officer for the Massachusetts Bay Transportation Authority (MBTA) Transit Police Department. His training and experience in this role included work in the Special Weapons and Tactics (SWAT) Unit, the Anti-Terrorism Law Enforcement and Security (ATLAS) Team, and work as a TSA National Explosives Detection Canine Handler. (R0085)
4. In 2019, the Appellant was promoted to Police Sergeant with the MBTA Transit Police Department and remained employed in that role at the time he applied to work for the Respondent. (R0083).
5. On April 2, 2021, the Appellant took the civil service examination for Field Parole Officer A/B. (Stipulated Facts; R0006)
6. On June 15, 2021, the Appellant's name was placed on an eligible list of candidates established by the state's Human Resources Division (HRD) for Field Parole Officer A/B. (Stipulated Fact; R0006)

7. On February 23, 2022, HRD issued Certification No. 08385 to the Massachusetts Parole Board from which the Respondent was authorized to appoint seven candidates from the first 15 candidates willing to accept appointment. (Stipulated Fact; R0006)
8. The Appellant was ranked tenth among those willing to accept appointment on the certification. (R0006; R0025)
9. On April 15, 2022, the Appellant participated in a first-round interview conducted by a panel of one Field Parole Officer Supervisor and two Assistant Field Parole Officer Supervisors. (R0028-R0037)
10. During his first-round interview, the Appellant was asked if he had ever received any form of discipline in the workplace. He reported that in 2014 he received a written warning or reprimand for being “AWOL” by leaving the City of Boston a few times before his shift ended while in the K-9 unit. He also reported that in 2021 he received a two-day suspension for being accused of sleeping on an overnight shift. While the Appellant did not admit to sleeping on shift, he reported taking responsibility for the accusation. (R0029; R0032; R0035)
11. The interview panel for the first-round interviews ranked candidates in order of their scores relating to ten job-related categories. The scores of the three panel members were then averaged. On average, the Appellant ranked sixth among the candidates. (R0039)
12. Selected Candidate A ranked fourth among the candidates and Selected Candidate B ranked fifth. (R0039)
13. Following the first round of interviews, all candidates were subject to a background investigation. (Gomez Testimony).

14. On May 23, 2022, the Respondent submitted a selection memorandum to HRD which listed candidates selected for the position of Field Parole Officer A/B and provided reasons for bypassing other candidates. (R0062)
15. The selection memorandum gave the following explanation for the bypass of Appellant:

A background investigation revealed that the candidate was issued a written warning by the Massachusetts Bay Transportation Authority Transit Police Department on or about 7/14/2014 for leaving his assigned work area. On or about 1/21/21 the candidate was also suspended from the Massachusetts Bay Transportation Authority Transit Police Department for two days for sleeping during his assigned shift and failure to properly supervise officers under his control. Further, he was also excluded from receiving overtime pay for a 60-day period. (R0067)
16. Two candidates ranking lower than the Appellant were selected. They have been designated by the Respondent as Selected Candidate A and Selected Candidate B. (R0068; R0070)
17. Neither Selected Candidate A nor Selected Candidate B had any disciplinary issues in their work history. (Gomez Testimony)
18. On May 31, 2022, the Appellant was notified by the Respondent that he had not been selected as a candidate for the position of Field Parole Officer A/B. (R0205)
19. The Appellant acknowledged receiving notification of his non-selection by June 6, 2022. (Appellant Testimony; R0002)
20. On June 27, 2022, the Appellant attempted to file an appeal of the Respondent's bypass decision by attempting to email a Bypass Appeal Form to the Commission. (Appellant Testimony; R002)
21. The Appellant was aware on June 27, 2022 that the deadline for filing a bypass appeal with the Commission is sixty (60) days. (Appellant Testimony)
22. The Appellant reviewed the instructions and requirements for submitting an appeal prior to attempting to file his Bypass Appeal Form on June 27, 2022. (Appellant Testimony)

23. The Appellant sent a copy of his appeal form to Angelo Gomez and Kevin Keefe of the Massachusetts Parole Board on June 27, 2022. (Appellant Testimony, forwarded email)
24. The Appellant did not receive a response from anyone at the Massachusetts Parole Board nor any other confirmation of receipt of this email.
25. At the time of the Appellant's bypass, three options existed for filing an appeal with the Commission: via mail; via email; or in-person. Bypass appeals must be filed within 60 days of the candidate being notified of the bypass. When filing an appeal with the Commission via email, the Commission's website indicates that a complete appeal form should be submitted as an attachment to "cscappeals@mass.gov" and that a filing fee must be submitted within 30 days after submitting the appeal.
26. On November 15, 2022, the Appellant provided the Commission with a copy of a reply email dated June 27, 2022 that he received from "Mail Delivery Subsystem" with the subject "Returned mail" indicating that the email address "csappeals@mass.gov" was unknown. The Appellant had mistakenly omitted the letter "c" after "cs" in the email address. (December 22, 2022 Procedural Order)
27. The Appellant did not receive a confirmation email indicating that he had properly filed his Bypass Appeal Form at the time. (Appellant Testimony)
28. The Appellant did not submit a filing fee to the Commission within 30 days of his June 27, 2022 email (erroneously addressed to "csappeals@mass.gov"). (December 22, 2022 Procedural Order; Appellant Testimony)
29. Approximately five months after unsuccessfully attempting to file his appeal—i.e., on November 14, 2022—the Appellant emailed the Commission inquiring about the status of his appeal. (December 22, 2022 Procedural Order)

