

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

DAVID RINGER,
Appellant

Case No. G2-09-329

v.

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

Valerie McCormack, Atty.
Louison, Costello, Condon & Pfaff, LLP
67 Batterymarch Street
Boston, MA 02110

Respondent's Attorney:

Jeffrey S. Bolger
Director of Employee Relations
Department of Correction
P.O. Box 946
Norfolk, MA 02056

Commissioner:

Daniel Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), Appellant David Ringer (hereinafter "Appellant") appealed the decision of the Respondent, Massachusetts Department of Correction (hereinafter "Appointing Authority" or "Department") to remove him from the promotional list for the position of Industrial Instructor III and place him on the open competitive examination list. Appellant was notified of the Appointing Authority's decision on June 10, 2009 and

appealed to the Civil Service Commission on August 6, 2009. The Appointing Authority filed a Motion to Dismiss on September 2, 2009. In denying that motion, the Commission limited the full hearing to two issues: (1) whether the Appointing Authority was justified in deeming Appellant not qualified for the position of General Mechanic at NCCI Gardner; and (2), if not, whether the Appointing Authority was justified in bypassing Appellant in favor of candidate Butler. A full hearing was held on November 16, 2009. As no notice was received from either party, the hearing was declared private. Witnesses were not sequestered. The hearing was digitally recorded.

FINDINGS OF FACT

Based on the seventeen (17) exhibits entered into evidence and the testimony of the following witnesses:

For the Appointing Authority:

- Cheryl Brannan, Personnel Officer II, Division of Human Resources, Department of Correction

For the Appellant:

- David Ringer, Appellant

I make the following findings of fact:

1. Appellant commenced his employment with the Appointing Authority on June 10, 1990 in the position of Correction Officer I. On October 21, 2001, Appellant was voluntarily demoted to a provisional Industrial Instructor I position and was subsequently granted permanent status in that position with an effective date of January 1, 2003. (Testimony of Appellant; Exhibit 5)

2. On January 31, 2007, the Massachusetts Human Resources Division (hereinafter “HRD”) and Appointing Authority entered into a Delegation Agreement (hereinafter “Agreement”). The Agreement provided, *inter alia*, that the Appointing Authority shall use HRD’s Eligibility List Processing System to generate certifications when a vacancy exists and an active eligible list exists. The Agreement also provides that, in the event that the Appointing Authority bypasses selecting an eligible candidate for a candidate with a lesser score, the Appointing Authority is responsible for maintaining records of its written statements of reasons. The Agreement was in effect throughout the relevant dates of this appeal. (Exhibit 14; Testimony of Brannan)
3. The Appointing Authority announced an Open and Departmental Promotional Examination for the position of Industrial Instructor III (announcement number 1957). The examination was held on September 29, 2007. The announcement provided the following eligibility requirements:

ELIGIBILITY: This examination is open only to employees in the State Department of Correction who have been employed therein, after certification, in a permanent OR temporary status for the entire twelve-month period next preceding the date of the examination in any title, but who do not have permanent status in any title higher than the examination title.

IN ADDITION, such employees (I) must have been employed in the State Department of Correction after certification, in a permanent or temporary status in any of the following titles for a total of twelve months at any time preceding the date of the examination, including any period during which the employee may have been temporarily or previously promoted to a position in a higher title.

ELIGIBLE TITLES
Industrial Instructor III
Industrial Instructor II

Or (II) Applicants must have at least (A) two years of full-time, or equivalent part-time, experience in industrial arts work, the major duties of which involved training, or instructing, and (B) of which at least one year must have been in a

supervisory capacity, or any equivalent combination of the required experience and the substitutions below:

SUBSTITUTIONS:

An undergraduate or higher degree from a recognized school with a major in industrial arts may be substituted for a maximum of one year of the required (A) experience on the basis of one year of such education for six months of the required experience.*

One year of such education is equal to 30 semester hours or its equivalent.

* Education toward such a degree will be prorated on the basis of the proportion of the requirements actually completed.

