

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JUSTIN RUGGIERO,

Appellant

v.

G1-14-52

CITY OF QUINCY,

Respondent

Appearance for Appellant

Pro Se
Justin Ruggiero

Appearance for Respondent

Janet Petkun, Esq.
Assistant City Solicitor
Quincy City Hall
1305 Hancock Street
Quincy, MA 02169

Commissioner:

Cynthia Ittleman¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Justin Ruggiero (hereinafter “Mr. Ruggiero” or “Appellant”), filed an appeal on February 13, 2014, regarding the decision of the City of Quincy, the Appointing Authority (hereinafter “City” or “Respondent”), to bypass him for appointment to the position of police officer with the Quincy Police Department (“Department”) based on his psychological evaluation. The Appellant filed a timely appeal. A pre-hearing conference was held on March 25, 2014 and a full hearing was held on June 18, 2014 at the offices of the Civil Service Commission (“Commission”). The hearing was digitally recorded and copies of the recording were sent to the parties. Both parties submitted post-hearing briefs on July 16, 2014. For the reasons stated herein, the appeal is allowed.

¹ The Commission acknowledges the assistance of Law Clerk Ryan Clayton in the drafting of this decision.

FINDINGS OF FACT:

Twelve (12) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Respondent:

- Helen Murphy, Director of Human Resource, Quincy;
- Robert W. Mullaly, Psychologist;
- Russell G. Vasile, M.D. Psychiatrist.

For the Appellant:

- Ms. E, Fiancé of Appellant;
- Justin Ruggiero, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, a preponderance of the credible evidence, and reasonable inferences therefrom, establishes the following findings of fact:

1. Mr. Ruggiero is a thirty (30) year old resident of Quincy, having grown up in Milford, MA. Mr. Ruggiero is a veteran and was honorably discharged in 2007. Mr. Ruggiero graduated from Milford High School in 2001 and obtained a degree in Criminal Justice from Bridgewater State University in 2007. Mr. Ruggiero took the civil service examination for police officer on April 30, 2011, scoring a 96. The state's Human Resources Division ("HRD") established an eligible list on November 1, 2011. The City requested a Certification based on the eligible list to hire eighteen (18) candidates, and HRD created Certification No. 01170 on September 18, 2013. Mr. Ruggiero ranked twenty-fourth (24th) on the Certification among those willing to accept employment. Twenty-four (24) candidates were selected for appointment instead of eighteen due to

increased available resources, eleven (11) of whom were ranked below Mr. Ruggiero.

(Stipulated Facts)

2. Mr. Ruggiero works with Brain Injury and Statewide Specialized Community Services in Quincy, a part of Community Living Division of the Massachusetts Rehabilitation Commission and is state funded, and has worked there since 2007 as a life skills trainer/case worker. Mr. Ruggiero mostly works with veterans who have suffered head injuries and helps transition those veterans back into civilian life. *(Testimony of Ruggiero)*
3. Mr. Ruggiero completed an application for police officer for the Department on September 23, 2013. *(Exhibit 2)*
4. On October 31, 2013, the Department rendered Mr. Ruggiero a conditional offer of employment as a Quincy Police Officer, conditioned upon successfully passing the background check, medical examination, Physical Abilities Test, psychological test, and an available academy. *(Exhibit 3)*
5. The psychological screening process is a three step process. Phase I is testing. Candidates must take the Minnesota Multiphasic Personality Inventory – 2 – RF (“MMPI-2-RF”), as well as the Personality Assessment Inventory (“PAI”). The MMPI-2-RF is specifically designed to identify high-risk candidates in public safety screening and selection settings, and identify psychopathology in clinical populations. The PAI is designed to identify and screen out emotionally unstable applicants. Candidates then enter Phase II, which consists of a clinical interview performed by a doctorate level psychologist designated by the Appointing Authority. If no questions are raised by this process, the designated clinician will notify the Appointing Authority in writing of the candidate’s psychological

eligibility to be appointed as a police officer. Should questions arise during the first interview, these questions are explored, and then a report is generated and forwarded to a second opinion psychiatrist to further interview the applicant. Should a candidate need to seek a second opinion then they enter Phase III of the process. The second-opinion clinician then makes a final recommendation to the Appointing Authority as to the eligibility of the applicant to be hired as a police officer. (*Exhibit 11*)

