

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

Richard J. Savickas, Jr.
Appellant

v.

Boston Police Department,
Respondent

DOCKET NO. G1-07-51

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Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Richard J. Savickas, Jr. (hereafter "Savickas" or "Appellant") is appealing the decision of the Personnel Administrator of the Commonwealth or the Human Resources Division, (hereafter "HRD") to accept the reasons of the Respondent, the Boston Police Department, (hereafter "Department", "BPD" or "Appointing Authority) for the bypass of the Appellant for original appointment to the position of police officer on the grounds that he was deemed to be psychologically unfit for appointment to the position. The Appellant filed a timely appeal. A full hearing was held for the first day on March

25, 2008, before then Commissioner John Guerin. John Guerin has subsequently left the Commission. The second day of the hearing, on May 9, 2008 was before Commissioner Daniel Henderson, at the offices of the Civil Service Commission. A stenographer was present and transcripts of the hearing were made. The transcripts were designated to be the official record of the proceedings and the original of the transcripts shall be provided to the Commission at no cost.

FINDINGS OF FACT

Twenty-four, (24), Exhibits, including Exhibit 1 (Stipulation of facts), were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

1. Dr. Julia M. Reade;

For the Appellant:

1. Richard J. Savickas, Jr., the Appellant;
2. Dr. James C. Beck;
3. Steven Rubin owner of Huntington Market, K&R Concessions, Inc;
4. Vito Costa, prior Sergeant in BIDMC Police Department.

I make the following findings of facts:

1. The Appellant holds a Bachelor's Degree from Suffolk University in Sociology with a concentration in Criminal Justice. (Testimony of Appellant, Tr. 362). He is close to receiving his Master's Degree in Criminal Justice from Curry College. (Testimony of Appellant, Tr. 362).

2. In 2004 or 2005, the Appellant graduated from a police academy and received numerous specialized police training certificates. He has also taken numerous classes through the Mass. State Police. (Testimony of Appellant, Tr. 360-361).
3. From May, 1998 to the present date, the Appellant is employed as a part-time manager for Huntington Market where he is a manager in charge of security and loss prevention. (Exhibit 9, Testimony of Rubin, Tr. 281-288)
4. Mr. Steven Rubin is the owner of Huntington Market and he has known the Appellant for seventeen (17) years. He testified on the Appellant's behalf in this matter. The Appellant was basically in charge of the Market whenever the owner was absent. The primary concern of the Market is safety. The appellant's duties carried substantial responsibility including: protection of inventory, credit card transactions, substantial monetary receipts and customer interaction. The Market sells alcoholic beverages and is located in a college area. The customer base covers a wide and diverse ethnic and economic range. Alertness to underage student use of false I.D.'s, is a constant concern, sometimes involving police contact due to potential criminal activity and/or civil liability. The Market's policy as the law requires is for the personnel to confiscate false I.D.'s. Confiscation of I.D.'s could cause contentious confrontations, which required proper handling. Despite the stress and responsibility involved in these types of spontaneous situations; the Appellant always acted properly and never showed any immaturity, impulsivity, poor judgment or resentment in dealing with customers or employees. He is dedicated, even coming to work when he is sick, to help out the Market. The Appellant is very bright and has shown "excellent" verbal, written and personal communication skills. Mr. Rubin summed up his assessment of the Appellant: "I trust his judgment. I trust his judgment 100 per cent". (Testimony of Rubin, Tr. 282-301)
5. From November, 2003 to January, 2004, the Appellant was employed as an Assistant Director of Public Safety at the Solomon Pond Mall. (Exhibit 9) (Testimony of Appellant, Tr. 362).
6. From March, 2004 to May of 2005, the Appellant was employed as a Public Safety Officer with the Curry College Department of Public Safety. (Exhibit 9). Curry College Public Safety Officers respond to all emergencies within the campus and the Appellant

has personally responded to calls such as medical emergencies, domestic abuse incidents, suicide attempts, sexual assaults, robberies, breaking & entering, and larcenies. (Testimony of Appellant, Tr. 350-351).

