

After careful review, and in accordance with our Standard Governing Disclosures of Sensitive Personal Data, the Commission has opted to use a pseudonym for the Appellant to appropriately balance their privacy interests with the Commission's statutory obligation to provide the public with a transparent record of its deliberative process and interpretation of civil service law.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

ROBERT G ■■■, ■■■
Appellant

v.

G1-12-■■■

FALL RIVER POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Robert G ■■■

Appearance for Respondent:

Gary Howayeck, Esq.
Assistant Corporation Counsel
1 Government Center
Fall River, MA 02720

Commissioner:

Christopher C. Bowman

DECISION

On September 17, 2012, the Appellant, Robert G ■■■ (Mr. G ■■■), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Fall River Police Department (City) to bypass him for original appointment to the position of permanent, full-time police officer in the City's Police Department (Department). A pre-hearing conference was held on November 9, 2012 at the UMASS Dartmouth School of Law in North Dartmouth and a full hearing was held at the same location on March 22, 2013¹. The hearing was digitally recorded and both

¹ The full hearing initially scheduled for February 8, 2013 was postponed due to inclement weather.

parties were provided with a CD of the hearing. Proposed decisions were submitted by both parties.

FINDINGS OF FACT:

Seventeen (17) exhibits were entered into evidence. Based on these exhibits, the testimony of the following witnesses:

Called by the Appointing Authority:

- Lt. Roger LaFleur, Fall River Police Department;
- Dr. Michael W. Kahn, Psychiatrist;

Called by the Appellant:

- Robert G■■■■, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, agreed post-hearing documents, and reasonable inferences from the credible evidence; a preponderance of the credible evidence establishes the following findings of fact:

1. Mr. G■■■■ is a ■■■■■ year old divorced male with no children who resides in Fall River. He graduated from Westport High School in ■■■■■ and has attended classes at Bristol Community College. (Testimony of Mr. G■■■■ and Exhibit 7)
2. Mr. G■■■■ is one (1) of nine (9) children, all of whom eventually were removed by the Massachusetts Department of Social Services (DSS). He had six (6) foster home placements between the ages of three (3) and eleven (11) where he continued to be abused and neglected. (Exhibit 11)
3. Mr. G■■■■ was adopted at the age of fourteen (14) by his sixth foster parents but he reports that his adoptive parents became verbally abusive. He moved out of his

adoptive parents' home after graduating from high school and does not maintain any contact with them. (Exhibit 11)

4. In 1991, Mr. G■■ was subject to a restraining order against him by his stepfather. Mr. G■■, who was 21 at the time, indicates that he and his step parents had a verbal argument regarding Mr. G■■'s inability to pay room and board. Mr. G■■ indicates that his step mother struck him and he defended himself by pushing her away. (Testimony of Mr. G■■)
5. While serving as a security guard at an Old Navy store in 2004, Mr. G■■ violated store policy by chasing an alleged shoplifter out of the store in an attempt to apprehend him. He was terminated as a result of this incident. (Testimony of Mr. G■■)
6. Mr. G■■ has served in the Army National Guard since 1997. His general duties in the Guard include serving as a truck driver. Mr. G■■ earned the rank of sergeant and has been activated on several occasions since 1997, including sixteen (16) months of service in Iraq in 2006 and 2007 and a tour of duty in Guantanamo Bay Naval Base in Cuba in 2009 and 2010. (Testimony of Mr. G■■)
7. When Mr. G■■ returned from his tour of duty in Iraq in 2007, he and his wife separated. (Testimony of Mr. G■■)
8. During his tour of duty in Guantanamo Bay in 2009 / 2010, Mr. G■■ was part of the security team responsible for guarding the prison facility. U.S. military personnel assigned to security duty are required to remain within the forty-five (45) square mile foot print. (Testimony of Mr. G■■)