NOTE: No substitutions will be permitted for the required (B) experience.
(Exhibit 13)

4. The Appointing Authority does not determine an applicant's eligibility for a position prior to the applicant sitting for an examination. Rather, an applicant's eligibility is determined after the administration of the exam. (Testimony of Brennan)
5. Appellant has not been employed by the Appointing Authority on a temporary or permanent basis as an Industrial Instructor II or III for any period of time prior to taking the examination for Industrial Instructor III. (Testimony of Appellant; Testimony of Brennan)
6. Appellant took the Open and Departmental Promotional Examination on September 29, 2007 and achieved a score of eighty-one percent (81%). (Exhibit 4; Testimony of Appellant)
7. On April 8, 2009, Appellant was notified that he was not eligible to have taken the Departmental Promotional Examination for Industrial Instructor III. Appellant was also informed that he was eligible to take the Open Competitive Examination for Industrial Instructor III and that his name was removed from the promotional eligible list and placed on the open competitive list. (Exhibit 13)

8. On May 7, 2008, an open certification was issued for Industrial Instructor III and Appellant signed the certification willing to accept. As part of the selection process, Appellant submitted an Industrial Instructor III Site Selection Form. Subsequently, the Appointing Authority determined that additional vacancies should be filled under the Industrial Instructor III list and issued an Amended Industrial Instructor III Site Selection Form. In that amended form, Appellant indicated his preference to be considered for four positions. Appellant indicated that his first preference was the position of General Maintenance at MCI Shirley, followed by General Maintenance at Souza-Baranowski Correctional Center, then Locksmith at Souza-Baranowski Correctional Center, and his fourth preference of General Mechanic at North Central Correctional Institution. (Exhibits 3 and 4; Testimony of Appellant; Testimony of Brannan)
9. Appellant's top three preferences were filled by applicants selected from the Promotional Certification list. Appellant was deemed unqualified for his fourth preference – General Mechanic at NCCI Gardner. (Testimony of Brannan)
10. On June 10, 2009, Appellant was notified that he was not selected for appointment to the position of Industrial Instructor III. The reason stated was that “[y]our score was not reached for positions that you were qualified for and/or your resume did not demonstrate that you met the qualifications for your selected functional title(s).” (Exhibit 2)
11. The position description of Industrial Instructor III (Garage Foreman) at NCCI Gardner had been prepared on November 14, 2006. The general statement of duties and responsibilities provides that the Garage Foreman is the “[s]upervisor of garage operations, assignments and scheduling of work for garage staff, supervision of all snow removal, maintenance and repair

of all vehicles and equipment, ordering all parts and supplies and other maintenance duties as required.” (Exhibit 6)

12. The position description also provides a chain of command, that employees in the Industrial Instructor I position report to Industrial Instructor II, who in turn report to the Industrial Instructor III. (Exhibit 6)

13. The position description also provides minimum entrance requirements. An incumbent “[m]ust have at least three (3) years full-time or equivalent part-time experience in automotive maintenance and repair which at least one (1) year must have been in a supervisory capacity. (Exhibit 6)

14. Appellant submitted his resume in support of his consideration for promotion. Appellant’s background includes twenty seven (27) years of experience in the construction business and thirteen (13) years as a correctional officer, of which five (5) years were at the MCI Shirley Maintenance Department. Although Appellant’s resume indicates that he has worked in the vehicle trap, Appellant’s resume does not indicate any knowledge, skill or training in automotive maintenance or repair. (Exhibit 7)

15. The resume of Eugene Butler, the individual appointed to the position of Industrial Instructor III (General Mechanic) at NCCI Gardner was submitted to the Commission. Mr. Butler’s resume indicates that he possesses twenty (20) years part-time experience operating his own automotive garage during which time he has handled “practically any type of automotive repair.” Mr. Butler’s resume also indicates that he has been employed as an Industrial Instructor III (Garage Foreman) from 1986 to Present. During that time Mr. Butler was responsible for maintaining a fleet of vehicles and supervising employees in basic automotive repair. (Exhibit 8)

