

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

100 Cambridge St., Suite 200  
Boston, MA 02114  
(617) 979-1900

**PETER ROBERGE,**  
*Appellant*

v.

**CITY OF WORCESTER,**  
*Respondent*

**Case No.:** G2-22-094

**DECISION**

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission and the parties had thirty days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate thus making this the Final Decision of the Commission.

The decision of the City of Worcester to bypass the Appellant for promotional appointment is overturned and the Appellant's appeal under Docket No. G2-22-094 is hereby *allowed*.

Pursuant to its authority under Chapter 310 of the Acts of 1993 and consistent with prior orders of the Commission regarding this appeal, the Commission hereby orders the following:

1. The certification created by the City to fill the vacancies that are the subject of this appeal shall be revived for the sole purpose of filling, on a permanent basis, the one promotional appointment to police sergeant deemed temporary based on prior orders of the Commission.

2. The City is prohibited from bypassing the Appellant for promotional appointment to permanent police sergeant based on any reasons deemed invalid in this decision or for any reasons for which the City was aware of at the time of bypass.
3. Should the City promote any candidate other than the Appellant from the revived certification, that promotion shall be deemed temporary until such time as the Appellant has exhausted all due process rights before the Commission, including, but not limited to, a decision by the Commission on any future bypass appeal by the Appellant.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on May 4, 2023.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

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:

Patrick N. Bryant, Esq. (for Appellant)

Ian Keefe, Esq. (for Respondent)

James Rooney, Esq. (Acting Chief Administrative Magistrate, DALA)

Michele Heffernan, Esq. (HRD)

Regina Caggiano (HRD)

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Peter Roberge,**  
Appellant,

No. CS-22-409 (G2-22-094)

Dated: March 8, 2023

v.

**City of Worcester,**  
Respondent.

**Appearance for Appellant:**

Patrick N. Bryant, Esq.  
Boston, MA 02019

**Appearance for Respondent:**

Ian Keefe, Esq.  
Norwood, MA 02062

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF TENTATIVE DECISION**

The appellant, a police detective, received permission to take a scheduled promotional exam on a makeup date because of lingering COVID-19 symptoms. He was honest and transparent in his communications about the exam with the Human Resources Division. And no wrongdoing inhered in his decision to report for work before and after the original exam date, even though he was less than 100% healthy then. There was therefore no reasonable justification for the respondent city's decision to bypass the appellant for a promotional appointment.

**TENTATIVE DECISION**

The City of Worcester bypassed police detective Peter Roberge for a promotional appointment to the position of police sergeant. Officer Roberge appealed to the Civil Service Commission, which referred the appeal to DALA. An evidentiary hearing took place on January 26, 2023. Five Worcester police officers testified: Officer Roberge, Sergeant Andrew Cravedi, Lieutenant Christopher Murphy, Captain Michael McKiernan, and Chief Steven Sargent. I

admitted into evidence exhibits marked A1-A35 and R3-R7. The record closed upon the submission of hearing briefs.

### **Findings of Fact**

I find the following facts.

Officer Roberge has been with the Worcester Police Department since 2006, with an injury-related break in service during 2010-2011. For several years, he worked in the gang unit. He now investigates major crimes such as shootings, robberies, and frauds. (Roberge; Murphy; McKiernan.)<sup>1</sup>

On August 17, 2020, Officer Roberge tested positive for COVID-19. Department policy required him to miss two weeks of work. He was not permitted to work remotely. Because Officer Roberge's symptoms persisted, he remained home for a third week. (Exhibits A5-A7, A9, R5; Roberge; Murphy.)

Officer Roberge returned to work on September 7, 2020. He carried his usual workload without missing assignments or drawing complaints. He was available to respond to incidents as needed. In practice, during the height of the COVID-19 pandemic, Worcester's police detectives investigated fewer cases than usual and were only infrequently called out to any incidents. (Exhibit R5; Roberge.)

Even after he returned to work, some of Officer Roberge's COVID-19 symptoms lingered. On and off, he experienced tightness in his chest, dizziness, difficulties with memory, and unclear thinking. He also remained congested. (Exhibits A9, A10, R5; Roberge.)