7. As a Curry College Public Safety Officer, and throughout his law enforcement career, the Appellant frequently dealt with irate individuals and diffused conflict situations. (Testimony of Appellant, Tr. 351, 364). He had never had any complaints filed against him while at Curry College. . (Testimony of Appellant, Tr. 351).
8. From May 5, 2005 until January, 2007, the Appellant was employed as a Police Officer and Detective with the Beth Israel Deaconess Medical Center (BIDMC) Police Department. (Exhibit 9). The Chief of Police at BIDMC assigned the Appellant to train new officers and he addressed all new hospital employees at orientation. (Testimony of Appellant, Tr. 365-366).
9. In connection with his employment with the BIDMC Police, the Appellant underwent and passed a screening process that was very similar to, if not exactly the same as, the screening for the Boston Police Department (BPD). (Testimony of Costa, Tr. 308, Testimony of Appellant, Tr. 345).
10. The BIDMC Police Department is an armed full service police department. Its officers have police powers throughout Suffolk County and perform virtually all of the tasks performed by municipal police officers, including arrests, report writing and court testimony. (Testimony of Appellant, Tr. 348-350, Testimony of Costa, Tr. 303).
11. In the performance of their duties, BIDMC Police Officers deal with a diverse population in terms of ethnicity, national origin, and income. (Testimony of Costa, Tr. 332).
12. According to present Police Officer Vito Costa in a suburban municipality, who was employed as a BIDMC Police Sergeant, as a co-worker and supervisor of the Appellant; the BIDMC Police Department performs “the same exact function as any other police department in the country.” (Testimony of Costa, Tr. 303).
13. BIDMC Police Officers possess what Sgt. Costa describes as “full arrest powers.” They are appointed as Special State Police Officers and Suffolk County Deputy Sheriffs. (Testimony of Costa, Tr. 303).

14. Like Boston Police Officers, BIDMC Police Officers have to make split-second decisions in high risk, complex and ambiguous situations. (Testimony of Costa, Tr. 314). For example, Sgt. Costa described a situation where the Appellant held an individual, at gunpoint, who was reportedly illegally carrying a firearm. (Testimony of Costa, Tr. 315-316).
15. The Appellant received a commendation for assisting the Boston Police Department with the apprehension of an armed robbery suspect, who was arrested outside of the confines of the BIDMC. (Testimony of Costa, Tr. 317). For his actions, he also received a compensatory day off. Sgt. Costa described awards of such days off at BIDMC as unprecedented. (Testimony of Costa, Tr. 317).
16. The Appellant is also employed as a Plymouth County Deputy Sheriff, and has been so employed since August of 2007. (Testimony of Appellant, Tr. 341). As a Deputy Sheriff, the Appellant has police powers throughout Plymouth County. (Testimony of Appellant, Tr. 341).
17. The Appellant is further currently employed as an Operations Manager for Allied Barton Security Services, where he is assigned to Harvard University, and responsible for approximately 175 security officers who are assigned to protect Harvard University properties in several communities. (Testimony of Appellant, Tr. 339-340).
18. The Appellant has excellent references from previous employers, which included various police departments and security departments. (Testimony of Beck, Tr. 222-223, Exhibits 12-15, 21).
19. Of background significance, in November, 2006, during the course of his ongoing employment as an armed officer with the BIDMC Police Department, approximately one month after Dr. Reade found the Appellant unqualified; Consulting Police Psychologist Leo F. Polizoti, Ph.D evaluated the Appellant's psychological fitness for the BIDMC Police Department. "The results of the assessment [which included a review of the Appellant's MMPI-2 results] did not indicate any psychological problems or characteristics that would prevent him from properly performing the duties required for that position." (Exhibit 18, Testimony of Appellant. Tr. 345-348)

