

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

ROBERT ROHLFING,
Appellant

v.

Case No.: G1-14-74

**BOSTON POLICE
DEPARTMENT,**
Respondent

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. The parties had thirty (30) 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 in whole, thus making this the Final Decision of the Commission.

The decision of the Boston Police Department to bypass Mr. Rohlring for appointment as a police officer is affirmed and Mr. Rohlring's appeal under Docket No. G1-14-74 is hereby ***denied***.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on November 13, 2014.

Civil Service Commission

/s/ Christopher C. Bowman
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)(1), 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:

James Michael Merberg, Esq. (for Appellant)

Nicole I. Taub, Esq. (for Respondent)

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

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

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Docket Nos: G1-14-74
CS-14-308

ROBERT ROHLFING,
Appellant

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

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Appearance for Respondent:

Nicole Taub, Esq.
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Administrative Magistrate:

Angela McConney Scheepers, Esq.

SUMMARY OF TENTATIVE DECISION

The Boston Police Department had reasonable justification to bypass the Appellant for the position of permanent full-time police officer due to his driving history, criminal history and untruthfulness about his ownership and operation of an auto repair shop. I therefore recommend that the Civil Service Commission dismiss the appeal.

TENTATIVE DECISION

INTRODUCTION

Pursuant to the provisions of M.G.L. c. 31, § 2(b), the Appellant, Robert Rohlfing (Appellant), seeks review of the Boston Police Department's (Appointing Authority or Department) reasons for bypassing him for appointment to the position of permanent full-time police officer. A pre-hearing conference was held on April 15, 2014 at the offices of the Civil Service Commission (Commission), One Ashburton Place, Room 503, Boston, MA 02108.

On May 30, 2014, pursuant to 801 CMR 1.01(11)(c), a Magistrate from the Division of Administrative Law Appeals (DALA) conducted a full hearing at the Division of Administrative Appeals (DALA) offices, One Congress Street, Boston, MA 02114, in accordance with the Formal Rules of the Standard Rules of Practice and Procedure. 801 CMR 1.01. Detective John Boyle and Devin E. Taylor, the Director of Human Resources, testified on behalf of the Respondent. The Appellant testified on his own behalf. The hearing was digitally recorded. As no notice was received from either party, the hearing was declared private.

Nine (9) exhibits were admitted into evidence. I admitted the parties' Stipulated Facts as Exhibit 10. The Appellant's Pre-hearing Memorandum was marked "A" for identification. The Appellant and the Respondent submitted post-hearing briefs on June 11, 2014, whereupon the administrative record closed.

FINDINGS OF FACT

Based upon the testimony and documents presented at the hearing, I hereby render the following findings of fact:

1. In 2013, Robert Rohlfing took the Civil Service exam for the position of permanent full time police officer, receiving a score of 96. (Exhibit 10; Testimony of the Appellant.)
2. The Appellant attended West Roxbury High School. He earned his G.E.D. on February 14, 2000. (Testimony of Appellant.)
3. Mr. Rohlfing currently works as an auto mechanic at a luxury dealership. (Exhibit 3.)
4. In 2001, Mr. Rohlfing moved to Orlando, Florida to attend a one-year program at Motorcycles Mechanics Institute. He became factory-certified in replacing and rebuilding engines. (Exhibit 2; Testimony of Appellant.)
5. Mr. Rohlfing used his experience as a mechanic and body man to run

his own business, Mass Riders Motorsports (MRM) Auto Body, from January 2004 until April 2006. The business was located at 120 Business Street, Hyde Park, a residential neighborhood. There was off-street parking and at least one work bay. Before opening the business, Mr. Rohlfing failed to procure the proper permits and licenses from the City of Boston and the Boston Fire Department. In order to operate legally, Mr. Rohlfing was obligated to have a permit from the Boston Fire Department allowing him to store chemical agents/flammable materials on the premises, a Building Use and Occupancy permit from the City of Boston, and a license from the Inspectional Services Department. (Exhibit 10; Testimony of Appellant.)