9. While serving in Guantanamo Bay, Mr. G■■ had a one-night romantic encounter with a female subordinate. As a result of this misconduct, he was disciplined for this misconduct in the form of a demotion. (Testimony of Mr. G■■)
10. In 2009, Mr. G■■ took and passed the civil service examination for police officer in Fall River. (Stipulated Fact)
11. In ■■■■■ 2012, Mr. G■■'s name appeared on Certification No. ■■■■■ from which the City ultimately appointed twenty (20) permanent, full-time police officers. (Stipulated Fact and Exhibit 9)
12. Sometime on or after January 2012, Mr. G■■ completed an employment application and a supplemental questionnaire required of all police officer candidates. (Exhibits 7 and 15)
13. The sixth page of the application contains the following question: "Was any type of disciplinary action taken against you while in the service?" Mr. G■■ checked "No". (Exhibit 7 and Testimony of Mr. G■■)
14. Question 65 on the supplemental questionnaire asks whether the candidate has ever been subject to a domestic abuse order. Mr. G■■ answered "No". (Exhibit 15 and Testimony of Mr. G■■)
15. At some point, Mr. G■■ was interviewed by an interview panel that included the Police Chief. Based on the discrepancies in the application (answering no to the questions about military discipline and a domestic restraining order), and the unsatisfactory answers regarding these discrepancies, the interview panel opted to "dismiss" Mr. G■■ from the appointment process. (Testimony of Lt. LaFleur)

16. That same day, the Police Chief and the rest of the interview panel decided to bring Mr. G■■ back for a further interview. The Police Chief, still not satisfied with Mr. G■■'s answers regarding the discrepancies, decided to stand by his decision to dismiss Mr. G■■ from the selection process. (Testimony of Lt. LaFleur)
17. On May 16, 2012, Mr. G■■ penned a letter to the Police Chief stating in part:
- “I have so much respect for you and your police force that I was very nervous during my interview. Many people have been through this process before, but not me. I was not sure what to expect and had no idea that you and so many high-ranking members of your administration would be present during my interview. My military training has caused me to respect high-ranking officials and caused my extreme nervousness. Also, I do not have much experience with the interview process. I am sorry that I did not provide the right answers to some of your questions, but it was not for my lack of morals or knowledge; it was because of my extreme nervousness.” (Exhibit 16)
18. After receiving Mr. G■■'s letter, the Police Chief opted to call Mr. G■■ in for a third interview. (Testimony of Lt. LaFleur)
19. During this third interview, the interview panel observed that Mr. G■■ was less nervous, was forthcoming about the inconsistencies in the application and questionnaire and expressed “remorse”. As a result, Mr. G■■ was given a conditional offer of employment subject to various physical and medical examinations, including a psychological evaluation. (Testimony of Lt. LaFleur)
20. The Fall River Police Department had previously submitted a psychological screening plan to the state's Human Resource Division (HRD) which was approved by HRD. (Exhibit 6)
21. The Fall River Police Department's Psychological Screening Plan, which was approved by HRD, states that: “The goal of this psychological screening program is to detect any serious psychological disorders or characteristics that would render a

candidate unable to perform with reasonable accommodation the essential functions of a police officer.” (Exhibit 6)

22. The “Regulations for Initial Medical and Physical Fitness Standards Tests for Municipal Public Safety Personnel” establishes two categories of medical conditions, “Category A” and “Category B”.

- A “Category A” Medical Condition is “a medical condition that would preclude an individual from performing the essential job functions of a municipal police officer, or present a significant risk to the safety and health of that individual or others.” (emphasis added)
- A “Category B” Medical Condition is “a medical condition that, based on its severity or degree, may or may not preclude an individual from performing the essential job functions of a municipal police officer, or present a significant risk to the safety and health of that individual or others. (emphasis added) (Administrative Notice: HRD Regulations for Initial Medical and Physical Fitness Standards Tests for Municipal Public Safety Personnel)
- Using the same above-referenced “A” and “B” categories, the “Psychiatric” section of the regulations indicate that a “Category A” medical condition shall include: “disorders of behavior; anxiety disorders; disorders of thought; disorders of mood; disorders of personality.” A “Category B” medical condition shall include: “a history of any psychiatric condition, behavior disorder, or substance abuse problem not covered in Category A. Such history shall be evaluated base on that individual’s history, current status, prognosis, and ability to respond to the stressor’s job;” or “any other psychiatric condition that results in an individual not being able to perform as a

police officer.” (emphasis added) (Administrative Notice: HRD Regulations for Initial Medical and Physical Fitness Standards Tests for Municipal Public Safety Personnel)

23. As part of the psychological screening process, candidates are required to complete the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and the Personality Assessment Inventory (“PAI”), both written examinations. (Testimony of Dr. Kahn)
24. These written tests “assess symptoms of a broad range of mental disorders, maladaptive personality characteristics, and behavioral proclivities relevant to a candidate’s overall psychological fitness for the position of police officer.” (Exhibit 11)
25. Candidates are then required to undergo an interview with a first level reviewer. If the first level reviewer deems the candidate unfit, the candidate is referred for a second-level review. (Testimony of Dr. Kahn)
26. The Fall River Police Department has contracted with Dr. Allen Brown, a clinical and forensic psychologist and Dr. Michael Kahn, a staff psychiatrist at Beth Israel Deaconess Medical Center, to conduct the first and second level psychological screenings of candidates. (Exhibits 10 and 11)
27. According to a report penned by Dr. Brown:

