

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

JOSE RODRIGUEZ,  
Appellant

v.

G1-15-1

GREENFIELD POLICE DEPARTMENT,  
Respondent

Appearance for Appellant:

*Pro Se*  
Jose Rodriguez

Appearance for Respondent:

Robert H. Haigh, Jr.  
Chief of Police  
Greenfield Police Department  
321 High Street  
Greenfield, MA 01301

Commissioner:

Christopher C. Bowman

**DECISION**

On January 2, 2015, the Appellant, Jose Rodriguez (Mr. Rodriguez), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Greenfield Police Department (Police Department) to bypass him for appointment for the position of reserve police officer. A pre-hearing conference was held on January 14, 2015 at Springfield State Building in Springfield, MA. A full hearing was held at the same location on February 25, 2015.<sup>1</sup> The full hearing was digitally recorded.<sup>2</sup>

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> 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 he/she wishes to challenge the decision as unsupported by

## **FINDINGS OF FACT:**

Six (6) exhibits were entered into evidence at the hearing<sup>3</sup>. Based on those exhibits, the stipulated facts, the testimony of:

*Called by the Police Department:*

- Patrick F. Buchanan, Police Officer, Greenfield Police Department;
- Robert H. Haigh, Jr., Police Chief, Greenfield Police Department;

*Called by Mr. Rodriguez:*

- Jose Rodriguez, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Mr. Rodriguez is twenty-six (26) years old. He is single, resides in Greenfield and has three children, ages 7, 6 and 5, all of whom are in the custody of the state's Department of Children and Families (DCF). He has visitation rights with his children, but does not pay child support. He received his GED and has earned four (4) to six (6) credits at Greenfield Community College and Holyoke Community College. He is currently employed as a merchandise processor at Sears in Holyoke, MA. (Testimony of Mr. Rodriguez)
2. On June 15, 2011, Mr. Rodriguez took the civil service examination for police officer administered by the state's Human Resources Division (HRD). He received a score of 89. On November 1, 2011, his name was placed on an eligible list of candidates for police officer. (Stipulated Facts)

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substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

<sup>3</sup> Consistent with Massachusetts Statewide Retention Schedule 02-11, Sections B5 2(b) and/or B5 3(g), these exhibits, and the entire case record, will be retained, either at the offices of the Commission, or at the State Records Center, for six (6) years after final case activity / case closure. After such time period expires, the entire case file will be destroyed. A copy of this decision, however, will be retained permanently by the Commission.

3. On January 11, 2014, the Police Department requested a Certification from HRD to appoint eight (8) permanent reserve police officers in Greenfield. (Stipulated Facts)
4. Greenfield has a population of approximately 18,000. Its police department consists of a Police Chief, a Deputy Police Chief, two (2) Lieutenants; six (6) Sergeants and twenty-five (25) Police Officers. (Testimony of Mr. Buchanan)
5. On January 31, 2014, HRD sent Certification No. 01570 to the Police Department, from which the Police Department ultimately appointed eight (8) reserve police officers, three (3) of whom were ranked below Mr. Rodriguez. (Stipulated Facts)
6. After Mr. Rodriguez submitted an application for employment with the Police Department, Police Officer Patrick Buchanan was assigned to complete a background investigation of Mr. Rodriguez. (Testimony of Mr. Buchanan)
7. Mr. Buchanan has been a police officer in Greenfield for sixteen (16) years. He is a field training officer and has been conducting background investigations on police officer candidates for the past three (3) years. He received two (2) days of formal training on how to conduct background investigations. (Testimony of Mr. Buchanan)
8. The Police Department's background investigation consists of two (2) phases, an initial investigation and a full investigation. The initial investigation includes reviewing the candidate's application for employment, driving history, CORI record and any other in-house or other police incidents reports available to the Police Department. Depending on the results of the initial investigation, the Police Department may conduct a full investigation which includes interviewing the candidate and his references along with home and neighborhood visits. Candidates may also be called before an "Oral Board" that is comprised

of a member of the community and various police representatives. (Testimony of Mr. Buchanan)

9. Upon completing the initial investigation of Mr. Rodriguez, Mr. Buchanan had numerous concerns about Mr. Rodriguez's candidacy. (Testimony of Mr. Buchanan)
10. According to a printout from the Registry of Motor Vehicles, Mr. Rodriguez was issued fifteen (15) motor vehicles citations from 2005 to 2014; some of which he was found not responsible; and had his license suspended five (5) times for failure to pay fines. (Testimony of Mr. Buchanan and Exhibit 1)
11. According to Mr. Rodriguez's Board of Probation (BOP) report, he was the subject of five (5) separate restraining orders, four (4) in which complainant was the mother of his children and one (1) in which the complainant was his mother. (Testimony of Mr. Buchanan, Exhibits 1 & 2)
12. Two (2) of the above-referenced restraining orders were in place for one (1) year and another restraining order was in place for ten (10) months. The most recent restraining order expired on June 2, 2014, while Mr. Rodriguez was being considered for employment as a reserve police officer. (Testimony of Mr. Buchanan and Exhibits 1 & 2)
13. The BOP also showed various other entries including two (2) counts of violating a restraining order in 2014; breaking and entering in 2013; assault and battery in 2010; and possession of a firearm and ammunition without an ID card and possession of marijuana in 2006. Most of these charges were dismissed or nol prossed. (Testimony of Mr. Buchanan and Exhibits 1 & 2)