Officer Roberge told his direct supervisor at the time, Sergeant Tom Radula, that he was feeling "less than 100%." Sergeant Radula relayed to his commanding officers that Officer

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<sup>1</sup> The testimony, which has not been transcribed, is cited by witness name.

Roberge was “not himself.” It would have been unusual for a Worcester police officer to provide his supervisors with a more detailed account of his health issues. (Roberge; Murphy; McKiernan.)

As a group, Worcester’s police officers tended to disapprove of complaining. They often performed work while suffering through non-major ailments. Each officer was considered to be personally responsible for determining his or her own fitness for duty. Several testifying officers were asked whether they had ever heard of an officer being punished for showing up to work while insufficiently healthy: they found the idea laughable. (Roberge; Murphy; McKiernan; Sargent.)

Officer Roberge was scheduled to take the promotional sergeant exam on September 19, 2020, twelve days after his return to work. The exam covers more than half a dozen textbooks, requiring test takers to apply memorized information under time pressure. On September 13, 2020, Officer Roberge emailed the Human Resources Division, asking:

I recently tested positive for COVID-19. My isolation period and quarantine period is completed yet I still have some lingering symptoms. These symptoms include chest tightness, vertigo, brain fog and congestion. . . . Is there any relief that I could be afforded due to my condition regarding the test?

(Exhibits A4, A8, A11; Roberge; Murphy.)

In response, HRD requested “supporting documentation from [Officer Roberge’s] MD stating [his] inability to take the exam on the scheduled date.” Officer Roberge’s doctor wrote a responsive letter that said: “Please excuse [Officer Roberge] from his upcoming examination. He is suffering from prolonged symptoms of an acute illness that will impede his ability to take the test properly.” Upon reviewing this note, HRD instructed Officer Roberge not to report to the exam site. He was later invited to a January 2021 makeup exam, on which he scored 86.

(Exhibits A9, A11, A13; stipulations.)

During December 2020, the city obtained from HRD a certified list of candidates eligible for promotion to sergeant. Officer Roberge was added to the list in February 2021 based on his score on the makeup exam. (Exhibits A12, A14, A31; stipulations.)

Around March 2022, the police department's Bureau of Professional Standards (BOPS) heard informal complaints about the fact that Officer Roberge had taken the sergeant exam later than his peers. BOPS began to collect pertinent information. During May 2022, Chief Sargent requested a formal investigation into the matter. (Exhibit A16; Cravedi; Sargent.)

Sergeant Cravedi of BOPS researched the circumstances under which HRD would permit a candidate to take a makeup exam. HRD employee Keith Costello wrote to him:

This makeup exam did not just apply to candidates with Covid, but also for . . . other legitimate hardships. Each of these requests [was] looked at on a case by case basis. . . . Also, if a candidate was experiencing lingering symptoms from Covid (long Covid), that request would be valid.

Unsatisfied, Sergeant Cravedi contacted HRD employee Regina Caggiano, who said that COVID-related extensions were designed to protect test takers and administrators. Sergeant Cravedi asked whether Ms. Caggiano would have allowed Officer Roberge to take a makeup exam if she had known that he was reporting to work before (and after) the original exam date. Ms. Caggiano declined to answer. (Exhibits A34, R6; Cravedi.)

As of early June 2022, Officer Roberge was among the candidates for a promotion to an open sergeant position. On June 17, 2022, he received a notice that he had been bypassed. The notice incorporated a letter from Chief Sargent, which stated:

I find it disingenuous that Officer Roberge asked for an extension to take the exam yet performed his daily duties leading up to the test date and in the months that followed. His extension allowed for four extra months to study, giving him an unfair advantage over his colleagues.

By the time Chief Sargent wrote this letter, he had learned about the bulk of the evidence that BOPS had collected. (Exhibits A2, A14, A27; Sargent.)

BOPS released its investigation report in late July 2022. The report determined that Officer Roberge had violated a passage of the police department's Code of Ethics stating as follows:

I will keep my private life unsullied as an example to all . . . . Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department.