“Mr. G■■ received mixed and often inconsistent results on the MMPI-2 validity and clinical scales. His score on the “L” (Lie) scale of the MMPI-2 indicates a denial of common human imperfections most people readily admit. This is consistent with the positive impression management expected of job applicants. He also has an elevation on the Fp scale, the Infrequency Psychotherapy scale, indicating that he reported symptoms very rarely reported by people with actual psychopathology. The scale has been found to be useful in distinguishing cases (sic) of PTSD from those of feigned PTSD. His test results make it appear that he has simultaneously attempted to ‘fake good’ and ‘fake bad’. Following a review of the MMPI-2 critical items with him, it became clear he answered some questions from the perspective of his childhood,

which was characterized by abuse and neglect, and some from his current perspective, resulting in his inconsistent profile. This same pattern of inconsistent responding was evident on the PAI, where his results are significantly different from those of the pre-employment scores of active duty police officers.” (Exhibit 11)

28. In regard to his interview with Mr. G■■■, Dr. Brown wrote:

“In the interview, Mr. G■■■ was oriented in all spheres. He was very subdued, with flat affect. He had some difficulty maintaining appropriate eye contact. He presented his thoughts in a logical and coherent manner. He did not report symptoms at present, or display signs, of a psychotic disorder (e.g., hallucinations or delusions). He reports having almost constant anxiety during his childhood, during which he was abused and neglected, removed from his family, and placed in a series of foster homes. Currently, he reports ‘a little tense,’ which he attributes to his military experience and bad childhood memories. He reports moderate social drinking and states that his use of alcohol has never caused difficulties in his personal or professional life or caused anyone to express their concern. He reports having ‘a bit of a hot temper.’ His temper and the incidents as a security guard and his relationship with the woman in the Army National Guard suggest difficulty with impulse control and poor judgment.” (Exhibit 11)

29. Dr. Brown summarized his conclusions about Mr. G■■■ by writing:

“In sum, Mr. G■■■ continues to be effected by having been repeatedly abused and neglected as a child, by his parents and in a series of foster homes, and by his experience in a combat-zone during his sixteen-month deployment in Iraq. He has had episodes here he has demonstrated difficulty controlling his anger, compromised impulse control, and poor judgment. He has never sought treatment for these difficulties. Although he appears quite sincere in his desire to become a police officer to help his community, these unresolved traumas have significantly impaired his ability to do so.

These qualities make him unfit for appointment as a police officer and for which no reasonable accommodation is possible.” (Exhibit 11)

30. As a result of Dr. Brown’s conclusion, Mr. G■■■ was referred to a second level

interview with Dr. Kahn. (Testimony of Dr. Kahn)

31. Dr. Kahn has conducted approximately 10-20 second level screenings and completed

4-5 second level screenings for the Fall River Police Department during the current hiring cycle. (Testimony of Dr. Kahn)

32. Dr. Kahn agrees with the first-level reviewer 1/3 of the time and disagrees 2/3 of the

time. (Testimony of Dr. Kahn)

33. Prior to interviewing Mr. G■■■, Dr. Kahn reviewed the MMPI-2 and PAI results as well as the notes from Dr. Brown, both of which he uses as “data points”. (Testimony of Dr. Kahn)

34. Dr. Kahn observed that Mr. G■■■ was “polite and respectful” but that he was inarticulate, “had a hard time expressing himself ... doesn’t use words well” and was not “self reflective”. (Testimony of Dr. Kahn)

35. Dr. Kahn found that although Mr. G■■■ does not have a DSM IV mental illness, he has psychological characteristics that would result in Mr. G■■■ having problems dealing with conflict. Dr. Kahn was particularly struck by Mr. G■■■’s insecurity and lack of confidence. (Testimony of Dr. Kahn)

36. In his written report, Dr. Kahn stated the following about Mr. G■■■ under the heading “MENTAL STATUS EXAM”:

“He presented as a casually dressed and groomed man who was friendly, polite, and: easy to engage, but who seemed to me to be somewhat anxious throughout the interview. He was tense, made reasonable eye contact, showed no abnormality of speech, thought form or thought content, and gave no hint of any psychotic thinking. He mood was ‘pretty good,’ affect was as described above. There was no suggestion whatsoever for hopelessness or suicidality, and he appeared to be entirely intact cognitively, without any deficits in attention, memory or concentration.”

