

COMMONWEALTH OF MASSACHUSETTS

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

DANIEL RAMPENTHAL,
Appellant

v.

G1-21-002

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Daniel Rampenthal

Appearance for Respondent:

Joseph Santoro
Department of Correction
PO Box 946, Industries Drive
Norfolk, MA 02056

Commissioner:

Paul M. Stein

Summary of Decision

The DOC showed reasonable justification for bypassing a candidate for appointment as a Correction Officer I (CO I) who was discharged from the military under “other than honorable conditions” related to unexcused failures to attend training and his less than candid statements about that military record.

DECISION

The Appellant, Daniel Rampenthal (“Mr. Rampenthal” or “Appellant”), acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (“Commission”) contesting his bypass by the Department of Correction (DOC) for original appointment as a permanent full-time Correction Officer I.¹ On February 22, 2021, the Commission held a remote pre-hearing videoconference (Webex), followed by a full hearing on April 5, 2021, also via Webex video

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

conference, which was digitally recorded.² The DOC filed a Proposed Decision; the Appellant did not.

FINDINGS OF FACT

The Respondent submitted twenty-five (25) exhibits at the hearing, labelled Respondent's Exhibits 1-25, and the Appellant submitted four (4) exhibits at the hearing, labelled simply by consecutive bates stamp numbers A0001-A0010.³ Based upon the evidence and the testimony of the following witnesses:

For The Department of Correction:

- Eugene Jalette, Supervising Identification Agent
- Kyle Brouillette, Correction Officer I, Background Investigator

For the Appellant:

- Daniel Rampenthal

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, Daniel Rampenthal, is a 2006 high school graduate. He is thirty-two (32) years old, the father of two (2) children, and is engaged to be married. (*Resp. Ex. 3*)
2. The Appellant is currently employed in Worcester, MA as a warehouse employee and has held that position since November 2018. His employer indicated that he is punctual and

² A link to the digital recording of the full hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the stenographic or other written transcript of the 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.

³ During the hearing, the Appellant testified that he requested a Discharge Upgrade from the United States Army Reserves. Should he receive a discharge upgrade, the Appellant was advised to forward any documentation to the Commission post-hearing but that it would not be considered part of the exhibits. The Appellant failed to forward any such document to the Commission post-hearing.

hardworking, has never been disciplined, and would highly recommend him for employment.
(*Reps. Ex. 3*)

3. On or about April 13, 2019, the Appellant took the civil service examination for Correction Officer I. (*Stipulated Fact; Resp. Ex. 25*)

4. On or about July 1, 2019, the state's Human Resources Division ("HRD") established a list of eligible candidates for Correction Officer I. (*Stipulated Fact; Resp. Ex. 25*)

5. On or about January 1, 2020, per the request of the DOC, HRD sent the DOC Certification No. 06870 for appointment to the position of Correction Officer I. (*Stipulated Fact; Resp. Ex. 25*)

6. The Appellant's name appeared tied for 75th on Certification Number 06870, putting him within the statutory "2N + 1" formula for the DOC to consider as part of a hiring cycle in which it ultimately appointed thirteen (13) candidates, one (1) of whom was ranked below the Appellant. (*Stipulated Fact; Resp. Ex. 25*)

7. On or about February 2, 2020, the Appellant signed Certification Number 06870, indicating his willingness to accept employment with the DOC. (*Stipulated Fact; Resp. Ex. 25*)

8. On or about February 2, 2020, the Appellant also signed a Background Information Request and Waiver allowing the DOC to conduct a background investigation which included a check with any past employers and the Registry of Motor Vehicles; a criminal record check with the local police department, the State police, the FBI, and the Massachusetts Board of Probation; and interviews with character references. (*Resp. Ex. 4; Testimony of Jalette*)