14. After reviewing Mr. Rodriguez's BOP, Mr. Buchanan obtained and reviewed fifteen (15) arrest, summons or police incident reports from the Greenfield and other police departments that referenced Mr. Rodriguez. (Testimony of Mr. Buchanan and Exhibits 5A – 5O)
15. Mr. Buchanan also found numerous omissions or incomplete answers to various questions on Mr. Rodriguez's application for employment. Mr. Buchanan reviewed a half dozen examples of these omissions or incomplete answers during his testimony before the Commission. (Testimony of Mr. Buchanan)
16. After consulting with a sergeant and lieutenant in the Police Department, Mr. Buchanan decided that a full investigation (i.e. – home visit, talking with references) was not warranted. Rather, he penned a report to Sergeant Todd Dodge which summarized his findings and questioned Mr. Rodriguez's suitability for employment as a reserve police officer. (Testimony of Mr. Buchanan and Exhibit 1)
17. Sergeant Dodge verbally conveyed the findings of Mr. Buchanan's report to Police Chief Robert Haigh. Based on the concerns identified, Chief Haigh decided to bypass Mr. Rodriguez for appointment as a reserve police officer and did not include his name among those forwarded to the Mayor for appointment. (Testimony of Chief Haigh)
18. On November 15, 2014, Mr. Rodriguez was notified of the decision to bypass him. This timely appeal to the Commission followed. (Exhibit 6 & Stipulated Facts)

### *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) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. 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. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

In Beverly, a candidate for police officer was bypassed for appointment because he was terminated from his previous employer for serious misconduct – the unauthorized access of the voicemail accounts of other employees. A three-person majority of the Commission concluded that the City “failed to prove that [the candidate] illegally accessed voicemails of employees .... the reason given for his bypass, and accordingly did not support the reason by the necessary preponderance of the evidence.”

That decision was subsequently vacated by the Superior Court. Agreeing with the Superior Court, the Appeals Court stated, “Instead of focusing on whether the city had carried its burden of demonstrating a ‘reasonable justification’ the commission focused on whether the city had proven that [the candidate] in fact engaged in the misconduct. We believe the commission erred as a matter of law in placing such an added evidentiary burden on the city. In simple terms, neither [the candidate] nor the commission has presented a convincing argument that the Legislature intended to force an appointing authority to hire a job applicant for such a sensitive position unless it is able to prove to the commission’s satisfaction that the applicant in fact engaged in the serious alleged misconduct for which he was fired.” (Beverly 182, 190)

Further, the Commission has previously held that an applicant’s arrest record, even where there is no conviction, is entitled to some weight by the appointing authority in making its decision. Labriola v. Town of Stoneham, 25 MCSR 36, 38 (2012), citing Thames v. Boston Police Dep’t, 17 MCSR 125, 127 (2004); Soares v. Brockton Police Dep’t, 14 MCSR 109, 110 (2001); Brooks v. Boston Police Dep’t, 12 MCSR 19, 20 (1999); Frangie v. Boston Police Dep’t, 7 MCSR 252, 253 (1994)). This is especially true when the applicant is seeking appointment to a public safety position ....” Campbell v. Boston Fire Dep’t, 22 MCSR 489 (2009). However, in relying on a candidate’s arrest record, the appointing authority is obligated to produce sufficient

substantiation of the facts underlying those charges. Lee v. Boston Police Dep't., 22 MCSR 239 (2009). Additionally, in order for an appointing authority to rely on a record of prior criminal conduct as the grounds for bypassing a candidate, there must be a sufficient nexus between the prior misconduct and the candidate's current ability to perform the duties of the position to which he seeks appointment. The amount of time that has passed since the misconduct occurred, the nature of the offense, and evidence of the candidate's subsequent record are factors that should be taken into account on a case-by-case basis. See e.g., Langston v. Cambridge Police Dep't., 7 MCSR 178, 179 (1994); Dowd v. Lowell Fire Dep't., 14 MCSR 31, 32 (2001); Ellis v. Dedham, 17 MCSR 30, 31 (2004).

#### *Analysis*

Mr. Rodriguez argues that "nobody's perfect"; that he is a different person today than he was years ago; and that, since most of the criminal charges against him were dismissed, the Police Department was not justified in bypassing him for appointment. He is mistaken.

The record, including the fifteen (15) arrest, summons and incident reports which I reviewed in their entirety, paints a troubling picture of a person prone to violent outbursts, unable to control his temper and unwilling to take responsibility for his actions.

On three (3) separate occasions, a Court, after giving Mr. Rodriguez an opportunity to be heard, extended a ten-day restraining order, twice for one (1) year and once for ten (10) months. One (1) of those restraining orders was sought by his mother and the other two (2) were sought by the mother of his three (3) children. Mr. Rodriguez, during his testimony, casually dismissed the restraining orders involving the mother of his children, at one point stating that DCF orchestrated the petition for a restraining order solely to make the children's mother eligible for assistance.



In regard to the restraining order involving his mother, the police incident report regarding that matter states: “Jose stated that his mother tried to smack him so he blocked her hand and proceeded to pick her up and throw her on the floor.”

Mr. Rodriguez’s history of violence, his poor driving history<sup>4</sup>, his criminal record and his omissions on his application, collectively, and individually, provided the Police Department with reasonable justification to bypass him for appointment. Based on the facts presented, no further review was warranted beyond the review completed here by the Police Department.

### *Conclusion*

The Police Department’s decision to bypass Mr. Rodriguez is affirmed and his appeal under Docket No. G1-15-1 is hereby ***denied***.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on March 15, 2015.

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:  
Jose Rodriguez (Appellant)  
Chief Robert H. Haigh, Jr. (Respondent)  
John Marra, Esq. (HRD)

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<sup>4</sup> Mr. Rodriguez stated that someone used his identity in Wisconsin, causing erroneous entries to appear on his driving record. Officer Buchanan was apparently aware of this and did not consider any entries from Wisconsin.