Under the heading, “IMPRESSION”, Dr. Kahn stated the following:

“In summary, Mr. G■■■ is a 41-year-old man without any history of psychiatric treatment who endured a traumatic childhood without resorting to drugs, alcohol, or antisocial behavior to cope. He has managed to be self-supporting throughout his adult life, and has had a lengthy stint in the Army Reserve. He also worked for many years as a security guard and bouncer.

Of concern with regard to his suitability as a police officer are several issues. I think the main one is his repeated tendency to violate rules, as evidenced by his having an affair with a subordinate in the military as well as having violated proper procedure as a security guard. I do not think Mr. G■■■ did either of these things with malicious

intent, but they cast doubt on his ability to follow procedures properly.

His testing results, provided by Dr. Brown, show an alarming spike in the 'negative impression management' scale, which is confusing for someone who would be trying to present himself in a good light.

Furthermore, Mr. G■■, while a friendly person, showed a degree of tenseness and lack of psychological sophistication which I think would put him at risk as a police officer in terms of handling and resolving disputes properly. These qualities make him unfit for appointment as a police officer in Fall River.” (Exhibit 12)

37. On or about November 1, 2012, approximately thirty (30) days after the pre-hearing conference before the Commission, Mr. G■■ visited a Dr. Timothy Rivinus, a staff psychiatrist at the VA Medical Center in Providence, Rhode Island. (Testimony of Mr. G■■ and Exhibit 14)²

38. According to a report penned by Dr. Rivinus, he interviewed Mr. G■■ and gave him a “1.5 hour comprehensive psychiatric evaluation with specific assessment for the presence of Post Traumatic Stress disorder.” (Exhibit 14)

39. The report of Dr. Rivinus stated in relevant part:

“Mr. G■■ came smartly dressed in ACUs. He is clean, polite, forthright and well spoken. He show no abnormal signs or symptoms of psychiatric disorder on this exam. Specifically, he has no signs or symptoms of Post Traumatic Stress Disorder this on (sic) exam. He also has no history or prior treatment of PTSD. Additionally and specifically, he has no history, signs or symptoms of Behavioral, Personality or impulse Control problems.

It is my medical psychiatric opinion stated with the greatest degree of medical certainty that Mr. G■■ has no psychiatric diagnoses or impediments to application for police or other public or private service employment. It is also my opinion based on this evaluation that he would be a morally upright and hard-working police officer.

His military record and level of education are fully commensurate with the prediction of outstanding performance and contribution in police or other employment.” (Exhibit 14)

² I take administrative notice that the state of Rhode Island’s website indicates that Dr. Rivinus is a licensed physician in that state and his disciplinary history is limited to one (1) incident in 2005 in which Dr. Rivinus agreed to pay \$500 for overcharging a patient.

40. Mr. G■■ previously sought appointment as a police officer in North Providence, RI.

After being interviewed, he was not appointed. (Testimony of Mr. G■■)

LEGAL STANDARD

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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 v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v.

Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited.

The role of the psychiatrist conducting a pre-employment evaluation for police officers in civil service communities is ... “narrowly circumscribed. [His] sole task [is] to determine whether [the candidate] [has] a psychiatric condition that [prevents him] from performing, even with reasonable accommodation, the essential functions of the job.” Police Dep’t of Boston v. Kavaleski, 463 Mass. 680 (2012).

The Commission is entitled to discredit a psychiatrist’s assessment of a candidate even if the candidate offers no expert testimony of his own, but the Commission must provide a basis for the rejection in the record. Kavaleski citing Daniels v. Board of Registration in Medicine, 418 Mass. 380, 392 (1994) quoting Commonwealth v. DeMinico, 408 Mass. 230, 235 (1990) (“[t]he law should not, and does not, give the opinions of experts on either side of ... [a]n issue the benefit of conclusiveness, even if there are not contrary opinions introduced at the trial”).

ANALYSIS

The City argues that it relied on a sound psychological screening process, including the conclusions of two highly qualified mental health professionals, to bypass Mr. G [REDACTED] and that there was no evidence of any personal or political bias or favoritism that would warrant the Commission overturning their decision.