9. On or about February 2, 2020, as part of the DOC application process, the Appellant signed a military records Authorization to Release Information, which was part of the Military History Addendum. That authorization allowed the National Records Center (in St. Louis, MO) or any other custodian of military records to release to the DOC information or photocopies from military

personnel and related medical records, limited to the following information/records: Disciplinary records, Character of Discharge, and Reenlistment Code. This could include a photocopy of the candidate's DD Form 214 and Report of Separation, as well as information regarding commendations, medals and awards received. (*Resp. Ex. 5, 6; Testimony of Jalette*)

10. Eugene T. Jalette is the Supervising Identification Agent with the DOC and coordinates all of the administrative functions related to the hiring process at the DOC, including background investigations. A background investigation is conducted on all applicants for the position of Correction Officer I ("CO") to ensure that all entrance requirements of suitability and character are met. (*Testimony of Jalette*)

11. Supervising Identification Agent Jalette assigned CO Kyle Brouillette to investigate Mr. Rampenthal's background. CO Brouillette is a trained background investigator and has conducted over fifty (50) prior investigations for the DOC. (*Testimony of Brouillette*)

12. The Pre-Employment Background Investigation of the Appellant consisted of the following: Military History Inquiry; Criminal History Check, noted as None; Fingerprints; Local Police Department Check (Woonsocket, RI PD); Drivers History/Driver License; Professional Licenses/Firearms License, noted as None; Education, Employment, four (4) noted; Professional References; Neighborhood Investigation; Home Visit/Applicant Interview; and Family Interview. (*Resp. Ex. 3; Testimony of Officer Brouillette*)

13. DOC Investigator Brouillette conducted a home visit and interview with the Appellant on August 24, 2020. At that time, Investigator Brouillette had yet to receive the Appellant's military records from the Army Reserves. He only had the Appellant's Military History Addendum form, which indicated his dates of service and his rank. (*Testimony of Brouillette; Resp. Ex. 6*)

14. During the August 24th interview, the Appellant indicated that he tore the meniscus in his knee in 2011 and he was unable to go to Reserve monthly trainings thereafter. He said he informed his Army sergeant of the injury, that he needed surgery, and that the sergeant told him he would be medically discharged from the Army Reserves. The Appellant also told Investigator Brouillette that he was considering re-enlisting in the Reserves and contacted a recruiter prior to applying to the DOC. During that conversation with the recruiter, the Appellant learned that he was not actually discharged for medical reasons. At no time during this interview with the DOC investigator did the Appellant inform the investigator that his rank had been reduced. (*Testimony of Brouillette; Resp. Ex. 6*)

15. Soon after the August 24, 2020 interview, the Appellant's military records were received by Investigator Brouillette from the Army Reserves via email, completing the background investigation. An Investigative Summary Report was submitted for review on August 31, 2020. The investigation was reviewed by Supervising Identification Agent Jalette and Investigator Brouillette together to ensure that all aspects of the investigation were completed and no other actions were needed. (*Testimony of Brouillette and Jalette*)

Appellant's Military History

16. The Appellant was a member of the United States Army Reserves from 2010 to October 8, 2012. (*Resp. Ex. 7 and 8; Testimony of Appellant*)

17. During his time in the Army Reserves, the Appellant injured his knee in mid-2011. (*Testimony of Appellant; Resp. A0006; A0010*)

18. On or about June 2, 2011, the Appellant submitted a temporary disability insurance (TDI) claim to the Rhode Island Department of Labor and Training Temporary Disability Insurance Division. (*App. Ex. A0008*)

19. The Benefit Review document admitted into evidence indicates that the Appellant was indeed granted TDI and the first payment he received was on August 1, 2011. The final TDI payment that the Appellant received was on October 11, 2011. The Appellant's medical disability ended as of October 11, 2011. (*App. Ex. A0008-A0010*)

20. While the Appellant was receiving temporary disability benefits, he underwent surgery at the Roger Williams Medical Center in Providence, RI for repair of a right medial meniscal tear in his knee on August 25, 2011. (*App. Ex. A0006*)

21. Although the Appellant's temporary disability benefits had ended, the Appellant never returned to the Army Reserves for his mandatory, monthly battle assemblies ("BAs"). (*Resp. Ex. 8, 9, 10, 12, 13, 16, 17, 21*)