6. On December 27, 2013, Mr. Ruggiero met with Dr. Mullaly for a psychological evaluation. (*Exhibit 4*)
7. Ms. Murphy and Dr. Mullaly met in January to discuss Mr. Ruggiero's psychological evaluation. Dr. Mullaly informed Ms. Murphy that Mr. Ruggiero failed the psychological evaluation but he did not have the final report at that time and would recommend that the City bypass Mr. Ruggiero. Ms. Murphy called Mr. Ruggiero to inform him that he failed the psychological evaluation and that the conditional offer was going to be rescinded. (*Testimony of Murphy*)
8. Dr. Mullaly gave the City his final report on February 7, 2014. (*Exhibit 4*)
9. Dr. Mullaly recommended to the City that it bypass Mr. Ruggiero based on his test results for the MMPI-2-RF, PAI and the interview. Mr. Ruggiero had scored higher on various portions of the MMPI-2-RF as compared to the rest of the test sample. These elevations were found on the Behavioral/Externalizing Dysfunction scale, Somatic Complaint, Antisocial Behavior, and Juvenile Conduct Problems.² The PAI which Mr. Ruggiero took established a risk factor probability rating of fifty-eight (58) percent and that Mr. Ruggiero had endorsed fifteen (15) critical items, where the average for the rest

² The Commission has taken these findings to mean Dr. Mullaly is suggesting that Mr. Ruggiero is at risk for the problems listed due to scoring higher on those portions of the exam as compared to the test sample.

of the test sample was ten (10) critical items. Mr. Ruggiero also rated at a High risk level on four (4) of the six (6) job-relevant behavior domain categories and Moderate on the other two (2) categories. Dr. Mullaly also questioned Mr. Ruggiero about his family during the interview. Mr. Ruggiero has three (3) brothers, all of whom have had problems, including arrests, incarcerations and substance abuse issues. Mr. Ruggiero's father has also had incarcerations and substance abuse problems. However, Mr. Ruggiero has not seen or spoken to his father in a number of years as he himself did not want to have the problems his father had. (*Testimony of Ruggiero*) Dr. Mullaly stated in his final report, "Given [Mr. Ruggiero's] reported family history of behavior and substance abuse issues, the risk for substance abuse and behavior problems requires close review and consideration as a risk factor in this profile." Dr. Mullaly's report also states, "there is no evidence of any depression or anxiety," and that, "[Mr. Ruggiero] denied any treatment for alcohol or substance abuse problems. Despite this, Dr. Mullaly stated in his report, "given the family history and particularly the history of behavior problems and possible substance abuse problems in family members ... the potential for risk of psychological problems was considered in developing this profile and in rendering the professional opinion. There was sufficient concern to withhold a full, unrestricted and unconditional endorsement for this candidacy." (*Exhibit 4*)

10. The City sent Mr. Ruggiero a letter on February 10, 2014 stating that the conditional offer of employment had been rescinded. (*Exhibit 8*)

11. A second level evaluation had not been scheduled because the City had failed to contract with a psychiatrist to perform this function pursuant to a plan approved by HRD. (*Testimony of Murphy; Administrative Notice*)

12. Mr. Ruggiero filed an appeal at the Commission on February 13, 2013. Mr. Ruggiero was unaware that a second-level evaluation was required until he was so informed at the Commission's pre-hearing conference. (*Testimony of Ruggiero*)
13. After the pre-hearing conference, the City retained Dr. Vasile's services. Dr. Vasile is a psychiatrist; he has performed psychological evaluations for the Massachusetts State Police but not for municipal police departments. Mr. Ruggiero's second-level evaluation was then scheduled for March 31, 2014. (*Testimony of Murphy*)
14. Police officer candidates must pass medical examinations, including a psychological evaluation. A candidate who has a Category A medical condition may not be considered for appointment. A candidate with a Category B condition may be further considered for appointment as long as the condition is not of sufficient severity to prevent the candidate from performing the essential functions of a police officer without posing a significant risk to the safety and health of him/herself or another. These categories are described in HRD's Physician's Guide Initial-Hire Medical Standards ("HRD Medical Standards"). (*HRD's Initial-Hire Medical Standards*)
15. For psychiatric purposes, Category A medical conditions include: disorders of behavior, anxiety disorders, disorders of thought, disorders of mood, and disorders of personality. Category B medical conditions includes: "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." Category B also covers "any other psychiatric condition that results in an individual not being able to perform as a police officer." (*HRD's Medical Standards, p. 16*)

16. Dr. Vasile concluded in his report that he agreed with Dr. Mullaly and recommended that the City bypass Mr. Ruggiero. Dr. Vasile cited to Mr. Ruggiero's test results on the MMPI-2-RF and PAI, and stated that Mr. Ruggiero does "appear to have a history of vulnerability to substance abuse." Dr. Vasile relies on Mr. Ruggiero's statement that he had been drunk "30-40" times while he was in his "Marine and college days." However, Dr. Vasile also reports that the last time Mr. Ruggiero reports being drunk was in September 2013 at a wedding. (*Exhibit 6*)
17. Mr. Ruggiero has never had substance abuse problems, at least in the seven years he has been with his fiancé, nor does he have a history of anti-social behavior. Mr. Ruggiero's fiancé is a fourth-grade elementary school teacher. Both Mr. Ruggiero and his fiancé help take care of Mr. Ruggiero's nephew since his brother is in jail. (*Testimony of Ms. E*)
18. One supervisor stated in a review of Mr. Ruggiero at his current job as a life skills trainer/case worker that, "[Mr. Ruggiero]'s professional skills really shine when he is observed running life skills groups. The clients frequently seek me out to express their enjoyment for his group and teaching style." Another former supervisor stated, "Mr. Ruggiero worked well with his clients and treated each as an individual, catering to their various personalities, and making them feel comfortable," and "I came to know Mr. Ruggiero on a personal level as well, and he is a caring, loyal & hard working individual." (*Exhibit 10*)
19. Both Dr. Mullaly and Dr. Vasile were unaware of HRD's Medical Standards; neither of them found that Mr. Ruggiero has a condition or disorder pursuant to the HRD's Medical Standards. (*Testimony of Mullaly and Vasile*). The City has not developed a plan for

psychological evaluation of police officer candidates as approved and required by HRD.
(*Testimony of Mullaly*)

20. On April 10, 2014, the City sent Mr. Ruggiero a second letter that he had failed the psychological evaluation and again that his conditional offer of employment was rescinded. (*Exhibit 7*)

21. Mr. Ruggiero filed an appeal on February 13, 2013.

DISCUSSION

Applicable Law

Upon an appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 241 (2006). Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Comm’rs of Civil Serv. v. Mun. Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. See City of Beverly v. Civil Serv. Comm’n, 78 Mass.App.Ct. 182, 189 (2010). “In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” Id. at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous

decision of the appointing authority, but rather decides whether 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.” *Id.* at 824 (quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983)).

In deciding an appeal, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was reasonable justification” shown. Beverly at 188. 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.” *See* City of Attleboro v. Mass. Civil Serv. Comm’n, C.A. BRCV2011-00734 (MacDonald, J.), citing Beverly at 191. The Commission is charged with ensuring that the system operates on “[b]asic merit principles.” Mass. Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, at 259 (2001). “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *Id.* (citing Sch. Comm’n of Salem v. Civil Serv. Comm’n, 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm’r of Health & Hosps. of Bos. v. Civil Serv. Comm’n, 23 Mass.App.Ct. 410, 413 (1987)).

Pursuant to the HRD Certification Handbook (“HRD Handbook”) regarding Entry Level Public Safety Appointments Subject to Civil Service,

... The use of psychological screening as a selection instrument for appointments to the position of Police Officer or Firefighter may be used only when a municipality has an approved psychological screening plan on file with the Human Resources Division. The results of psychological screening conducted when no approved plan is on file may not serve as a basis for the bypass of candidates. ...

Id., p. 4.

Further, the HRD Handbook provides that if a candidate is deemed unqualified by a psychologist and psychiatrist under an HRD-approved psychological screening plan, the appointing authority should forward such information to HRD for removal of the candidate from the certification. Id.

The role of the psychologist and/or psychiatrist conducting a pre-employment evaluation for police officers in civil service communities under an approved plan 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 psychologist’s or 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 has failed to prove by a preponderance of the evidence that it had reasonable justification to bypass Mr. Ruggiero. First, the City did not have a psychological screening plan that was approved by HRD. Second, the City relied completely upon Dr. Mullaly and Dr. Vasile’s psychological evaluation reports in making its determination to bypass Mr. Ruggiero. There is no evidence that Mr. Ruggiero has any condition or disorder, even broadly defined, that would prevent him from being a police officer pursuant to HRD’s Initial Hire Medical Standards.

Both Dr. Mullaly and Dr. Vasile were unaware of HRD's Medical Standards in making their decisions.

Mr. Ruggiero is known by his long-term employer to be a hard-working and serious individual who is a reliable employee. Mr. Ruggiero has also been in a long-term committed relationship and is engaged to be married. The City has no basis for disputing the portrait provided by these sources other than written tests results and the clinical observations of Drs. Mullaly and Vasile, which were not performed pursuant to the HRD's Medical Standard. Dr. Mullaly and Dr. Vasile's conclusions are not supported by Mr. Ruggiero's background. Their statements that Mr. Ruggiero may have problems with substance abuse because of his brothers' conduct constitutes little more than speculation. While test results may raise questions about a candidate's background if they are conducted pursuant to HRD's Medical Standards, the City did not psychologically assess Mr. Ruggiero according to those standards. When the HRD Medical Standards have not been applied, a psychological evaluation should not deny career opportunities to individuals who otherwise have records like that of Mr. Ruggiero. Funaro v. Chelmsford Fire Dep't, 8 MCSR 29 (1995). Moreover, the City has the opportunity to assess his conduct during the probationary period if Mr. Ruggiero is selected.

Conclusion

For all of the above reasons, the City of Quincy has not provided reasonable justification, supported by a preponderance of the evidence, for its decision to bypass Mr. Ruggiero for appointment as a police officer. The decision to bypass Mr. Ruggiero is overturned and his appeal under Docket No. G1-14-52 is hereby *allowed*.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the state's Human Resources

Division (HRD) or the City in its delegated capacity shall:

- Within sixty (60) days of the date of this decision, the City of Quincy shall prepare a psychological evaluation plan and obtain HRD's approval thereof. The City of Quincy shall not perform any psychological evaluations of police and firefighter candidates until and unless HRD approves its psychological evaluation plan.
- Place the name of Justin Ruggiero at the top of any current or future Certification for the position of Police Officer in Quincy until he is appointed or bypassed.
- Upon reconsideration of Mr. Ruggiero for appointment as a police officer in Quincy, the City of Quincy may process Mr. Ruggiero's application for original appointment as a Quincy Police Officer in accordance with its usual and customary procedures in compliance with civil service law and rules, including the requirement that the Appellant submit to and pass an appropriate medical screening, including a psychological screening pursuant to a plan approved by HRD; provided, however, that any psychological screening of the Appellant shall be performed, de novo, by qualified mental health professionals selected by the City of Quincy other than the mental health professionals who previously performed a first level or second level screening of Mr. Ruggiero.³
- If Mr. Ruggiero is appointed as a Police Officer, he shall receive a retroactive civil service seniority date, for civil service purposes only, to the earliest seniority date as individuals appointed from Certification No. 01170. This retroactive civil service seniority date is not intended to provide Mr. Ruggiero with any additional and/or retroactive compensation and should not be used to determine creditable service for purposes of retirement or time served

³ I note that in Kavaleski, the SJC states, "... the commission authorized the department to conduct further psychological screening of Kavaleski, if the department deemed it necessary, so long as any screening is performed de novo by psychiatrist other than those involved in this case. While nothing in the HRD rules required further screening, we defer to the commission's decision in this case to permit such screening. See G.L. c. 30A, § (14)(7)." Kavaleski, 463 Mass. 68, fn 21 (2012).

in the position of police officer in computing eligibility for any future civil service promotional examinations.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on July 24, 2014.

A true record. 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:

Justin Ruggiero (Appellant)
Janet Petkun, Esq. (For Respondent)
John Marra (HRD)