Mr. G■■■, who represented himself throughout the proceedings, in effect argues that he does not have any psychiatric condition that would prevent him from performing the duties of a police officer. Further, he in effect argues that the incidents cited by Dr. Kahn as showing “a repeated tendency to violate rules” are isolated incidents that do not support a conclusion that he is psychologically unfit to be a police officer.

It is worth reiterating the definition, found in the HRD regulations, of the “Medical B” condition that is at the center of this appeal:

“a medical condition that, based on its severity or degree, may or may not preclude an individual from performing the essential job functions of a municipal police officer, or present a significant risk to the safety and health of that individual or others.”

The “Psychiatric” section of the regulations indicates that a Category B medical condition shall include:

“a history of any psychiatric condition, behavior disorder, or substance abuse problem not covered in Category A. Such history shall be evaluated based on that individual’s history, current status, prognosis, and ability to respond to the stressor’s job;” or “any other psychiatric condition that results in an individual not being able to perform as a police officer.”

In upholding the Commission’s decision in Kavaleski, the SJC relied on the fact that the Commission had found an “indication of some bias or some other improper consideration” by the psychiatrist who evaluated Ms. Kavaleski. Here, there is no allegation of, nor is there any evidence of any bias against Mr. G■■■ by either Dr. Brown or Dr. Kahn.

In Kavaleski, the SJC also relied on the fact that the Commission had found that “neither [the psychiatrist] nor the [Boston Police] asserted the Kavalski would be unable to perform the essential functions of the job of police officer ...” (emphasis added)

Here, Dr. Brown, who conducted the first-level review, found that:

“He [Mr. G■■] has had episodes where he has demonstrated difficulty controlling his anger, compromised impulse control, and poor judgment. He has never sought treatment for these difficulties. Although he appears quite sincere in his desire to become a police officer to help his community, these unresolved traumas significantly impaired his ability to do so.

These qualities make him unfit for appointment as a police officer and for which no reasonable accommodation is possible.” (emphasis added)

Dr. Kahn, who conducted the second-level review of Mr. G■■, found that:

“Of concern with his regard to his suitability as a police officer are several issues. I think that the main one is his repeated tendency to violate rules, as evidenced by his having an affair with a subordinate in the military as well as having violated proper procedure as a security guard. I do not think Mr. G■■ did either of these things with malicious intent, but they cast doubt on his ability to follow procedures properly.

His testing results, provided by Dr. Brown, show an alarming spike on the ‘negative impression management’ scale, which is confusing for someone who would be trying to present himself in a good light.

Furthermore, Mr. G■■, while a friendly person, showed a degree of tenseness and lack of psychological sophistication which I think would put him at risk as a police officer in terms of handling and resolving disputes properly. These qualities make him unfit for appointment as a police officer in Fall River.” (emphasis added)

As part of his testimony, I asked Dr. Kahn to identify the psychological conditions or disorder that disqualified Mr. G■■ from being a Fall River police officer. He replied:

“It depends on what one calls a condition. Does he have a mental illness, like schizophrenia or bipolar disorder, panic disorder, borderline personality disorder? No, he does not have a DSM IV identifiable mental illness. But what I believe he has – and the language is – psychological characteristics ... which would make him a very bad fit as a police officer.”

Dr. Kahn then offered the following analogy:

“If someone came to me and said, ‘I’d like to be a police officer,’ or ‘I’ve applied to be a police officer’ and I did my full history on them and I found them and found out they had no identifiable psychiatric illness, but they ... had a hard time with relationships with other people, they never had a meaningful romantic relationship, they engaged in a lot of thrill seeking activities which is potentially dangerous, they didn’t get hurt and they were somewhat responsible with it; and they held jobs for various periods of time, reasonably well, but seemed to get bored easily and moved on; but they didn’t necessarily have a mental illness, a psychiatric condition but had these personality characteristics which can also be termed personality traits which would not be conducive to function as a public safety officer. I guess what I’m saying is that there are people who don’t have a psychiatric condition or mental illness who are not a good fit for their jobs. I would not be a good fit as a police officer or a space shuttle astronaut or even a surgeon. It is not because I have a mental illness, but rather because I would not be a good fit for the position.”

I asked Dr. Kahn to distinguish what he found, as part of the psychological evaluation, that could not have been identified as problematic by seasoned, senior members of the Fall River Police Department as part of the interview and overall vetting process. Dr. Kahn stated that he was able to identify Mr. G■■■■’s “psychological difficulty dealing with stress.”

While Dr. Kahn did not specifically state the Mr. G■■■■ would be “unable to perform the duties of a police officer,” his testimony leaves no question that this is precisely what he concluded. Specifically, he has concluded that Mr. G■■■■ would be unable to perform the inherently stressful duties of a police officer given his traits and characteristics that were observed during the psychological interview and which Dr. Kahn concluded were shown through Mr. G■■■■’s history.

The question for the Commission is whether the findings of Dr. Brown and Dr. Kahn support their conclusion that Mr. G■■■■ has a “Category B” disqualifying condition as outlined in the psychiatric section of HRD’s regulations.

In Roberts v. Boston Police Dep't, 21 MCSR 536 (2008), the Commission concluded that:

“An applicant may be disqualified for having a Category B “psychiatric condition” so long as the applicant has a “psychiatric condition” which has manifested itself by a preponderance of scientifically reliable and credible proof of deficient mental health behavior, but not necessarily proof of a psychiatric “disorder” found within the DSM-IV. Should the occasion present itself in future cases, the Commission may consider further refinement of this definition, as well as further inquiry into the scientifically appropriate role of clinical interview impressions and standardized testing in the evaluation process, with a view to seeking greater clarity on these subjects that will preserve the balance necessary to respect the legitimate purposes of PSP screening while promoting requirements of the basis merit principle that eschews public employment decisions when they are arbitrary and capricious or incapable of fair and objective substantiation.”
(emphasis added)

The conclusion in Roberts is also consistent with the language in the Psychological Screening Plan which states: “The goal of this psychological screening program is to detect any serious psychological disorders or characteristics that would render a candidate unable to perform with reasonable accommodation the essential functions of a police officer.”

Applied here, a preponderance of the evidence supports the conclusion of Dr. Kahn that Mr. G■■ has psychological difficulty dealing with stress, a Category B condition that disqualifies him from performing inherently stressful duties and responsibilities of a police officer, including the ability to testify in a court of law under aggressive cross examination.

In making this conclusion, I gave significant weight to the personal observations of Dr. Kahn (and Dr. Brown) during their interviews with Mr. G■■. Those observations, that Mr. G■■ was emotionally constricted; that he had a hard time expressing himself; and that he is not self-reflective, is generally consistent with my personal observation of

Mr. G■■ and appear to be generally consistent with the City's interview panel, including the Police Chief, who initially rejected Mr. G■■ (twice) based on his poor interview performance and his inability to adequately explain inconsistencies on his application. Further, even Mr. G■■ acknowledges his "extreme nervousness" during his interview. While it is not the reason for bypass, it is also noteworthy that the subject matter which resulted in his anxiety pertained to why he answered "no" on an application and questionnaire when asked if he ever had been subject to discipline in the military and whether he had ever been subject to a domestic abuse order. The correct answer to both these questions, as outlined in the findings, was "yes" and Mr. G■■ never fully explained why he provided incorrect answers.

I gave less weight to the conclusions of Dr. Brown and Dr. Kahn that Mr. G■■ has shown a history of repeatedly violating rules. Respectfully, the two incidents cited, a one-time romantic encounter with a subordinate while in the military, and an isolated event where he sought to apprehend a shoplifter while serving as a security guard, are not sufficient to establish any pattern or history of violating rules during MR. G■■'s forty-two year lifespan.

I also reject the conclusion of Dr. Brown that Mr. G■■ continues to be effected by his experience in a combat zone during his sixteen-month deployment in Iraq. There is no reliable evidence upon which Dr. Brown could make this sweeping conclusion intimating that Mr. G■■ suffers from PTSD. In fact, while I gave it relatively little weight, a physician who evaluated Mr. G■■ for approximately 1 ½ hours reached the conclusion that Mr. G■■ does not suffer from PTSD.

In summary, I believe that the observations of these two well-qualified mental health professionals, made without any personal bias or animus toward Mr. G■■■, are sufficient to support the conclusion the Mr. G■■■ is not psychologically capable of carrying out the stressful duties and responsibilities of a police officer.

As such, the Fall River Police Department was reasonably justified in rescinding Mr. G■■■'s conditional offer of employment and bypassing him for appointment.

Conclusion

For all of the above reasons, Mr. G■■■'s appeal under Docket No. G1-12-■■■ is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on May 30, 2013.

A True copy. Attest:

Commissioner

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:

Robert G [REDACTED] (Appellant)

Gary Howayek, Esq. (for Respondent)

John Marra, Esq. (HRD)