20. As a result of the Appellant's placement on an eligible list, (Certification No.: 260616) the Respondent reached the Appellant's name, selected him for employment, and extended to him a conditional offer of employment in the title of Permanent Full Time Police Officer for the City of Boston. (Stipulated Fact).
21. The Appellant met with the Boston Police Department's Recruitment Investigations Unit and provided them with his Student Officer Application (Exhibit 9) and numerous other items including completed "Personal Letter of Reference Forms" (Exhibit 15).
22. The offer of employment was contingent upon the Appellant successfully completing the medical and psychological screening components of the hiring process. (Stipulated Fact).
23. The Boston Police Department had previously submitted a psychological screening plan (hereinafter "Plan" or "the Plan") to the state's Human Resource Division (HRD) which was approved by HRD in July 2004. (Exhibit 19) (Stipulated Fact).
24. The Appellant completed two written psychological tests, the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and the Personality Assessment Inventory ("PAI") on August 26, 2006. (Stipulated Fact).
25. On October 6, 2006, Consultant Psychiatrist Dr. Julia Reade interviewed the Appellant and found him unqualified for appointment as a Police Officer. (Stipulated Fact).
26. On November 2, 2006, Dr. Reade wrote a 3 page report regarding her interview of the Appellant (Exhibit 4). (Stipulated Fact).
27. In a *bypass letter* dated November 22, 2006, the BPD notified HRD that the Appellant failed to meet the psychological criteria for appointment as a police officer and that it was bypassing him for the position of police officer. Specifically, the BPD stated that it was relying upon Dr. Reade's second opinion report (Exhibit 4) which psychologically disqualified the Appellant. (Exhibit 2). (Stipulated Fact).
28. Specifically, Dr. Reade stated her opinion as follows: "[i]n summary, Mr. Savickas appears to be a gregarious, hard-working man, who has shown a clear interest in police work, but has a history of well-intentioned but impulsive behavior and poor judgments. The examples include his recent behavior at work, his decisions related to school, his decisions regarding his car, and his problems managing or attending to his financial obligations. Mr. Savickas lacks insight into the severity of his lapses and tends to dismiss them as jokes or unimportant mistakes. Individually, these lapses are not grave, but taken

as a whole indicate, in my opinion, a lack of maturity and willingness to take full responsibility for his actions. For these reasons, Mr. Savickas is currently found not acceptable for the police department.” (Exhibit 4).

29. The Boston Police Department did not produce any evidence regarding its exploration of or offer of or attempt to provide any “reasonable accommodations” to the Appellant, due to his alleged “disability” or mental limitation, so that he could perform the duties of a Boston Police Officer. This could be considered an act of employment discrimination or the denial of an employment opportunity to a job applicant who is an otherwise qualified individual with an alleged disability. This appears to possibly be a violation of the so called “Americans with Disabilities Act of 1990”. However, more significantly is the glaring omission of the BPD to even attempt to provide the Appellant with a “reasonable accommodation”, which accommodation would be considered an advantage to the Appellant’s chances of becoming a Boston Police Officer.. (Administrative notice Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq., Exhibit 4, exhibits and testimony).
30. Under the ADA, a disability is: (A) a physical or mental impairment that substantially limits one or more of the major life activities . . . (B) a record of such an impairment; or (C) being regarded as having such an impairment., 42 U.S.C. §§ 12102(2)(A) and Krocka v. City of Chicago, 203 F.3d 507 (7th Cir., 2000) (Administrative notice)
31. A conditional offer of employment is a legal term of art developed under the Massachusetts anti-discrimination laws, M.G.L. c. 151B, as well as the federal Americans with Disabilities Act (ADA). Specifically, under these statutes, an employer may not require that an applicant undergo a medical examination prior to making that individual a conditional offer of employment. Most relevantly, G.L. c. 151B provides: “An employer may not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or severity of the handicap, except that **an employer may condition an offer of employment on the results of a medical examination conducted solely for the purpose of determining whether the employee, with reasonable accommodation, is capable of performing the essential functions of the job...**” G.L. c. 151B §4(16) (emphasis added, administrative notice)