6. On April 2, 2006, the Boston Police responded to a call for an illegal auto body shop at 120 Business Street. Upon arrival, Sergeant John E. Tevnan found Mr. Rohlfing repairing motor vehicles at MRM Auto Body. Several vehicles were at the auto body shop, and tools and other items were on the paved floor in the repair bay. After an inspection and speaking with Mr. Rohlfing, Sgt. Tevnan issued a violation for no occupancy permit, no state license for storage of flammable materials, no locked and approved fire safe for solvents and paints, no permit for storage of gasoline and no Fire Department inspection permit. (Exhibit 6; Testimony of Appellant.)

7. Sgt. Tevnan ordered that the auto body shop be closed immediately and gave Mr. Rohlfing time to put away and lock his tools in the building. Sgt. Tevnan issued violation number 0034926 to Mr. Rohlfing. (Exhibit 6; Testimony of Appellant.)

8. On April 8, 2006, the Boston Police responded to another call for MRM's illegal operation. Officers James H. Earle and Gladys Frias spoke to Mr. Rohlfing, who could not produce any permits for the operation of his business. However, he had a Fire Department application for a permit for storage of gasoline

and flammables. Officer Earle issued license premise violation number 6492 to Mr. Rohlring. Mr. Rohlring signed for the violation. (Exhibit 7; Testimony of Appellant.)

9. Due to noise complaints, Officer Thomas Manning conducted an inspection of MRM on May 23, 2008. When he arrived, he saw four people working on a motor vehicle in the repair bay. The four people then closed the garage door and appeared to be closing up the shop. Officer Manning spoke to KM, the Appellant's stepbrother, who appeared to be in charge, and requested the operating permits. KM then called Mr. Rohlring, who informed him where the proper permits were kept. Officer Manning was shown Boston Fire Department permit number BFD 0128316, Building Use and Occupancy permit number BD17 and Inspectional Services Department application number 003518. However, none of the documents showed the proper business hours, restrictions of the persons, vehicles or chemical agents allowed on the premises. No license was posted. Officer Manning issued license premise violation number 06648 to KM. The Department forwarded the matter to the City of Boston Licensing Board. (Exhibit 8; Testimony of Appellant.)

10. Devin E. Taylor has been employed by the Department's Human Resources Division since 2001 and became its Director in August 2013. She assigned Detective John Boyle to conduct Mr. Rohlring's background check. (Testimony of Taylor.)

11. Det. Boyle has been employed by the Department since May 1999 and became a detective in August 2012. He oversees the hiring of new officers, reviewing taxes, high school graduation, college diplomas, verification of employment, verification of active driver's license and a check for warrants. (Testimony of Boyle.)

12. Candidates for police officer who were reached on the eligibility lists, and who indicated that they are interested in employment, were given a packet of employment forms which they may take home for one week. The packet included the

Department's Student Officer application and other Department forms, including an application/renewal for a license to carry a firearm. After the forms were returned to the Department, the packet was given to a background investigator for review.

(Testimony of Boyle.)

13. The Appellant's name appeared on Certification 00746. After indicating his interest in being a police officer, Det. Boyle was assigned to conduct Rohlring's background check. (Exhibit 10; Testimony of Appellant.)

14. The Appellant submitted his employment packet to the Department on or about June 5, 2013. Many items were missing. Mr. Rohlring submitted further documents on more than one occasion before the application was complete and Det. Boyle could begin the background check. (Exhibits 2, 3 and 9; Testimony of Appellant, Testimony of Boyle.)

15. On page 10 of the Student Officer application, Mr. Rohlring replied *yes* to the question, "Have you ever been self-employed or been a part-time or full-time owner of a business?" He listed his business as Mass Riders Motorsports, and left blank the section requiring a license number, if applicable. Mr. Rohlring replied *no* to the question, "Have you ever received a violation or complaint from any government agency in reference to your place of business?" (Exhibits 2 and 9; Testimony of Boyle, Testimony of Taylor.)

16. Within the four years of filing his Student Officer application, Mr. Rohlring had registered 14 cars and motorcycles under his name. (Exhibit 2.)

17. In his Student Officer application, Mr. Rohlring disclosed that he had been arrested for operating recklessly in 2001 while he was in Florida. The Department was unable to corroborate this information, and would have been unaware of this information except for the Appellant's self-disclosure. (Exhibits 2 and 3.)