22. Beginning on October 21, 2011 through March 26, 2012, Army Reserves Captain Nishant J. Lal repeatedly issued Developmental Counselling Forms relative to the Appellant's failure to appear for monthly battle assemblies. According to the documents issued, the purpose of a counselling form is to "assist leaders in conducting and recording counseling dates pertaining to subordinates," pursuant to 5 USC 301, Departmental Regulations; 10 USC 3613, Secretary of the Army. (*Resp. Ex. 22*)

23. The first date that a Developmental Counselling Form was issued relative to the Appellant was dated October 21-23, 2011. The form indicates that the Appellant was "being counseled for unexcused absence. [Your] failure to report for Inactive Duty training/ Unit Training Assembly will jeopardize the valuable benefits [you] may otherwise be eligible for as a member in good standing with the unit and Army reserves..." (*Resp. Ex. 22*)

24. The Developmental Counselling Form indicates that the Army contacted the Appellant via his cell phone on October 20, 2011 at 4:20 PM and had a conversation about his failure to appear.

During that conversation, the Appellant “requested to stop going to BAs (battle assemblies) due to medical issues (unrelated to the medical issues referenced above) and to request a discharge from the military.” The Appellant said that “if more information is needed, to see the commander.”
(*Resp. Ex. 22*)

25. Thereafter, multiple other Developmental Counselling Forms were issued relative to the Appellant’s failure to attend monthly, mandatory battle assemblies, to include:

- November 19, 2011 – Army Reserves attempted to contact the Appellant via telephone for unexcused absences. By this date, the Appellant had accumulated six (6) unexcused absences. (*Resp. Ex. 20*)
- November 20, 2011 – Army Reserves attempted to contact the Appellant again via telephone for unexcused absences. (*Resp. Ex. 19*)
- January 7, 2012- Army Reserves attempted to contact the Appellant via telephone for unexcused absences. The document summarizes what **Mr. Rampenthal’s explanation** was as follows: “Soldier is not attending training due to awaiting medical discharge. Soldier will not be attending BA per the commander and understands he will be receiving “U’s” until medical information is needed, see commander who is aware of SM situation.” By that date, the Appellant had accumulated sixteen (16) unexcused absences. (*Resp. Ex. 15*)
- January 8, 2012 – Additional attempts to contact the Appellant via his home phone number and his cell phone number relative to unexcused absences. By this date, the Appellant had accumulated eighteen (18) unexcused absences.

(*Resp. Ex. 14*)

26. On March 26, 2012, a final Developmental Counselling Form was issued and mailed via certified mail, the purpose of which was “[t]o document the unit leadership’s interaction with the Soldier concerning their Unsatisfactory Participation. To inform the soldier that they are currently being processed out of the Army Reserve for accumulating 9 or more “U” Letters in a one-year period” within the 338th EN CO. The document further indicated that the “Army Reserve has invested time and funding to assist in your military goals and the current focus is to shape our force to meet future needs as an Operational Army Reserve. We can no longer afford to carry Soldiers

that do not participate – they block promotion opportunities and inhibit our ability to fill lower-grade vacancies.... You have failed to keep in contact with your Chain of Command and have accumulated more than 9 unexcused absences from battle assemblies during the past year. This is a violation of AR-135-91 Chapter 4-14(a).” (*Resp. Ex. 22*)

27. According to the March 26, 2012 Developmental Counseling Form, the plan of action was “[i]mmediate Separation from the Army Reserves. We have provided ample enough time and opportunity for the Soldier to respond to the process; the Soldier has failed to respond. We will continue to mail “U” Letters and try to contact the Soldier until a Discharge Order is received.” (*Resp. Ex. 22*)

28. The Army Reserves provided an Affidavit of Service and the Certified Mail Return Receipt as proof of service of the March 26, 2012 Developmental Counselling Form. (*Testimony of Appellant; Resp. Ex. 23, 24*)

29. The Appellant admits that it is his mother’s signature on the Certified Mail Return Receipt. (*Testimony of Appellant; Resp. Ex. 24*)