32. Dr. Reade testified in a prior matter, the O'Loughlin appeal, that two prior candidates who were in a similar situation to Mr. O'Loughlin in which she recommended that they not be bypassed. Those two candidates in the 2004-2006 time-frame, did have psychiatric conditions for which they were treated by a psychiatrist with psychotropic medication. She recommended to the BPD then that they not be bypassed and should continue in treatment with the suggestion that those candidates notify the BPD upon any change in diagnosis or type or amount of medications taken. Dr. Reade viewed her own recommendation in those two cases to be an "accommodation". (Administrative notice Testimony of Dr. Reade in O'Loughlin v Boston Police Department , No. G1-07-282, allowed May 29, 2009)
33. There is no evidence presented here that the Appellant, Richard Savickas has ever been treated by a psychiatrist or treated with psychotropic medication.(Exhibits and testimony)
34. HRD has developed in conformance with its policies and published a "Model Plan For Psychological Screening of Entry-Level Public Safety Positions" HRD's stated goal of this Plan is: "The goal of this psychological screening program is to detect any serious psychological disorders or characteristics that would render a candidate unable to perform with reasonable accommodation the essential functions of the public safety position for which the candidate is being considered." It is also noteworthy that HRD's Model Plan, at Section II Stage One, (A.) calls for the group administration of the MMPI test and several other named tests, of which the PAI test is not one. The HRD Model Plan requires that the Psychological Screener, at Section II Stage Two -Clinical Interview, (BPD's 1st level screener) "...will examine the results of the psychological tests, review background information provided by the hiring department (concerning criminal convictions, relevant medical information, if any, and information from interviews with employers, teachers and associates) and conduct a clinical interview of the candidate." The HRD Model Plan also lists one to three additional tests at Stage Two that the Psychological Screener may administer to further evaluate the candidate. The PAI test is not one of the three named discretionary tests. HRD's Model Plan, at Section II Stage Three, (BPD's 2nd level screener), requires that a board-eligible or board-certified psychiatrist perform certain duties and evaluate the candidate. The screening psychiatrist, at Stage Three is required to file a written, signed report. "*The report must describe why*

the candidate is unqualified for appointment as a public safety employee. Evidence substantiating this opinion must be supplied, and the report must explain specifically why the disorder prevents the candidate from successfully performing with reasonable accommodation the essential functions of the public safety position for which s/he was considered.” Section III Responsibilities of the Appointing Authority at (6.) also requires the appointing authority to notify HRD with a written statement that the candidate has “... *been found unqualified... and that no reasonable accommodation is possible.*”(administrative notice: HRD “Model Plan For Psychological Screening of Entry-Level Public Safety Positions”)

35. The Personnel Administrator Rule, (PAR) that applies to the appointing authority’s statement of reasons for bypass : “Upon determining that any candidate on a certification is to be bypassed, as defined in Personnel Administration Rule, PAR.02, an appointing authority shall, immediately upon making such determination, send to the Personnel Administrator, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reason or reasons for selecting another person or persons, lower in score or preference category. Such statement shall indicate all reasons for selection or bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission. The certification process will not proceed, and no appointments or promotions will be approved, unless and until the Personnel Administrator approves reasons for selection or bypass.” PAR.08(3)
(Administrative notice)

36. The term “Rules” as defined and used in the civil service law is “the rules promulgated by the personnel administrator pursuant to civil service law,” G.L. c. 31§ 1. Any new rule of the administrator and any amendment to an existing rule shall not be effective until after a public hearing... and until such change has been reviewed by the Civil Service Commission pursuant to G.L. c. 31§ 4. This statutory process obviously requires rules and proposed rule changes to be written. The personnel administrator regularly publishes

in writing; his or her rules under the title “Personnel Administration Rules” (PAR) with periodic amended versions. (administrative notice)

