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NORFOLK, SS

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUPERIOR COURT

NO. 14-00130

TOWN OF BROOKLINE, PLAINTIFF

v.

JAMES ROSICKY, ET AL., DEFENDANTS

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

James Rosicky applied to the Town of Brookline (the Town) for a firefighter position. The Town conditionally approved him, subject to the results of a psychological examination. Rosicky took two written psychological examinations, the MMPI-2 and the PAI (Personality Assessment Inventory), and then was examined by 2 psychiatrists, Dr. Brown and Dr. Reade. Both psychiatrists reported that he was at high risk for job relevant problems. As result of the negative psychiatric evaluations, the Town bypassed him.

Thereafter Rosicky filed an appeal with the Civil Service Commission (the Commission). After hearing, at which Dr. Brown, Dr. Reade, Sandra DeBow (the Town's Human Resource Director) and Rosicky testified, the Commission concluded that the Town had failed to establish "reasonable justification" to bypass Rosicky and ordered as follows:

The Town shall place the name of James Rosicky at the top of any current or future certifications for the position of firefighter with the Brookline Fire Department until he is appointed or bypassed;

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if Mr. Rosicky is selected for appointment, he shall receive a retroactive seniority date for civil service purposes only the same as those appointed from Certification no.202904.

Thereafter the Town sought judicial review per G.L.c.30A, §14 and G.L.c.31, §44, and has now moved for judgment on the pleadings. After hearing and review I find and rule as follows.

The applicable standards pertaining to the role of the appointing authority (here, the Town) and the Commission in civil service hearing decisions is well-established. See Town of Beverly v. Civil Service Commission, 78 Mass.App.Ct. 182, 187 (2010). An appointing authority may bypass a candidate if it has a “reasonable justification” to do so. The appointing authority has the burden of proof on that issue. The Commission must then “find the facts afresh”, but it does not operate from a wholly blank slate. The Commission owes “substantial deference” to the appointing authority in determining whether there was “reasonable justification” for the decision to bypass the applicant.

The court, in reviewing the Commission’s decision, is bound to accept the findings of fact of the Commission. The court owes deference to the Commission’s decision. Essentially the court must determine whether the Commission’s decision is supported by “substantial evidence”.

The role of the psychiatrists in the process is narrowly circumscribed. Dr. Brown’s and Dr. Reade’s task was to determine whether Rosicky had a psychiatric condition that would prevent him from performing the essential functions of the job. Police Department of Boston v. Kavaleski, 463 Mass. 680, 695 (2012).

The medical protocol for examining physicians for their assessment of candidates who are applying for initial-hire firefighter positions considers medical conditions in 2 categories. Category A medical conditions are those conditions that “preclude an individual from performing the essential job functions of a municipal firefighter in a training or emergency operational environment, or present a significant risk to the safety and health of that individual or others.” A Category B medical condition is one that “based on its severity or degree, may or may not preclude an individual from performing the essential job functions of the municipal firefighter in a training or emergency operations environment, or present a significant risk to the safety and health of that individual or others.” With regard to psychiatric/psychological conditions for firefighter candidates, the medical standards indicate that there are no category A conditions. With respect to category B, psychiatric medical conditions shall include

- a. 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 stressors of the job,

- b. Any other psychiatric condition that results in an individual not being able to perform as a firefighter.

The Commission determined that the psychiatric reports and testimony of Dr. Brown and Dr. Reade failed to identify a condition that would preclude Rosicky from performing the essential job functions of a firefighter. The primary concern of the psychiatrists was what they regarded as Rosicky’s high risk of alcohol abuse. They essentially pointed to 2 incidents, one in 2000 when Rosicky was about 21 and one in 2009. The first incident involved a situation where Rosicky and a friend were on a roof of a building setting off firecrackers and possibly throwing

bottles off the building. The police intervened. According to the police report, Rosicky slammed one of the officer's arms in a door and forcibly resisted arrest. He was charged, but the charge was later dismissed. The other incident occurred in 2009 outside a bar on Lansdowne Street in Boston. According to the police report, Rosicky and a friend were leaving a bar and the friend urinated against a building. The police officer confronted the person and Rosicky became engaged in a verbal altercation with the police officer. This confrontation resulted in Rosicky's arrest on a charge of disorderly conduct. That charge was also dismissed. Overindulgence in alcohol was obviously involved in each incident. Rosicky expressed an exculpatory version of his conduct in each event during the interviews with the psychiatrists.

Rosicky denied an alcohol abuse problem but admitted to drinking "4-5" beers on Friday and Saturday nights. The information available to the psychiatrists was inadequate for them to diagnose Rosicky as being substance dependent or suffering from alcohol abuse pursuant to the standards of DSM-IV.

The psychiatrists also pointed to what they regarded as Rosicky's tendency to deny responsibility, and to deny generally human frailties as reflected in his scores on the MMPI-2 psychological test. They also referred to problematic behavior related to impulse control, including several driving tickets (although no driving infractions were alcohol-related), and confrontational behavior with law enforcement as reflected in the 2 referenced incidences in the context of over drinking.

It was within the Commission's province to regard the psychiatrists' evidence as inadequate to establish a disqualifying medical condition. The detailed decision of the hearing officer reflected appropriate deference which the Commission owed to the appointing authority.

Nonetheless, the Commission was not obliged to regard the alleged risk of substance abuse and the various other personality shortcomings identified by the psychiatrists as preventing Rosicky from performing the essential functions of a firefighter. The Commission was aware of and relied upon the recent Kavaleski decision. I also regard that case as substantially in point here.

In summary, having in mind that the Commission had the authority to assess the credibility and weight to be given the evidence presented by the psychiatrists, and the deference that the court must give to the Commission's decision, I see no reason to substitute my judgment for that of the Commission. I regarded it as supported by substantial evidence.

ORDER

The motion for judgment on the pleadings of the Town is denied. Judgment shall enter affirming the decision of the Commission dated January 9, 2014 allowing the appeal of James Rosicky and ordering the Town to place his name at the top of any current or future certifications for the position of firefighter with the Brookline fire department until he is appointed or bypassed, and if Mr. Rosicky is selected for appointment, ordering that he shall receive a retroactive seniority date for civil service purposes only the same as those appointed from certification number 202904.

Attest

Deputy Assistant Clerk

Patrick F. Brady
Justice, Superior Court

2 Dec 14

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