18. During the course of the investigation, Det. Boyle accessed the

Appellant's criminal history and driving record. The criminal history check revealed that Mr. Rohlring was arraigned on six separate dates, mostly for vehicular offenses. In 1998, when he was 18 years old, he received a continuance without a finding for operating negligently. On August 9, 1999, Mr. Rohlring received guilty probation for malicious destruction of property over \$250 (riding a dirt bike across Ross Field in Hyde Park), compulsory insurance violation, operating recklessly, and operating after a license suspension. He returned to court on October 3, 2012, and the court vacated the guilty finding on the malicious destruction of property. According to the June 5, 2013 CJIS print-out, the guilty findings remain in place for the other three offenses.¹ On November 14, 2002, Mr. Rohlring crashed his car into a parked car on South Street in Jamaica Plain. On December 23, 2002, Mr. Rohlring received a six-month suspended sentence for operating recklessly. (Exhibits 2, 3, 4, 5 and 10.)

19. A check of Mr. Rohlring's driving record revealed over one hundred entries, again beginning in 1998 when he was 18 years old. Mr. Rohlring testified that he got a motorcycle when he was 18 years old, and that all his criminal and operating offenses stemmed from operation of the same. (Exhibit 4; Testimony of Appellant.)

20. Mr. Rohlring's driving history includes a litany of offenses, suspensions and revocations. His first infraction took place on July 2, 1998, and his last infraction took place on March 31, 2008. In order to regain his driver's license, Mr. Rohlring had to attend National Safety Council (NSC) classes on two separate occasions. (Exhibit 4; Testimony of Appellant.)

21. Mr. Rohlring completed his first NSC class in February 1999 before his 19th birthday. When he was 18 years old, Mr. Rohlring was found Responsible after allowing an unlicensed person to operate his motor vehicle on July 2, 1998. He was

¹ A felony conviction is an automatic disqualification for employment as a Boston Police officer. It is unclear if there is an error in the CJIS report as to a similar vacating for the other offenses, or if this represents an oversight on the part of the Appellant.

found Responsible for speeding on August 11, 1998. He was found Responsible for speeding on September 2, 1998. Mr. Rohlfing failed to pay fines on time after being stopped in Dedham for attaching plates, unregistered/improper equipment, and operating without insurance in Dedham on September 9, 1998. His driver's license was suspended for failure to pay his fines on September 15, 1998. Mr. Rohlfing was found Responsible for speeding, lane violation and failing to give a signal when driving in Newbury on August 24, 1998. Arising from the same incident, he also received a continuance without a finding for operating negligently in Newburyport District Court on December 1, 1998. On December 8, 1998, Mr. Rohlfing's driver's license was suspended for accruing 3 speeding citations in 30 days. On December 18, 1998, he was involved in a surchargeable accident. Mr. Rohlfing's license was suspended due to 5 surchargeable events on December 30, 1998, triggering the NSC class requirement for license reinstatement. (Exhibits 4 and 5; Testimony of Appellant.)

22. On August 9, 1999, when he was 19 years old, Mr. Rohlfing received guilty probation for malicious destruction of property over \$250, compulsory insurance violation, operating recklessly and operating with a suspended license on May 26, 1999. Arising from the same incident, he was found Responsible for illegal operation, unregistered/improper equipment and failing to use safety. On July 21, 1999, Mr. Rohlfing's license was suspended for 60 days due to 7 surchargeable events. On September 27, 1999, the Commonwealth sought to classify Mr. Rohlfing as a habitual traffic offender and revoke his license for 4 years. His license was reinstated after he paid fees on February 28, 2001. (Exhibits 4 and 5; Testimony of Appellant.)

23. Mr. Rohlfing was found Responsible for a September 23, 2002 seatbelt

violation on October 29, 2002. Arising from the same incident, he received a 6 month suspended sentence for 2 years for operating recklessly. On November 14, 2002, Mr. Rohlfing was involved in a surchargeable accident. The Commonwealth revoked his license for 60 days on January 28, 2003. On February 27, 2003, the Commonwealth also sought to classify him as a habitual traffic offender and revoke his license for 4 years. (Exhibits 4 and 5; Testimony of Appellant.)

24. On July 7, 2004, Mr. Rohlfing completed his *second* NSC class and received his license back on July 9, 2004 after paying the fines. Mr. Rohlfing was now 24 years old. (Exhibits 4 and 5; Testimony of Appellant.)

25. Since completion of the second NSC class, Mr. Rohlfing was found Responsible for a February 14, 2005 seatbelt violation, allowing an unlicensed operator to use his motor vehicle on October 11, 2006 and Responsible for a March 27, 2007 seatbelt violation. Mr. Rohlfing's license was suspended in May 2007 for failure to pay fines. The license was reinstated on June 11, 2007 upon payment. Mr. Rohlfing was found Responsible for failing to have an inspection sticker on March 31, 2008. This last entry on the driving record occurred when Mr. Rohlfing was 28 years old. (Exhibits 4 and 5; Testimony of Appellant.)

26. Det. Boyle testified that Mr. Rohlfing's driving record was the worst one he had reviewed in his fifteen years on the job. (Testimony of Boyle.)

27. On September 17, 2013, Det. Boyle submitted a Privileged and Confidential Memorandum to Ms. Taylor. In the memorandum, Det. Boyle noted that the Appellant had received 3 violations for license premise violations at MRM, although he had denied receiving a "violation or complaint from any government agency in reference to your place of business" in the Student Officer application. Det. Boyle also gave a thorough run-down of the Appellant's criminal history and driving

record.² Det. Boyle documented that the Appellant's residence was verified, and that he had favorable reviews from his employers, neighbors, girlfriend and his personal references. (Exhibit 3.)

28. Mr. Rohlfig's application was reviewed by a roundtable comprised of Deputy Superintendent for Internal Affairs, Lisa Holmes; Sergeant Detective of the Recruitment Investigations Division, Norma Ayala; and Attorney Maryum Khan from the Legal Department. Det. Boyle was not part of the roundtable. (Testimony of Boyle.)

29. The roundtable decided not to recommend Mr. Rohlfig to the Police Commissioner for employment. Ms. Taylor informed Mr. Rohlfig of the Department's decision in a letter dated February 12, 2014. The roundtable had considered Mr. Rohlfig's positive reviews from employers, neighbors, his girlfriend and his personal references. However, the roundtable found Mr. Rohlfig ineligible to be a Boston police officer. As reasons therefor, Ms. Taylor cited three bypass reasons: the Appellant's driving history, his criminal record, and that he had denied receiving a violation or complaint from any government agency on his employment application. (Exhibit 9; Testimony of Ms. Taylor.)

30. The roundtable was concerned because operating a police cruiser or other police vehicle is a primary duty of being a police officer. They were also concerned that after being classified as a *habitual traffic offender* and being ordered to attend NSC classes on or about February 20, 1999 and on or about November 30, 2002, instead of correcting his behavior - the Appellant continued to garner further violations on his driving history. For the first bypass reason, Ms. Taylor wrote:

² Det. Boyle incorrectly noted in his September 17, 2013 Memorandum to Ms. Taylor that Mr. Rohlfig's offenses for compulsory insurance violation, attaching plates, and knowingly receiving stolen property were dismissed after a jury trial. The CJIS states that the charges were dismissed on the date scheduled for a jury trial. (Exhibits 3 and 5.)

... there are 116 entries on your driving record. Despite many of the entries being for non-payment, suspensions and hearings there are a multitude of other infractions. Your driving behavior shows poor judgment and blatant disregard for the laws that govern motor vehicle use.

(Exhibit 9; Testimony of Ms. Taylor.)

31. For the second bypass reason, Ms. Taylor wrote:

You also have 17 arraignments on your criminal record. Despite many of the entries being for non-payment, suspensions and hearings there are a multitude of other infractions including: operating recklessly, operating after a suspended license, operating negligently, compulsory insurance violations, malicious destruction of property, attaching wrong plates, and insurance violations. Other infractions include non-driving related including: knowingly receiving stolen property.³ Combined your criminal record and driving record is concerning.

(Exhibit 9.)

32. The Department has a zero tolerance policy for untruthfulness because police officers' credibility is crucial for investigations and testifying in court. The roundtable was concerned about Mr. Rohlfing's failure to be forthcoming about his business. For the third bypass reason, Ms. Taylor wrote:

You own your own business, and checked off that you never received a violation or complaint from any government agency (see page 10, BPD application [for employment]). However, you did receive three separate licensed premise violations in 2006. You acknowledged receipt by signing two of these violations. The other one [third violation] was a notification by phone.