30. In addition to the Developmental Counselling Forms, the Army Reserves mailed a two-page document entitled Letter of Instructions for Unexcused Absences on seven (7) separate occasions to the Appellant. Each time the Letter of Instructions was mailed, the Appellant was notified of the following information:

- A detailed list of the dates the soldier had missed during that month;
- Notification that the soldier is required to attend all scheduled unit training assemblies and annual training period, pursuant to AR 135-91;
- The number of accrued unexcused absences within 1-year period;
- How to furnish the unit an appropriate affidavit or certification by a medical doctor... having specific knowledge of the emergency or circumstances, requesting that it be excused...;
- That the soldier will be notified within 10 days after receipt of his request as to whether absence has been excused;

- A warning that, if a soldier accumulates 9 unexcused absences within a 1-year period, the soldier will become an unsatisfactory participant and will be processed for separation from the Selected Reserve either by reassignment or discharge... and could result in an other than honorable characterization of your military service; and
- The exact date of the next scheduled training assembly for the soldier's unit.

(Resp. Ex. 9, 10, 12, 13, 16, 17, 21)

31. The Army Reserves mailed the seven (7) Letters of Instruction for Unexcused Absences to the Appellant on the following dates:

- October 24, 2011 (Appellant informed that he missed four (4) dates that month and that the next scheduled training assembly would be November 19, 2011); *(Resp. Ex. 21)*
- November 21, 2011 (Appellant informed that he missed four (4) additional dates and that the next scheduled training assembly would be on December 10, 2011); *(Resp. Ex. 17)*
- December 13, 2011 (Appellant informed that he missed four (4) additional dates and informed that the next scheduled training assembly would be January 7, 2012); *(Resp. Ex. 16)*
- January 9, 2012 (Appellant informed that he missed four (4) additional dates and informed that the next scheduled training assembly would be February 11, 2012); *(Resp. Ex. 13)*
- March 11, 2012 (Appellant informed that he missed five (5) additional dates and informed that the next scheduled training assembly would be April 13, 2012); *(Resp. Ex. 12)*
- April 16, 2012 (Appellant informed that he missed four (4) additional dates and informed that the next scheduled training assembly would be May 5, 2012); *(Resp. Ex. 10)*
- May 7, 2012 (Appellant informed that he missed four (4) additional dates and informed that the next scheduled training assembly would be June 2, 2012).

(Resp. Ex. 9)

32. On or about November 21, 2011, the Army Reserves issued a Personnel Action pursuant to Title 5, Section 3012; Title 10, USC, EC 9397 relative to the Duty Status Change of Daniel K. Rampenthal. The Appellant's rank was reduced from PV2/E2 to PVT/E1 as of November 21, 2011, for "non participation during scheduled BA... 12 unexcused absences..."⁴ *(Resp. Ex. 18)*

⁴ The Appellant testified that, at one point, his rank was PFS/E3 based simply upon his time of service exceeding one year in the Army Reserves. The record is unclear as what his rank was reduced *from* – either PFS/E3 or PVT/E2 – down to PVT/E1. Regardless, the Appellant acknowledges that his rank was ultimately reduced to PVT/E1.

33. On or about September 23, 2012, the Department of the Army issued a Memorandum for the Deputy Chief of Staff G1, 412th Engineer Command, Vicksburg, MS regarding the Subject: Separation under AR-135-178 Chapter 13 – Unsatisfactory Participation, PVT Daniel K. Rampenthal, 338th Engineer Company, Attleboro, MA. Within the Memorandum, Commanding Major General William Buckler, Jr. indicates that he “carefully considered the enclosed separation packet and recommendations by the chain of command that the above named Soldier be considered for separation from the Army prior to the expiration of the Soldier’s current term of service....” Major General Buckler directed “[T]hat the Soldier be discharged with a characterization of service as Other Than Honorable and that the Soldier be reduced in rank to Private (E-1).” (*Resp. Ex. 8*)