37. The Commonwealth’s personnel administrator (HRD) has established Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel HRD regulations, for police officers, establish two disqualifying categories of psychiatric medical conditions:

- “Category A Medical Condition” is a “condition that would preclude an individual from performing the essential functions of a municipal police officer or present a significant risk to the safety and health of that individual or others.” Category A “psychiatric” medical conditions include “disorders of behavior, anxiety disorders, disorders of thought, disorders of mood, disorders of personality”.
- “Category B Medical Condition” is a “condition that, based on its severity or degree, may or may not preclude an individual from performing the essential functions of a municipal police officer or present a significant risk to the safety and health of that individual or others.” Category B “psychiatric” medical conditions include “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” and “any other psychiatric condition that results in an individual not being able to perform as a police officer.” (administrative notice: HRD)

38. The personnel administrator’s (HRD) Regulations for Initial Medical and Physical Fitness Standards for Municipal Public Safety Personnel, effective until September 7, 2007, mandated a per se disqualification of any candidate with a Category A medical condition. However, those standards only called for a disqualification for a Category B medical condition “that is 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 others.” (administrative notice)

39. Dr. Reade did not testify that she found that the Appellant suffered from either a “Category A Medical Condition” or a “Category B Medical Condition”. Dr. Reade also did not state such findings or conclusions of a Category A or B medical condition in her unfavorable psychiatric second opinion report dated November 2, 2006. Dr. Reade

specifically testified that she did not diagnose any psychological condition suffered by the Appellant. (Exhibit 4, testimony of Reade Tr. 137-138)

40. In its *bypass letter* dated November 22, 2006, the BPD notified HRD that it had found the Appellant to be psychologically unfit for the position of police officer, based on Dr. Reade's opinion as stated in her report of November 2, 2006. The BPD bypass letter and Dr. Reade's report did not mention: any offer, exploration of an offer or attempt to provide any "reasonable accommodations" to the Appellant, due to his alleged "disability" or mental limitation, so that he could perform the duties of a Boston Police Officer. HRD apparently approved reasons as so stated by the BPD in its bypass letter. (Exhibits 2 and 4)
41. The BPD, claims it followed its "Boston Police Department-Proposed Psychological Screening Plan", which it claims was properly approved by the personnel administrator, (HRD) (Stipulation). The "Boston Police Department-Proposed Psychological Screening Plan" requires that every potential Boston police officer recruit that is given a conditional offer of employment, including the Appellant, must take the MMPI-2 and PAI written exams, then meet with the BPD 1st Level Psychiatrist-screener, usually Dr. Marcia Scott. If the 1st Level screener determines that there are areas of concern or "if questions have been raised by Dr. Scott" and in need of further review and exploration, the candidate is referred to Dr. Reade, who is under contract with the BPD, for a 2nd Level Screening interview and opinion. There are a wide range of questions that are referred on to Dr. Reade as the 2nd. Level Screener, from Dr. Scott, the 1st. Level Screener. In this case, Dr. Scott, the 1st Level screener, had given the Appellant an unfavorable assessment after her interview with the Appellant on September 16, 2006. (Exhibits 3, 5, 7, Testimony Reade Tr. 14, 15, 25, 139)
42. Dr. Reade admitted that the BPD's practice of sending candidates for a 2nd. Level Screener's opinion before the candidate has appealed the psychological bypass is unusual. Most municipalities only send the candidate for a 2nd Level opinion, after the candidate has appealed the decision to bypass. (Testimony Reade Tr. 14)
43. There is an *error rate in psychological screening* of police officer candidates and Dr. Reade admitted that "there may be times when people are excluded who might be good candidates." Conversely, Dr. Reade testified that some candidates were admitted into the

