

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
617-979-1900

MARKUS REYNOLDS,
Appellant

G1-23-164

v.

CITY OF BROCKTON,
Respondent

Appearance for Appellant:

James Gilden, Esq.
173 N. Main St
Sharon, MA 02067

Appearance for Respondent:

Karen A. Fisher, Esq.
Senior Assistant City Solicitor
City of Brockton Law Department
45 School Street
Brockton, MA 02301

Commissioner:

Shawn C. Dooley

Summary of Decision

The Commission denied the bypass appeal of a candidate seeking appointment as a police officer, concluding that the City of Brockton had reasonable justification to bypass him based upon inconsistent responses about his residency history during the application process and the deliberate omission of prior employment attempts with the Massachusetts Department of Correction (DOC).

DECISION

On August 31, 2023, the Appellant, Markus Reynolds (Appellant), filed a timely appeal with the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(b), contesting the decision of the City of Brockton (City) to bypass him for appointment as a full-time, permanent police officer. The Commission held a remote pre-hearing conference on October 10, 2023. On

December 19, 2023, I conducted an in-person full hearing at the offices of the Commission.¹ The hearing was recorded via the Webex videoconferencing platform, and copies were provided to the parties.² Both parties filed Proposed Decisions. For the reasons set forth below, the Appellant's appeal is denied.

FINDINGS OF FACT

The City submitted into evidence seven exhibits (Exhibits 1-7; R0001-R0122). The Appellant did not submit any exhibits into evidence. Based on the documents submitted and the testimony of the following witnesses:

Called by the City:

- Detective Santiago Cirino, Brockton Police - Background Investigator

Called by the Appellant

- Markus Reynolds, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from other credible evidence, a preponderance of evidence establishes the following facts:

1. The Appellant was born and raised in Boston, Massachusetts and graduated from a Boston public high school in 2009. (*Testimony of Appellant, Exhibits 1 and 3*)
2. The Appellant received a bachelor's degree in criminal justice in 2015 and a Master of

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.

² A link to the audio/video recording was provided to the parties. 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 they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

Business Administration 2020. (*Exhibits 1 & 3*)

3. The Appellant currently resides in Brockton, MA with his girlfriend and their young children. (*Testimony of Appellant*)
4. The Appellant is currently employed as a correction officer in Suffolk County and has been appointed as a Deputy Sheriff. He has been employed there since 2018. (*Testimony of Appellant*)
5. The Appellant purchased his Brockton residence in 2016. (*Testimony of Appellant*)
6. On March 25, 2017, the Appellant took and passed the civil service examination for police officer administered by the state's Human Resources Division (HRD). His name was placed on the eligible list established by HRD on August 4, 2017. He received residency preference in Boston on the eligible list based on his representation that he resided in Boston continuously from March 25, 2016, through March 25, 2017, the date of the exam. (*Testimony of Appellant, Exhibit 1*)
7. In February 2018, the Appellant changed his address with the Registry of Motor Vehicles (RMV) from Brockton to an apartment rented by his mother in the Dorchester section of Boston. This is the apartment where he had resided from 2001 until he bought the house in Brockton in 2016. He also affixed a change of address sticker to the back of his Massachusetts Driver's License. (*Testimony of Appellant & Testimony of Det. Cirino*)
8. On February 8, 2018, the Appellant changed his voter registration from his Brockton residence to the City of Boston, listing his mother's address. His voter registration was changed back to Brockton on March 30, 2021. (*Exhibit 3*)
9. In 2019, the Appellant updated his residency preference with HRD from Boston to Brockton when he sat for a subsequent civil service exam for police officer on March 23,

2019. The Brockton address listed by the Appellant is the house in Brockton that he purchased in 2016. To secure a Brockton residency preference as part of this subsequent examination process, the Appellant was required to have resided continuously in Brockton from March 23, 2018, to March 23, 2019, one year prior to the subsequent examination. The eligible list for this exam was established by HRD on September 1, 2019. *(Testimony of Appellant, Exhibit 1)*

10. In June 2019, the Appellant was called from the 2017 eligible list to interview with the Boston Police Department for a police officer position. *(Testimony of Appellant)*

11. While going through the hiring process with the Boston Police Department in 2019, the Appellant changed utility bills at the Boston address from his mother's name to his name and established cable service under his name.³ *(Testimony of Appellant; Exhibit 3)*

12. In early 2019, the Appellant applied to renew his License to Carry (LTC) a firearm from the Boston Police Department. The renewed LTC was issued on May 8, 2019. *(Exhibits 2 and 6, Testimony of Det. Cirino)*

13. In late 2019, the Appellant was bypassed by the Boston Police Department based on a determination by the Boston Police Department that he did not qualify for the Boston residency preference, which required the Appellant to have resided in Boston from March 25, 2016, to March 25, 2017. *(Testimony of Appellant)*.