16. On or about June 8, 2009, Appellant applied for a permanent promotion to the position of Industrial Instructor II (General Maintenance) at MCI-Shirley. On November 9, 2009, Appellant was notified by letter that he was recommended and approved for promotion to said position, effective November 29, 2009. (Exhibit 16)

Conclusion

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304 (1997) rev.den., 426 Mass. 1102 (1997); *see also* Watertown v. Arria, 16 Mass.App.Ct. 331 (1983); McIsaac v. Civil Service Comm'n, 38 Mass.App.Ct. 473 (1995); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411 (2000); Leominster v. Stratton, 58 Mass.App.Ct. 726, 728 (2003). An action is "justified" when it is 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." Commissisoners of Civ. Serv. v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); *see also* City of Cambridge, 43 Mass.App.Ct. at 304; Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority had established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315 (1991). Appointing Authorities are granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the Commission is "not whether it would have acted as the Appointing Authority had acted, but whether, on the facts found by the commission,

there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown, 16 Mass.App.Ct. at 334.

Based on the information provided to the Appointing Authority, the Appointing Authority had reasonable justification to make a sound and sufficient determination that the Appellant was not qualified for the position of Industrial Instructor III (General Mechanic). Appellant did not meet the eligibility requirements for a promotional certification list. Appellant had not been employed in either an Industrial Instructor II or Industrial Instructor III position for a period of twelve months prior to his application. Although Appellant has made substantial contributions to the Appointing Authority through his diligent work ethic, he remained employed as an Industrial Instructor I. Thus, the Appellant was ineligible to take the examination despite obtaining a score of eighty-one percent (81%).

I find that the Appellant was not bypassed because he was ineligible to be on the list, and to have his score counted and ranked. Due to his ineligibility, the Appointing Authority was not required to provide a written statement of reasons stating why he was not selected. The Appointing Authority was justified in finding that the Appellant was ineligible, and justified in moving his application to the Open Competitive examination list.

Appellant did not possess the requisite experience for the Industrial Instructor III (Garage Foreman) position. The position required two years, or equivalent part-time experience in industrial arts work, with at least one year of service in a supervisory capacity. Appellant’s resume and job responsibilities as an Industrial Instructor I do not indicate that he possessed at least one year supervisory experience of employees engaged in industrial arts work. Additionally, Appellant lacks the experience in automotive mechanics and maintenance.

Appellant provided his resume in support of his application. It is required that all applicants submit a detailed resume, reflecting their qualifications for the position being sought. While Appellant's resume highlighted his work experience, including significant experience as a home builder and correctional officer, it showed no experience in automotive mechanics or maintenance.

The position of Industrial Instructor III (Garage Foreman) requires significant experience in maintenance and repair of all vehicles and equipment such as passenger cars, light trucks and heavy equipment. Additionally, the position requires knowledge of engine rebuilding, cooling system and electronic repairs, auto body repair and painting. In his testimony before the Commission, Appellant professed to possess some of these skills. However, the information was not relayed on the resume which he provided to the Appointing Authority.

The Appointing Authority was justified in its reliance on the representations made in his resume, concluding that Appellant lacked the necessary automotive experience.

For all the above reasons, the appeal under Docket No. G2-09-329 is hereby *dismissed*.

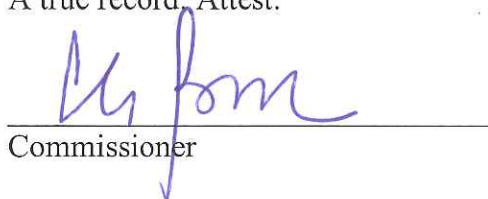
Civil Service Commission,



Daniel M. Henderson
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell, Marquis and Stein, Commissioners) on February 10, 2011.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Valerie McCormack, Atty. (for Appointing Authority)

Jeffrey S. Bolger (for Appellant)