(Exhibit 9.)

33. On March 21, 2014, Mr. Rohlfing filed a timely appeal with the Civil

³ Mr. Rohlfing *was not* convicted of the offense of knowingly receiving stolen property. In great detail, Mr. Rohlfing explained in his Student Officer application that he was driving his employer's vehicle (having swapped his personal vehicle with a coworker for said vehicle) in order to take home some metal and excess wire that he had been given during the course of his employment. He was pulled over by a police officer on a traffic stop, and the officer informed him that the vehicle had been reported stolen. On August 3, 2007, he was arraigned for the offenses of knowingly receiving stolen property, motor vehicle, and use without authority. The matters were scheduled on October 22, 2007 for a jury trial, but were instead dismissed. (Exhibit 5.)

Det. Boyle incorrectly noted in his September 17, 2013 Memorandum to Ms. Taylor that these offenses were dismissed after a jury trial. The CJIS states that the charges were dismissed on the date scheduled for a jury trial. (Exhibits 3 and 5.)

CONCLUSION AND ORDER

A. *Applicable Legal Standards*

When a candidate for appointment appeals from a bypass, the commission's role is not to determine whether that candidate should have been bypassed. The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 187 (2010). The commission determines, "on the basis of the evidence before it, whether the appointing authority [has] sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification" for the decision to bypass the candidate. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241 (2006), citing G.L. c. 31, § 2 (b). "Reasonable justification in this context means '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.'" *Brackett v. Civil Serv. Comm'n*, *supra*, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928). See also *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 189, 190-91 (2010), citing *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 824-26 (2006). See also *Methuen v. Solomon*, No. 10-01813-D, (Essex Sup. Ct. July 26, 2012); *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012). A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." *Mayor of Revere v. Civil Serv. Comm'n*, 31 Mass. App. Ct. 315 (1991). In determining whether the department has shown a reasonable justification for a bypass, the commission's primary concern is to ensure that the department's action comports with "[b]asic merit principles," as defined in G.L. c. 31, § 1. See

Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001). An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. *Beverly*, supra at 189. The commission “finds the facts afresh” in conducting this inquiry, and is not limited to the evidence that was before the Department. *Beverly*, supra at 187. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. *Id.* Cities and towns have wide discretion in selecting public employees, and absent proof that they acted unreasonably, may not be forced to take the risk of hiring unsuitable candidates. *Tewksbury v. Massachusetts Civ. Serv. Comm’n*, No. 10-657-G, (Suff. Sup. Ct. Aug. 30, 2012) (Superior Court found that the town acted reasonably; Commission erred when it reversed DALA Recommended Decision and improperly substituted its judgment).⁴ An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone as a new ... officer than in disciplining an existing tenured one.” *Attleboro v. Massachusetts Civ. Serv. Comm’n et al.*,⁵ No. 2011-734, (Bristol Sup. Ct. Nov. 5, 2012), citing *Beverly* at 191.

B. Reasonable Justification for Bypassing the Appellant

The Department was reasonably justified in bypassing Appellant for the position of permanent full time police officer because of his driving record, his criminal record, and his failure to be truthful on his Student Officer application.

The Appellant has offered many reasons why his appeal should be allowed. He testified that becoming a police officer is his lifelong dream. He has taken the civil service exam four times, although the Department has only considered him on two occasions.

It is undisputed that Mr. Rohlfling’s driving record is a lengthy one. Det. Boyle testified that it was one of the worst ones he had seen in his fifteen year career. Mr. Rohlfling

⁴ *Cyrus v. Tewksbury*, Docket Nos. G1-08-107, CS-08-539, Recommended Decision, (June 5, 2009), *rev’d by Final Decision* 23 MCSR 58 (2010).

argued that there are no felonies on his CJIS report and no operating under the influence of alcohol or controlled substances. He testified that most of the entries on his driving records were in regard to a motorcycle that he rode after he turned 18 years old; only 4 of the entries involved a car. He testified that most of the entries were attaching plates and failing to pay car insurance, behavior that should be excused because his parents were going through a divorce and he had difficulty paying for insurance. He testified that after he completed the second NSC course, his infractions were minor, mostly seatbelt violations. Respectfully, this argument does not hold merit. Mr. Rohlfing was an adult at all times of the driving record entries, and was fully responsible for his behavior while having the privilege of operating a motor vehicle. Mr. Rohlfing made numerous appearances in the district courts, was convicted on more than one occasion, and had the benefit of attending 2 NSC classes. A reasonable person would have rehabilitated. The driving record spans 10 years, ending when Mr. Rohlfing was 28 years old.