14. A background investigation completed by the Brockton Police Department states that the Appellant, as part of the background investigation, acknowledged that he used his mother's

³ During testimony, the Appellant stated that he established cable service under his name and changed the utility bill to his name at his mother's apartment after someone (identity unknown) from the Boston Police Department advised he would need to submit these documents as proof of residency.

address to obtain the residency preference in Boston. This was also acknowledged to Detective Miller of the Attleboro Police Department, who conducted the Appellant's background check when he applied to be a police officer in the City of Attleboro. (*Exhibit 3*)

15. On March 17, 2022, the Appellant took and passed a third civil service examination for police officer administered by HRD. His name was placed on the eligible list for police officer established on July 1, 2022. (*Stipulated Facts*)
16. On July 1, 2022, the Appellant's name appeared on an eligible list for police officer established by HRD. (*Stipulated Facts*)
17. His name appeared among those with Brockton residency preference based on the Appellant's representation to HRD that he resided continuously in Brockton from March 17, 2021, to March 17, 2022, the one-year period preceding the 2022 police officer examination. (*Exhibit 3*)
18. On December 15, 2022, HRD issued Certification #09004 to the City of Brockton to hire new police officers for the Brockton Police Department. (*Stipulated Facts*)
19. On January 17, 2023, Brockton requested 35 more names for consideration. The Appellant's name appeared on the updated certification in a tie-group with four other Brockton residency preference candidates in 24th place. (*Stipulated facts*)
20. On February 24, 2023, the Appellant participated in his initial interview with Brockton Police Detective Santiago Cirino. At that time, he arrived with his completed Brockton Police Department Recruit Officer Candidate Application Packet. (*Exhibits 1 & 6, Testimony of Det. Cirino*)
21. Detective Cirino began the application review by reading the Application instructions,

which provided, in relevant part, that: “False or misleading answers or withheld information will result in rejection of your application, dismissal from employment and removal from the Civil Service eligibility list.” After each page in the application packet was completed by the Appellant and reviewed with Detective Cirino, both the Appellant and the Detective initialed the page. (*Exhibit 1, Testimony of Det. Cirino*)

22. Detective Cirino then read the “Candidate Agreement” to the Appellant. The agreement provided in pertinent part: “1. I swear (or affirm) that the information I have caused to be entered into the preceding pages of this Application and Personal History Statement for employment as a Police Officer for the City of Brockton are true and complete. 2. I authorize the investigation of all statements contained in this Application and Personal History Statement Form as necessary in arriving at an employment decision. . . . 4. I understand that false or misleading information herein or during interview(s) will result in my being disqualified from further consideration and/or termination from employment from the Brockton Police Department.” This document was signed by the Appellant before a notary on February 22, 2024. When Det. Cirino finished reading the agreement, the Appellant initialed the document. (*Exhibit 1, Testimony of Det. Cirino*)

23. The Appellant stated on page 3 of his Brockton Police application that he had lived in Brockton since April 2016 and prior to that lived with his mother in her Boston (Dorchester) apartment from April 2001 to April 2016. (*Exhibit 1*)

24. On March 11, 2023, Detective Cirino interviewed the Appellant’s mother who stated that the Appellant moved out of the apartment and was removed from the lease in 2016 when he purchased the house in Brockton. She further informed Detective Cirino that while

the Appellant would on occasion “hang out during his lunch break and take a nap,” that he has not resided at the apartment since he moved out in 2016. (*Exhibits 3 and 4*)

25. On March 17, 2023, Detective Cirino reviewed the Boston Police Department’s background application done by Detective Peter McCarthy which stated that the Appellant had applied to be a Correction Officer with the Massachusetts Department of Correction (DOC). The Appellant neglected to include this information in his Brockton Police Department application when asked to list all law enforcement agencies that he had applied to in the past. During the interview with Detective Cirino, the Appellant agreed that he should have included the DOC information in his Brockton application. (*Exhibits 1, 3, and 4, Testimony of Det. Cirino*)

26. Detective Cirino reached out to DOC regarding the Appellant and received an email response indicating that DOC had not retained the Appellant’s file but that they could share the information contained in their database, which showed the following: “Cert. 01474: Passed Background, but failed drug test on 3/14/2014; Cert. 02212 (received 310 relief): 10/08/2014- Failed PT Test (run)”. When Detective Cirino inquired further about the failed drug test, he was informed that it came back positive for “high testosterone”.⁴ (*Exhibit 3, Testimony of Det. Cirino*)

27. On March 23, 2023, Detective Cirino conducted a second interview with the Appellant. (*Exhibit 3, Testimony of Det. Cirino*)

28. Following the second interview, Cirino prepared a summary of his findings, which

⁴ Detective Cirino spoke with the Appellant about the failed drug test and the Appellant said that the test showed a false positive. He denied that he was taking steroids (resulting in high testosterone), was retested, and passed the subsequent drug test. Due to the error in testing, the parties mutually agreed to Commission-ordered (or “310”) relief for the Appellant.

included his recommendation to bypass the Appellant based on his conclusion that the Appellant has made untruthful statements regarding his residency and for failing to disclose attempts to gain employment with the DOC. (*Exhibit 4, Testimony of Det. Cirino*)

29. On May 7, 2023, Detective Cirino submitted a memorandum to Brockton Police Captain McNulty recommending that the Appellant be bypassed from being hired as a Brockton Police officer. (*Exhibit 4, Testimony of Det. Cirino*)

30. On July 11, 2023, the Mayor of Brockton, Robert F. Sullivan, in his role as the appointing authority, sent the Appellant a letter notifying him that he was being bypassed for the position of police officer. (*Exhibit 5*)

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).

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 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).

An Appointing Authority is well within its rights to bypass an individual for fudging the truth as part of an application for a civil service position. It is reasonable to infer that a person

who does so in order to get a job will be inclined to lie on the job. See, e.g., *Noble v. Massachusetts Bay Trans. Auth.*, 25 MCSR 391 (2012) (concealing suspension from school for involvement in criminal activity); *Burns v. City of Holyoke*, 23 MCSR 162 (2010) (claiming he withdrew from another law enforcement application process from which he was actually disqualified); *Escobar v. Boston Police Dep't.*, 21 MCSR 168 (2008) (misrepresenting residence).

Analysis

By a preponderance of the evidence, the City of Brockton has shown that it had reasonable justification to bypass the Appellant for appointment as a Brockton Police Officer based on the Appellant's inconsistent and unreliable reports regarding residency between Brockton and Boston from 2016 through 2020 and his omission that he had previously sought employment with DOC. Honesty is a required trait of any person holding the position of police officer—or seeking to become a police officer. The criminal justice system relies on police officers to be always truthful, and an appointing authority is justified in not employing individuals who do not meet this standard. See *Meaney v. Woburn*, 18 MCSR 129, 133-135 (2005) (discharge upheld for police officer based, in part, on officer's consistent dishonesty and "selective memory" during departmental investigation of officer's misconduct); *Desharnias v. City of Westfield*, 23 MCSR 418 (2009) (discharge upheld based primarily on officer's dishonesty about a relatively minor infraction that occurred on his shift.)

Throughout the application process, honesty and truthfulness were repeatedly stressed as being essential to the process. The Appellant listed Brockton as his sole residence from April 2016 to the present on his Brockton Police Department application. But when confronted with additional data refuting this by the Brockton Police background investigator, the Appellant stated

that he originally thought he could claim “dual residence” and when he applied to the City of Boston he sought and received residency preference with HRD. I do not credit the Appellant’s testimony that he was living in both Brockton and Boston from 2016 to 2019 and that he only learned after he was removed from consideration for employment by the Boston Police that dual residency was not cognizable when determining Civil Service residency preference. While applying to become a Boston Police Officer, the Appellant put forth significant effort to disguise his actual residency in the City of Brockton in order to be granted preferential residency status with the Boston Police Department. I find that his actions in this regard were deliberate, as opposed to being the product of a misunderstanding. It is clear from the investigation that the Appellant was living full time in Brockton beginning in April 2016. If the Appellant truly believed that he could claim dual residency by using his mother’s address and be granted residency preference in Boston, there would have been no reason for him to have gone through all the effort to appear to be living exclusively with his mother in Boston. This included changing his drivers license, his voter registration, renewing his LTC in Boston, setting up cable television, and getting a utility bill changed to his name. Adding to the evidence that these actions were deliberately misleading to gain an advantage, the Appellant’s mother, when asked by Detective Cirino about his residency, stated that he had not lived with her in the Boston / Dorchester apartment since he bought his Brockton house in 2016.

While I do not find the fact that the Appellant omitting his DOC application to be as significant as his lack of truthfulness regarding his residency, the fact that the Appellant omitted his applications for employment with DOC is relevant in that the application clearly stated that he should include all law enforcement agencies that he had applied to in the past. While he applied to DOC nine years ago, it is difficult to credit the Appellant’s testimony that he forgot about two

separate applications, both of which resulted in a non-selection, one of which was successfully appealed to the Commission. Police officers are expected to be clear, concise, truthful, and have a keen attention to detail when dealing with official matters.

Conclusion

For all of the above stated reasons, the appeal of Markus Reynolds under Docket No. G1-23-164 is *denied*.

Civil Service Commission

/s/ Shawn C. Dooley

Shawn C. Dooley
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, & Tivnan, Commissioners) on April 4, 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 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:

James Gilden, Esq. (for Appellant)
Karen Fisher, Esq. (for Respondent)