(Exhibits A22, A33, R6.)

Officer Roberge timely appealed from the city's bypass decision. During the appeal's pendency, the city posted several new sergeant vacancies. In submissions to the commission, the city agreed to make one of its appointments provisional, so that the position would remain available to Officer Roberge in the event of success in this appeal. (Exhibit A1; administrative record.)

### **Analysis**

The civil service law requires both original and promotional appointments to be made in accordance with "basic merit principles." G.L. c. 31, §§ 1, 2. This overarching goal requires candidates to be evaluated based on their abilities, knowledge, and skills; they may not be selected or rejected for arbitrary or improper reasons. *Sherman v. Town of Randolph*, 472 Mass. 802, 804 (2015); *Boston Police Dep't v. Collins*, 48 Mass. App. Ct. 408, 412 (2000).

The civil service examinations serve these purposes. They are designed to test fairly for "knowledge, skills and abilities which can be practically and reliably measured." G.L. c. 31, § 16. When a position is open, the candidates are ranked "in the order of their marks on the examination," allowing for statutory preferences. *Id.* §§ 25, 26. The appointing authority must then justify any decision to bypass higher-ranked candidates in favor of lower-ranked ones. *Id.* § 27. *See generally Malloch v. Town of Hanover*, 472 Mass. 783, 787-88 (2015).

On appeal from a bypass decision to the commission, the appointing authority bears the “burden of proving, by a preponderance of the evidence, that there was reasonable justification for [its] action.” *Brackett v. Civil Serv. Comm’n*, 447 Mass. 233, 241 (2006). A reasonable justification means “adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” *Id.* (quoting *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928)). See *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

Police officers are held to unusually demanding standards of behavior. *McIsaac v. Civil Serv. Comm’n*, 38 Mass. App. Ct. 473, 474 (1995). Officers specifically are required to remain scrupulously truthful and forthright. *Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. 796, 801 (2004). Accordingly, a bypass of Officer Roberge might have been justified if he had been dishonest in his discussions with HRD about the sergeant’s exam. But Officer Roberge was truthful and transparent in those discussions. He told HRD immediately that he had already completed his “isolation period and quarantine period.” He described only the specific symptoms that continued to bother him. Officer Roberge’s physician also did not overstate his condition, writing only that “prolonged symptoms . . . will impede [Officer Roberge’s] ability to take the test properly.”

Chief Sargent’s letter explaining the city’s bypass decision may be read as suggesting that Officer Roberge committed wrongdoing by the very act of obtaining a makeup exam date, even through honest, transparent inquiries. Unprejudiced minds guided by common sense would disagree. HRD bears the responsibility for administering fair civil service examinations. G.L. c. 31, § 16. By extension, HRD personnel are charged with determining which circumstances do



and do not justify makeup exam dates. An individual who seeks HRD's guidance without deceit, hyperbole, or concealment has done nothing wrong.

The city's closing brief emphasizes a different variant of its argument: the city maintains that the bypass decision was justified by Officer Roberge's decision to report for work while insufficiently healthy. It is true that the symptoms that diminished Officer Roberge's ability to take a time-pressured, information-heavy exam had the potential to detract from the quality of his detective work. Officer Roberge himself agreed on the stand that perhaps he should have remained home for a longer period.

But unprejudiced minds would not see Officer Roberge's conduct in this regard as an adequate reason to bypass him for a promotion. It is not always easy for employees to determine when they are healthy enough to return from sick leave. Officer Roberge's behavior comported with the police department's general approval of officers' efforts to work through physical challenges. The department did not require or expect detailed health information from officers who deemed themselves fit enough for duty. And Officer Roberge's performance at work before and after the original exam date was satisfactory, suggesting that he estimated correctly that he was up to the lighter-than-usual workload imposed on Worcester's detectives during the pertinent period.

### **Conclusion and Order**

Subject to review by the commission, Officer Roberge's appeal is ALLOWED, the city's decision is VACATED, and the city is directed to reconsider Officer Roberge for appointment to the sergeant position that has been held available for that purpose.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate