

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

JEFFREY RICHARD,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

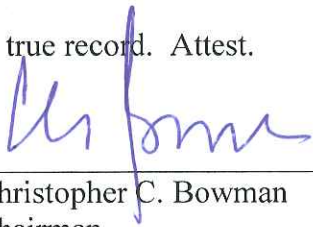
Case No.: G1-12-36

DECISION

The Civil Service Commission (Commission) voted at an executive session on January 10, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated November 1, 2012. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on January 10, 2013.

A true record. Attest.



Christopher C. Bowman
Chairman

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.

Notice to:

Harry M. Shuman, Esq. (for Appellant)

Earl Wilson, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
FAX: 617-727-7248

November 1, 2012

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Jeffrey Richard v. Department of Correction
G1-12-36; DALA Docket No. CS-12-247

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COMMISSION OF MASS
CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

Richard C. Heidlage, Esq.
Chief Administrative Magistrate

Enclosure

cc: Harry M. Shuman, Esq.
Earl Wilson, Esq.

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Jeffrey Richard,
Appellant

v.

Docket No. G1-12-36
DALA No. CS-12-247
Dated: November 1, 2012

Department of Correction,
Appointing Authority

Appearance for Petitioner:

Harry Shuman, Esquire
15 Court Square, Suite 840
Boston, MA 02108

Appearance for Appointing Authority:

Earl Wilson, Esquire
Department of Correction
P.O. Box 946
Industries Drive
Norfolk, MA 02056

Administrative Magistrate:

Judithann Burke

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CIVIL SERVICE COMMISSION

CASE SUMMARY

The Appointing Authority, Department of Correction, had reasonable justification to bypass the Appellant for original appointment to the position of Correction Officer I, by virtue of his CORI record, which revealed a plea to sufficient facts to a charge of larceny in 2009.

RECOMMENDED DECISION

The Petitioner, Jeffrey Richard, is seeking review of the decision of the Department of Correction (DOC) no to select him for original appointment to the position

of Correction Officer I when he was bypassed on January 18, 2012. (Exhibit 2). He appealed in a timely fashion pursuant to the provisions M.G.L.c. 31 s. 2(b). (Exhibit 1). A hearing was held on June 4, 2012 at the offices of the Division of Administrative Law Appeals, which was then located at 98 North Washington Street, Boston, MA.

At the hearing, nine (9) exhibits were marked. The Appellant testified and argued in his own behalf. The Appointing Authority presented the testimony of Alexandra McInnis, Director of Personnel in the Human Resources Department at DOC. The hearing was digitally recorded. The record was left open for the filing by the Appointing Authority of a post-hearing brief. This was received on July 9, 2012, thereby closing the record.

FINDINGS OF FACT

1. The Appellant, Jeffrey Richard, 24 y.o.a., applied for a position as a Correction Officer I with the Appointing Authority, Department of Correction, in October 2011. His name appeared on certification no. 4011045. His Civil Service test score was "94%." (Exhibit 8.)

2. The DOC performed a background check on the Appellant and other applicants during October 2011. The Appellant had executed a waiver authorizing the background check. (Exhibits 3-8.)

3. The Appellant's CORI record showed that on December 9, 2008, he was arraigned in the Waltham District Court on a charge of Larceny Over \$250.00. The Appellant pled to sufficient facts. On February 3, 2009, the Appellant's criminal case

was continued without a finding. He was placed on probation for one year and ordered to pay restitution. (Exhibit 4.)

4. The Appellant was 20 years of age at the time of the November 2008 incident that gave rise to the criminal charge. He was employed at a Radio Shack in Watertown when he altered prices on merchandise in the store. He paid restitution in the amount of \$1,916.69.

5. A conviction on a felony charge, or service of jail or prison time for a misdemeanor, will preclude an applicant from ever being hired by the Appointing Authority. In the case of other criminal matters, the Appointing Authority has a general practice and policy of reviewing the five-year period preceding a candidate's application. An applicant can be bypassed for an unsatisfactory criminal history during that period, depending upon the time, severity and disposition of the charges. (McInnis Testimony.)

9. The Appointing Authority concluded that the Appellant's offense was both serious and recent enough to warrant not selecting him for appointment. On January 18, 2012, the Appellant was informed that he failed to meet the eligibility criteria for the position of Correction Officer I by virtue of an "unsatisfactory criminal history report (CORI)." (Exhibit 2).

10. The Petitioner filed a timely appeal. (Exhibit 1).

CONCLUSION AND RECOMMENDED DECISION

The issue for determination in this appeal is "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken". *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304

(1997). “Reasonable justification” is defined as “adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law”. *Selectmen of Wakefield v. Judge of First District Court of East Middlesex*, 262 Mass. 477, 482 (1928) and *Commissioners of Civil Service v. Municipal Court of Boston*, 359 Mass. 214 (1971). Pursuant to G. L. c. 31 § 2(b), the Appointing Authority must prove by a preponderance of the evidence that the reasons assigned for the bypass were “more probably than not sound and sufficient”. *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991).

The Civil Service Commission owes “substantial deference” to the Appointing Authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Such deference is especially appropriate with respect to the hiring of public safety personnel. In light of the high standards to which public safety personnel are appropriately held, Appointing Authorities are given significant latitude in screening candidates. *City of Beverly v Civil Service Commission*, 78 Mass. App. Ct. 182, 188 (2010), citing *City of Cambridge*, supra at p. 305.

After a careful review of all of the testimonial and documentary evidence in this case, I have concluded that the Appointing Authority has met its burden of proving that its reasons for the bypass of the Appellant were “more probably than not sound and sufficient”. The Appellant was charged with Larceny Over \$250.00 by virtue of a work-related offense in 2008. This behavior calls into question the Appellant’s maturity level, trustworthiness, and judgment.

In conclusion, the Civil Service Commission cannot substitute its judgment for

that of the Appointing Authority. *Cambridge v. Civil Service Commission*, supra, p. 304.

I recommend that the Civil Service Commission deny the Appeal, affirm the action of the DOC, and uphold the bypass.

Division of Administrative Law Appeals,
BY:

A handwritten signature in cursive script, reading "Judithann Burke".

Judithann Burke
Administrative Magistrate

DATED: November 1, 2012