Operating a police cruiser or other police motor vehicle is an important part of police work. Mr. Rohlfing's record is an unimpressive one, and the Department cannot be forced to hire someone whose history is so menacing. Officers must promote public safety, not be a risk to the general public on the public ways of the Commonwealth.

Mr. Rohlfing's CJIS record is likewise unimpressive. He has criminal convictions also related to the operation of a motor vehicle. The most recent one occurred in 2002 when he crashed into a parked car. Again, the Department cannot be asked to assume the risk of hiring a candidate who is a danger to the citizens of the Commonwealth on the public ways.

On the Student Officer application, Mr. Rohlfing replied *yes* to the question, "have you ever been self-employed or been a part-time or full-time owner of a business?" He listed his business as Mass Riders Motorsports. However, Mr. Rohlfing replied *no* to the question, "have you ever received a violation or complaint from any government agency in reference to

your place of business?” Mr. Rohlfig owned MRM from January 2004 until April 2006. He received citations on April 2, 2006, April 8, 2006 and May 23, 2006 from the City of Boston for failing to procure the proper permits for operation of his business. He opened a business in a residential district without a license from the Fire Department and proper storage for flammables and chemical agents. He had no Building Use and Occupancy permit from the City of Boston and no license from the Inspectional Services Department. In addition, he allowed others to work on the location in his absence.

Mr. Rohlfig’s argument that he did not realize that the Boston Fire Department, the City of Boston and the City of Boston Inspectional Services Department were government agencies, and thus answered no to this question is disingenuous at best. If he had any questions, Department staff was available to explain the application and the questions to him.

Untruthfulness is a serious concern and the Department is justly concerned with candidates’ ability to tell the truth consistently. *See Beverly* at 189-190; *Modig v. Worcester Police Dep’t*, 21 MCSR 78, 82 (2008) (police officer candidate’s failure to respond accurately to a question about his prior employment on a personal history questionnaire was grounds for bypass); *Escobar v. Boston*, 21 MCSR 168 (2008) (candidate’s untruthfulness in another police department’s application is grounds for bypass); *Moran v. Auburn*, Docket Nos. G1-08-42, CS-08-317, Recommended Decision, (June 5, 2009), *adopted by Final Decision 23* MCSR 233 (2010) (Town was justified in bypassing the Appellant for multiple reasons including misrepresentations about his extensive driving history and past criminal behavior, including assault and battery and OUI); *Konamah v. Lowell*, Docket Nos. G1-10-131, CS-11-34, Recommended Decision, (January 12, 2012), *adopted by Final Decision 25* MCSR 73 (2012) (candidate’s failure to complete application truthfully and to disclose actual role in business gave appointing authority reason for bypass); *O’Neil v. Cambridge*, Docket Nos. G1-12-14, CS-12-202, Recommended Decision, (August 14, 2012), *adopted by Final Decision* November 5, 2012. (Town was justified in bypassing the Appellant for an arrest for domestic

assault and battery).

Mr. Rohlfiing's CJIS record and driving history display a shocking lack of judgment, immaturity, and a disregard for his personal safety and for the safety of others. Mr. Rohlfiing had many years, numerous court interventions, and the opportunity to attend two NSC classes in order to ameliorate his behavior. Mr. Rohlfiing's horrible judgment is only compounded by his further failure to follow safety procedures and procure proper licenses in order to open a business and his subsequent lack of forthrightness on the Student Officer application. It is not the Department's responsibility to wait for Mr. Rohlfiing to "grow up" on the job.

There is no evidence that the City's decision was based on political considerations, favoritism or bias. Thus the City's decision to bypass the Appellant is "not subject to correction by the Commission." *Cambridge*, 43 Mass. App. Ct. at 305.

Based on the preponderance of credible evidence presented at the hearing, I conclude that the Department was reasonably justified in bypassing Robert Rohlfiing. Accordingly, I recommend that the appeal be dismissed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Angela McConney Scheepers
Administrative Magistrate

DATED: