

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
617-979-1900

MATTHEW SANTANA,
Appellant

Docket Nos.: G1-24-078, G1-23-201

v.

BOSTON POLICE DEPARTMENT,
Respondent

Docket Numbers:

G1-23-201
G1-24-078

Appearance for Appellant:

Michael J. Shivick, Esq.
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Rochdale, MA 01542

Appearance for Respondent:

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Commissioner:

Angela C. McConney¹

SUMMARY OF DECISION

The Commission affirmed the decision of the Boston Police Department to bypass a candidate for lack of good judgment and untruthfulness in regard to previous employment.

DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Matthew Santana (Appellant), appealed to the Civil Service Commission (Commission) the Boston Police Department's (BPD or

¹ The Commission acknowledges the assistance of Law Clerk Isabella Andrade with the preparation of this decision.

Department) September 13, 2023 decision to bypass him for original appointment to the position of permanent full-time police officer. As reasons therefor, the Department cited Mr. Santana's lack of good judgment and untruthfulness.

The Commission conducted a remote pre-hearing conference on November 13, 2023. On February 7, 2024, I held an evidentiary hearing at the offices of the Commission located at 100 Cambridge Street, Suite 200, Boston, Massachusetts.² The hearing was audio/video recorded via Webex and copies of the recording were provided to the parties.³ On April 8, 2024, the parties filed proposed decisions, whereupon the administrative record closed.

Consolidation of Docket Numbers G1-24-078 and G1-23-201

While the appeal filed on October 18, 2023, was pending, Mr. Santana filed another appeal after the Department bypassed him again on May 15, 2024. That appeal was docketed as G1-24-078. On June 30, 2024, at the request of both parties, I consolidated the second appeal, docketed under G1-24-078, with G1-23-201.

FINDING OF FACT

I admitted four exhibits from the Respondent Department (R. Exhibits 1-4) and two videos.³ I admitted eleven exhibits from the Appellant (A. Exhibit 1-11). Based upon the documents submitted and the testimony of the following witnesses:

Called by the Department

- Detective Anthony Cutone, Recruit Investigations Unit, Boston Police Department

² The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ 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/it wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

- Teori Shaw-Boyce, Deputy Director of Human Resources, Boston Police Department

Called by Appellant

- Matthew A. Santana, Appellant

and taking administrative notice of all pleadings filed in this case, plus pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence,

I make the following findings of fact:

Docket No. G1-23-201

1. Matthew Santana is a 24-year-old life-long resident of Massachusetts. He is a college graduate, and currently works as a laborer. (A. Exhibits 2 and 9).

2. On March 19, 2022, Mr. Santana passed the civil service examination for police officer administered by the state's Human Resource's Department (HRD). (Stipulated Facts)

3. Between September 9, 2022, and January of 2023, HRD issued Certification # 08848 for the original appointment of 180 Department police officers. Mr. Santana's name appeared in a tie group in the 75th position. (Stipulated Facts)

4. On December 31, 2022, the Appellant submitted his Employment Application (Application) to the Department. (A. Exhibit 9)

5. The Recruit Investigation Unit (RIU) assigned Det. Anthony Cutone to conduct Mr. Santana's background investigation. The background investigation included a review of Mr. Santana's educational history, work history, criminal history, driving history, personal and professional references, and interviews with neighbors, significant others and family members. (Testimony of Det. Cutone)

6. On page 27 of the Application under the heading *Employment History, Have any of the following happened to you during the course of employment?* Question 1 stated,

Terminated from a job? (A. Exhibit 9; Resp. Exhibit 11)

7. Mr. Santana responded, “yes,” and wrote the following:

On October 29, 2017, i [sic] was dismissed from my co-op job during highschool [sic] for engaging in a religious conversation with a customer that came up but was later used against me. ...

(A. Exhibit 9)

8. On January 23, 2023, Det. Cutone reached out to Mr. Santana for more details on the 2017 dismissal. Mr. Santana emailed the following:

The reason I was terminated:

We were doing siding work at a customer’s house. After we were all done, I had noticed that the family was setting up for a religious Christian event at their home that I also had participated in when I was a kid. I engaged in a conversation the mother as to how I also was a part of that; and it was nice to see that. Then we started to talk about God, and I gave advice due saying always so busy and has struggles balancing everything. My advice was, you can talk to God anywhere at any time, just always keep talking to him to keep that communion. She was happy and touched and then afterwards I went on my way home. Few months later my boss received a call and then scheduled a day to meet with me at a parking lot at Walmart to speak with me. He told me he was starting a new job but that these new customers said they heard that I called the previous customers demon possessed and that she needed to go to church, and other negative comments that I can’t remember now. I told him that was all false and told him exactly what had happened. He said we can’t mix politics and religion at work and that had to let me go or else he would lose this big job offer. It was either me or the job so he told me he had to let me go but that he would still be a reference for me if I wanted to find another contractor to work with. After I thanked him for the opportunity to have worked with him, I told the school what had happened, and they still allowed me to join another company, but I decided to just focus on my classes instead. They also told to be careful to share religion at work hours during co-op.

That was my only time I was terminated, and I learned about how employees shouldn’t discuss religious and political views during work. Those claims of what I said were false and I am not sure how and why those comments were said about me.

(A. Exhibit 2)

9. On January 24, 2023, Det. Cutone reached out to Mr. A, the former employer. Mr. A's recollection was different, so the detective requested that he submit his version of events in writing. (Testimony of Det. Cutone)

10. In January 24, 2023 email, Mr. A wrote:

... Matthew Santana worked for me on a work study program ... for approx. 7 months in 2017. I found out that he went back to one of my clients [sic] houses after hours and told her that he had a dream that she was possessed by the devil and that she should go with him to church to pray. She declined to go with him and closed the door and never mentioned it to me. Several weeks later the story came back to me thru sic a third party that I was getting ready to start a large project for. The third party told me that he was uncomfortable having Matt at his house with his wife and two young daughters. I spoke to Matt about it and he denied it. I have no reason to believe that the client of the third party would be making up the story, so I had to let Matt go.

(A. Exhibit 2)

11. Mr. A provided Det. Cutone with the client's contact information. When the detective telephoned her, she stated that she did not want to participate in the investigation, but confirmed that Mr. Santana had returned to her home after hours. (A. Exhibit2; Testimony of Det. Cutone)

12. On January 26, 2023, Det. Cutone and Det. Joel Resil conducted an in-person discretionary interview with Mr. Santana. The interview was videotaped. When the detectives presented him with Mr. A's January 23, 2023 email, Mr. Santana denied "100%" of the information contained within. He also denied that he returned to the client's home after the job was finished, and stated that doing so after the job was completed would be "strange." (R. Exhibit 4)

13. Mr. Santana specifically denied using the term "demon-possessed" and denied that he had invited the client to attend church with him to pray. He also denied that he had

brought up the conversation after hours. He clarified that he had told the client “that you can always talk to God in prayer not just at church.” (R. Exhibit 4)

14. Mr. Santana confirmed that Mr. A had to let him go so that he would not lose a big job from a third party, as the third party felt uncomfortable having Mr. Santana around his wife and two young daughters. (R. Exhibit 4)

15. Before ending the January 26, 2023 discretionary interview, the two detectives asked Mr. Santana if there was anything else he wanted to add. (R. Exhibits 3 and 4)

16. Teori Shaw-Boyce serves as the Human Resources Dep. Director and was a member of the roundtable for the 2023 class cycle. The roundtable also includes representatives from the Human Resources Department, Internal Affairs and the Legal Department. (Testimony of Shaw-Boyce)

17. Det. Cutone summarized his investigation findings into a Privileged and Confidential Memorandum (PCM). On or about February 1, 2023, Det. Cutone presented the PCM to the roundtable. After he left, the roundtable continued its review of the PCM and discussed Mr. Santana’s history. (A. Exhibit 2; Testimony of Shaw-Boyce, Testimony of Det. Cutone).

18. In its deliberations, the roundtable members were concerned that Mr. Santana was not forthcoming about an incident that took place so long ago. The roundtable thought that in addition to being untruthful in his interactions with the Department, Mr. Santana’s conduct showed immaturity, failure to take ownership for the incident, lack of responsibility and demonstrated lack of good judgment. (Testimony of Shaw-Boyce)

18. In a September 13, 2023 notice enclosing his appeal rights, the Department informed Mr. Santana of his bypass. (A. Exhibit 1)

19. Mr. Santana appealed to the Commission on October 18, 2023. (A. Exhibit 10; Stipulated Facts)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm’n*, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996). See also *Brookline v. Alston*, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Original appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09.

The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. *Boston Police Dep’t v. Civil Serv. Comm’n*, 483 Mass. 461, 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., *Falmouth v. Civil Serv. Comm'n.*, 61 Mass. App. Ct. 796, 801 (2004), *citing Cambridge v. Civil Serv. Comm'n.*, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997); *Police Comm'r v. Civil Serv. Comm'n.*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

Hearsay evidence may form the basis of a decision by a public employer to draw inferences adverse to a job applicant's candidacy, without violating due process, so long as that evidence contains substantial indicia of reliability. *Costa v. Fall River Hous. Auth.*, 453 Mass. 614 (2009).

ANALYSIS

The Department has shown, by a preponderance of the evidence, that it had reasonable justification to bypass Mr. Santana for the position of permanent full-time police officer.

The Commission has consistently held that to uphold a bypass based on a candidate's prior misconduct, an appointing authority must show a nexus between the past misconduct and the candidate's present ability to perform the duties and responsibilities of a civil service position. See *Finklea v. Boston Police Dep't*, 30 MCSR 93 (2017) (unanimously concluding that the BPD failed to show a nexus between the Appellant's admission to receiving stolen property 14 years prior and his current ability to serve as a police officer); *Finklea v. Civil Service Commission and Boston Police Department*, No. 1784CV00999 (Suff. Sup. Ct., Feb. 5, 2018) (affirmed as to this point); *Morgan v. Boston Police Dep't*, 33 MCSR 131 (2020) (unanimously concluding that the BPD failed to prove a nexus between the Appellant's criminal conduct 16 years prior and his current ability to serve as a police officer); *Teixeira v. Department of Correction*, 27 MCSR 471 (2014) (unanimously concluding that DOC failed to show a nexus

between the Appellant's criminal conduct from 20 years prior and his current ability to perform the essential job duties of a correction officer); *Stylien v. Boston Police Dep't*, 31 MCSR 154, 209 (2018) (bypass appeal allowed due to lack of evidence, and failure to show a pattern of criminal behavior or poor driving habits).

First Bypass Reason - Lack of Good Judgment

It is undisputed that Mr. Santana was terminated from his high school co-op job in 2017 after his boss discovered that he had stayed behind, after his coworkers had already departed, in order to conduct a conversation about religion with a female client while she was home alone with her young children.

The Department rightfully placed considerable weight on Mr. Santana's lack of good judgment. He admitted to lying in wait, watching Mr. A and his son depart, and returning to a private home to speak with a client after the job was already finished. Then Mr. Santana engaged the client on religion, a topic with no express business purpose – although Mr. A had previously warned him not to discuss religion on the job.

Whether or not the client was receptive to the conversation on religion, Mr. Santana had no reason to be on the property after the job was finished. His presence after hours, with no express purpose, presented a liability on behalf of his employer. In fact, the client shared her discomfort with a potential client, who expressed his unwilling to hire Mr. A because of his concern for his wife and young daughters being exposed to Mr. Santana's unbidden presence. Mr. A first learned about the after-hours conversation when the potential client expressed his concern about the safety of his family.

The fact that Mr. Santana approached a woman alone after work hours, in violation of the express wishes of his employer, demonstrates disobedience and a lack of good judgment. Good

judgment is a quality necessary for becoming a permanent full-time Boston police officer.

Second Bypass Reason - Untruthfulness

Mr. Santana's recollection of the after-hours conversation varied throughout the application process. He gave diverse accounts of the conversation with the client, on the application and during the January 26, 2023 in-person discretionary interview – even when presented with Mr. A's January 23, 2023 email. Mr. Santana had several opportunities to disclose the full story, especially during the discretionary interview process. The inconsistencies and withholding of information draw serious doubt about Mr. Santana's integrity and truthfulness.

Mr. Santana asserts that the Department based its decision on uncorroborated hearsay evidence. Public employers may use hearsay evidence, in whole or in part, so long as there is no reason to doubt its reliability. Here, the female client and the potential customer had no reason to be untruthful in their recounting of the 2017 incident. Further, Mr. A had warned Mr. Santana not to discuss religion on the job.

Regardless of whether there was hearsay, Mr. Santana cast doubt on the course of events due to the radically shifting nature of his own statements throughout the application process. The changing of statements were to a degree not reasonably attributable to forgetfulness or the passage of time, but to untruthfulness.

Thus, the Department had reasonable justification to find that at the time he was being considered for appointment, Mr. Santana lacked the good judgment and integrity necessary for performing the job duties of a police officer.

In the light most favorable to him, Mr. Santana's behavior and testimony demonstrated immaturity and a lack of readiness to serve as a police officer. He did not seem to understand the

seriousness of the application process and that failure to be completely candid and forthcoming would be fatal to his candidacy.

For this reason, and the reasons discussed above, I find that the Boston Police Department was reasonably justified in bypassing Mr. Santana.

Docket No. G1-24-078

While the Appellant's first appeal here was still pending, the Appellant re-applied to be considered in the next cycle of employment for the BPD. At the June 30, 2024 Prehearing Conference, Christopher C. Bowman, Chair of the Civil Service Commission, allowed the parties' motion to consolidate Docket G1-24-078 and G1-23-201 because the bypass appeals were similar.

I hereby make the following additional findings of fact:

20. On November 23, 2023, Mr. Santana submitted a sworn affidavit to the Department, stating that he "might have gone back at the end of the day to retrieve something I left there. ... I don't recall if I spoke to her or not or what the content of that discussion may have been ... "if I made a statement or joke about a 'possessed demon', I have no recollection of that." (A. Exhibit 3).

21. On January 22, 2024, Sgt. John Puglia and Det. Al Young conducted a second discretionary interview with the Appellant. The Appellant stated he remembered more now at the second interview than he did at the previous January 23, 2023 interview. (R. Exhibit 3)

22. Contrary to previous statements, in this second discretionary interview, Mr. Santana stated that he went back to get his tools, then purposefully waited in his car for Mr. A and his son to leave before going back to the house to talk to the client. (R. Exhibit 3)

23. Mr. Santana had parked his car on the street, but it was obstructed from view from the client's home by her bushes on the property and a tree near the street. (R. Exhibit 3)

24. Mr. Santana waited for Mr. A and his son to leave because he knew his boss wouldn't like it, as Mr. A had previously warned him not to discuss religion on the job. (R. Exhibit 3)

25. Mr. Santana told the detectives that the client's husband was not at home at the time, and that she was home alone with her young children. (R. Exhibit 3)

26. The detectives ended the interview asking if there was anything else Mr. Santana would like to add. Initially he said no, but then added that he didn't know if he mentioned "the enemy likes to distract us" or "the devil likes to distract us"; he could not recall for sure. When asked if he was "good," Mr. A responded that he was, and the detectives ended the interview. (R. Exhibit 3)

27. Five minutes after leaving the office, Mr. Santana rang the doorbell and said he had more information and wanted to supplement his earlier testimony. Detectives Puglia and Young then resumed the interview. (R. Exhibit 3)

28. During the second part of this discretionary interview, Mr. Santana admitted that while he did not find it relevant before, and that he wanted the detectives to know that he shared a dream from 2014 with the client during their 2017 conversation. Mr. Santana told the detectives that the dream was about Jesus, and that it has strengthened his faith and changed his life. (R. Exhibit 3)

29. Mr. Santana could not recall if he mentioned anything to the client about demon distraction. He said that he shared with the client that from the dream, he learned that "the devil

likes to use video games to distract us.” He said that there were “specific details I do remember but others I don’t.” (R. Exhibit 3)

30. In a May 13, 2024 notice, the Department informed Mr. Santana of his second bypass. As reasons for bypass, the Department again cited Mr. Santana’s lack of good judgment and untruthfulness. (Stipulated Facts)

19. Mr. Santana appealed to the Commission on May 30, 2024. (Stipulated Facts)

CONCLUSION

I find that the Boston Police Department was reasonably justified in bypassing Matthew Santana for the reasons cited above.

This is a sad outcome. Mr. Santana had this job while he was in high school, when he was a teenager with the judgment of a teenager. However, as an adult, he does not understand the value of telling the truth about a situation that could have been attributed to the earnestness of youth. The Department cannot be expected to assume the risk of hiring someone who lacks good judgment and is untruthful.

For all of the above reasons, the appeals filed under Docket No. G1-24-078 and G1-23-201 are hereby *denied*.

CIVIL SERVICE COMMISSION

/s/ *Angela C. McConney*

Angela C. McConney, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, and Stein, Commissioners) on December 5, 2024.

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 C.M.R. § 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Michael J. Shivick, esq. (for Appellant)

Joseph McClellan, Esq. (for Respondent)