34. On or about October 2, 2012, the Department of the Army Headquarters at Fort Dix, NJ mailed notice of Mr. Rampenthal’s official discharge to his address. The document indicates that the effective date of discharge was October 8, 2012 and the type of discharge was “Under Other Than Honorable Conditions.” (*Resp. Ex. 7*)

35. During the hearing of this appeal, the Appellant confirmed that the telephone numbers and the addresses listed on the Army Reserve documents were indeed his telephone numbers and addresses. More specifically, during a discussion about redacting personal telephone numbers and addresses from any and all exhibits, the Appellant told the Commission not to be concerned about redacting his addresses or phone numbers on the military documents in the record since he *no longer* lived at the relevant addresses, nor does he have the relevant home phone numbers because he had since moved.⁵ (*Testimony of Appellant*)

⁵ At no time during the hearing of this appeal did the Appellant claim the Army Reserves had incorrect contact information for him.

Appellant's Prior Statements and Appeal Testimony About Military History

36. As part of the Appellant's DOC Application, the Appellant submitted a Military History Addendum form. On that form, the Appellant indicated that he joined the Army Reserves in April 2010 and was discharged in June 2011. (*Resp. Ex. 6*)

37. The date that the Appellant wrote on the Military History Addendum as the discharge date (June 2011) was not accurate. The Appellant was discharged from the Army Reserves in October 2012, which is more than a year after the date he wrote on the form. When asked on cross-examination at the hearing of this appeal, the Appellant admitted the date of discharge that he wrote is wrong. (*Resp. Ex. 6; Testimony of Appellant*)

38. During his testimony at the hearing, the Appellant stated that he was "under the impression I was being discharged in October 2011." He further testified that "everything was verbal" and "nothing was in writing" with regards to his conversations with his sergeant about an October 2011 discharge. (*Resp. Ex. 6; Testimony of Appellant*)

39. The Appellant was pressed on cross-examination as to whether the Army's discharge was just verbal—*with no documentation*—that he was no longer in the United States Army anymore? The Appellant responded, "that's correct, that's pretty much what I got out of it." He further testified, "I was under the impression I was already discharged (in October 2011) – and it was a year after that I was officially discharged, and I know it looks bad. I was young and stupid." (*Testimony of Appellant*)

40. The Appellant further testified that October 2011 was the last time he spoke to anyone in his unit. He testified that "anything after October 2011 has nothing to do with me" because he was "under the impression he was being discharged for medical reasons." (*Testimony of Appellant*)

41. The Appellant could not explain, when I asked him directly, why he did not return for monthly drills with the Army Reserves after his disability ended on October 11, 2011. (*Testimony of Appellant*)

42. Additionally, the Military History Addendum in the DOC Application also asked about the Appellant's discharge from the Army Reserves. The Appellant wrote on the form that the type of discharge was a "General Discharge" in 2011. He also indicated that his rank was an E3. (*Resp. Ex. 6; Testimony of Appellant*)

43. The type of discharge the Appellant wrote on the Military History Addendum was incorrect. The Appellant was discharged under "Other Than Honorable Conditions" in 2012. He was also reduced in rank in November 2011 to a PVT/E1. His rank when he was discharged was not an E3 in 2012 as he incorrectly wrote on his DOC Application. (*Resp. Ex. 6, 7, 8 and 18*)

DOC's Decision to Bypass Appellant

44. The Background Investigation and all accompanying documentation, to include the Appellant's DOC Application and the medical documents he provided, were submitted for review and consideration by the Appointing Authority, DOC Commissioner Carol A. Mici. As part of the documents submitted, all military records the DOC received were included and considered. (*Testimony of Mr. Jalette*)

45. After a careful review of the facts and circumstances, Commissioner Mici decided to bypass the Appellant due to a "Failed Background – Based on an Other Than Honorable Discharge from the United States Army Reserve." (*Resp. Ex. 2; Testimony of Jalette*)

46. On or about October 27, 2020, a bypass letter was mailed to the Appellant. (*Resp. Ex. 2*)

47. The Appellant timely appealed his bypass to the Commission. (*Resp. Ex. 1, 25*)

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).

Basic merit principles in hiring and promotion call for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences. Appointments are then made, generally, in rank order, from a “certification” of the top candidates 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. In order to deviate from that formula, an appointing authority must provide specific, written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify 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 had 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. 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, § 2(b), 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).

ANALYSIS

The DOC has established that it conducted a reasonably thorough review of the Appellant’s qualifications for appointment as a DOC Correction Officer and that his military history, which includes a reduction in rank and an “Other Than Honorable Discharge,” provided reasonable justification to bypass him for appointment.

The Appellant joined the military in 2010 and the following year, he underwent knee surgery to repair a meniscus injury. Nothing in the record indicated that this was a career-ending injury. The evidence presented established that the Appellant received temporary disability benefits for just two (2) months from August 2011 through October 11, 2011. Thereafter, the Appellant's injury should not have prevented him from attending and participating in the mandatory, monthly battle assemblies for the Reserves. He failed repeatedly to do so, as evidenced by the seven (7) Letters of Instruction mailed to the Appellant from late October 2011 through late March 2012, alerting him to each and every training date he missed, advising him to furnish the unit with medical documentation, warning him that if he accumulated nine (9) unexcused absences within a year that he would be processed for separation, and alerting him of the next training assembly date.

The Appellant never once responded to these Letters of Instruction. He never provided the Reserves with any additional medical documentation, nor did he bother to appear for any future training dates. Multiple attempts were made over the many months that followed to contact the Appellant via his cell phone number and his home number, as well. On a couple of occasions, the Reserves were able to speak with him; however, most other calls went unanswered and unreturned. The Appellant accumulated well over the minimum of nine (9) unexcused absences. Due to his outright abandonment of his obligations, by November 21, 2011, his rank was reduced from PVT2/E2 back down to a PVT1/E1. He was ultimately discharged by the Army Reserves and it was classified as "Under Other Than Honorable Conditions."

The Appellant testified that he was "under the impression" that he was being discharged from the Reserves as early as October 2011 for medical reasons, even after his disability benefits ended. He claimed that his sergeant and/or commander *verbally* discharged him from the United States Army Reserves, without any documentation. I do not credit this testimony. When I asked him

why he was unable to attend, for medical reasons, those battle assemblies, the Appellant was unable to give a responsive answer. He testified that “anything after October 2011 has nothing to do with me” with regards to what the Army Reserves may or may not have documented about his lack of service or with regards to anything sent to him.

Also concerning to me was the Appellant’s inability to provide accurate information to the DOC on his Military History Addendum. On all pertinent parts of that form, the information that the Appellant provided was wrong, to include his dates or service with the Reserves, the type of discharge he received, and his rank at time of discharge. Although he admittedly had spoken to a recruiter-friend about the possibility of re-enlisting in the Reserves prior to applying to the DOC, having discussed with him the intricacies of a General Discharge and quite possibly learning about his reduction in rank, the Appellant claimed, even after that conversation, to not know what his dates of service in the Reserves were or what his rank was at the time of discharge, causing him to provide inaccurate information to the DOC in his Application.

The Department of Corrections is an organization with a paramilitary, hierarchical structure. As with the military, the DOC requires adherence to established rules and procedures. It is clear that the Appellant failed to attend the mandatory, monthly battle assemblies while still a member of the United States Army Reserves and that he either willfully ignored all of the documentation mailed and most every phone call made to him or he was fully aware of the content/reasons for all of those communications, and blatantly chose not to fulfill his obligations or maintain any contact whatsoever. This behavior resulted in his discharge under “other than honorable conditions”. The DOC is reasonable in not wanting to assume the risk of hiring the Appellant based on this troubling military record.

CONCLUSION

For the aforesaid reasons, the appeal of the Appellant, Daniel Rampenthal, under Docket No. G1-21-002, is *denied*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein and Tivnan, Commissioners) on June 2, 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 to:
Daniel Rampenthal (Appellant)
Joseph Santoro (for Respondent)