30. On November 15, 2022, the Commission acknowledged receipt of the Appellant's November 14, 2022 submission of his bypass appeal form. (R0004)

31. The Appellant paid his filing fee by mail on December 3, 2022. (December 22, 2022 Procedural Order)

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).

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. 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).

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 Service Comm'n, 61 Mass. App. Ct. 796, 801 (2004), citing City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305,

rev. den., 428 Mass. 1102 (1997); Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

Analysis

Timeliness

The Commonwealth’s Standard Adjudicatory Rules of Practice and Procedure, specifically the provision codified at 801 CMR 1.01 (6)(b), states that:

“Any Person with the right to initiate an Adjudicatory Proceeding may file a notice of claim for an Adjudicatory Proceeding with the Agency within the time prescribed by statute **or Agency rule**. In the absence of a prescribed time, the notice of claim must be filed within 30 days from the date that the Agency notice of action is sent to a Party.” (emphasis added)

More than two decades ago, the Commission adopted by rule a Bypass Appeal Statute of Limitations which allows bypassed candidates to file an appeal with the Commission up to 60 days “from receipt of ... notice” of the bypass reasons.

The Appellant received the reasons for bypass from the Respondent on May 31, 2022. Given the above-referenced statute of limitations, and given that July 30, 2022 falls on a Saturday, the Appellant had until Monday, August 1, 2022, to file a timely bypass appeal with the Commission. At the time, Appellants had three options for filing an appeal with the Commission: in-person (with the filing fee to be submitted at time of filing); via mail (with the filing fee to be submitted with the written submission); or via email (with the filing fee to be submitted no more than 30 days after submission of the appeal via email).

On June 27, 2022, within the 60-day filing deadline, the Appellant attempted to submit an appeal to the Commission via email, but he used an incorrect email address, sending the appeal to a non-existent csappeals@mass.gov email address instead of the correct cscappeals@mass.gov

address. Given that the appeal form was sent to a non-existent email address, the Appellant received a reply email from “Mail Delivery Subsystem” with the subject “Returned mail” indicating that the email address “csappeals@mass.gov” was unknown. Consistent with the instructions on the appeal form, the Appellant did properly serve the Respondent with a copy of the appeal form that same day (June 27, 2022). He did not submit a filing fee within 30 days of June 27, 2022.

More than three months after the August 1, 2022 filing deadline, the Appellant, on November 14, 2022, inquired with the Commission, stating that he had filed an appeal on June 27, 2022. Upon further inquiry with the Appellant, it was determined that an appeal had not been filed with the Commission on June 27, 2022, but, rather, sent to an incorrect email address. Upon receiving the appeal form from the Appellant on November 14, 2022, the Commission docketed the appeal the next day, sending an acknowledgment form and notice of pre-hearing conference to both parties via email the same day, noting an appeal filing date of November 14, 2022.

This is a close call, but, based on the particular facts of this appeal, the Appellant’s failure to file a timely appeal did not occur through no fault of his own. The Appellant, via an email delivery error notification, was notified that he sent the appeal to the wrong email address, yet he failed to re-send the appeal form to the correct email address. Even if he had done so, the Appellant failed to submit the required filing fee within 30 days of his unsuccessful attempt to submit an appeal. Since the Appellant’s failure to file a timely appeal was not through no fault of his own, there is no basis to effectively toll the period of time for filing an appeal. Even, however, if the Appellant had filed a timely appeal, the Respondent has shown reasonable justification for bypassing him for appointment, based on the Appellant’s employment record at the MBTA Police Department. Although the Appellant had an otherwise distinguished record of employment as a Transit Police

Officer and Sergeant, his relatively recent failure to properly supervise officers after falling asleep is a legitimate reason for the Respondent to have concerns about his ability to perform the duties and responsibilities of a Parole Officer A/B.

Nothing in this decision, however, should be construed as detracting from the Appellant's years of service to the Commonwealth with the MBTA Police Department nor the potential for him to serve the Commonwealth in other capacities in the future.

Conclusion

For all the above reasons, the appeal of Angel L. Ramos, under Docket No. G1-22-155 is hereby ***denied***.

Civil Service Commission

/s/ Shawn C. Dooley
Shawn C. Dooley
Commissioner

By vote of the Civil Service Commission (Bowman, Dooley, McConney, Stein, and Tivnan, Commissioners) on July 13, 2023

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:

Angel Ramos (Appellant)

Keara Kelley, Esq. (for Respondent)