police academy who should not have been admitted. Dr. Reade admitted that there have been times when her 2nd. Level opinion has been wrong. Dr. Reade has testified in other appeal hearings that her 2nd level opinion compared to Dr. Scott's is "really variable" and that she has a different opinion or conclusion on psychological fitness, than Dr. Scott from 5% on up to 20% of the candidates interviewed, by police academy class. However, she only sees candidates unfavorably assessed by the (1st level Interviewer) usually Dr. Scott. Neither Dr. Scott nor Dr. Reade audio/video record their candidate interviews. Dr. Scott did not testify at this hearing. (Administrative notice, opening statement Tr. 7, Testimony of Reade, Tr. 129-131).

44. Dr. Scott has referred approximately 200-300 applicants to Dr. Reade for a second level screening. Of those applicants, Dr. Reade found approximately 5% to 20% (i.e., about 10 to 60 of them) fit to be a Boston police officer and had found 80% to 95% unfit (i.e., from 160 to 285 of them). For the past three years, the statistics show:

	<u>Referred for Second Interview</u>	<u>Recruits Qualified</u>	<u>Recruits Disqualified</u>
Fall 2005	16	0	16
Spring 2006	38	5	33
Fall 2006	44	12	32
Summer 2007	50	6	44

(Administrative notice of Testimony of Dr. Reade and Exhibit 21 in Roberts v Boston Police Dept. No. G1-06-321, decision on September 25, 2008, hearing and testimony on June 23, 2008)

45. No specific instructions are given to the psychiatrists conducting the first and second level clinical interviews pursuant to the BPD's proposed psychological screening plan (PPSP), with respect to what information and/or documents may be relied upon. Dr. Scott, and Dr. Reade must abide by the PPSP in conjunction with their training and experience and utilize the standards set forth by the laws of the Commonwealth (G.L.c.31, §61A and regulations promulgated by HRD pursuant thereto) to determine the psychiatric fitness to perform the duties or manage the stresses of an armed police officer.

- (administrative notice, Exhibits and testimony of Dr. Reade generally here and in other appeal hearings)
46. On March 15, 2008, at the Appellant's request and expense, Board Certified Psychiatrist and Licensed Psychologist Dr. James C. Beck interviewed and performed a psychological evaluation of the Appellant. (Testimony of Dr. Beck, Tr. 216, Exhibit 17).
 47. Both Doctors Julia Reade and James C. Beck are psychiatrists and, by virtue of their education, training, background, and experience, expert witnesses qualified to render opinions regarding the Appellant's psychological fitness and related matters. (Stipulated Fact), (Exhibit 6, 16).
 48. Dr. James C. Beck, MD, PhD is a licensed clinical, forensic and teaching psychiatrist and also a psychologist with more than 40 years experience, who is Board Certified in Psychiatry and Forensic Psychiatry. (Exhibit 17, testimony of Dr. Beck)
 49. Like Dr. Polizoti, after interviewing the Appellant-Savickas and reviewing Dr. Reade's report, the results of the background investigation, as well as the Appellant's test results, Dr. Beck determined that, to a reasonable degree of medical certainty, the Appellant "is psychologically fit to serve as a Boston police officer." Dr. Beck found "no evidence that he has any mental disorder or behavioral characteristics which would significantly interfere with him performing the essential functions of a Boston Police Officer." (Exhibit 17, 18).
 50. According to Dr. Reade, the MMPI indicated that the Appellant-Savickas might "pop a gasket and blow up or explode or do something impulsive or angry that can get [him] or someone else in trouble." (Testimony of Reade, Tr. 52-53, 198). She based this concern on not only the MMPI results, but the fact that the Appellant had been in a fight in high school and an incident at work wherein he made an inappropriate statement to a co-worker (Testimony of Reade, Tr. 198-199).
 51. Dr. Beck testified that because the high school fight was not part of a pattern of conduct, did not involve use of a weapon, and did not result in serious injuries, it was largely irrelevant with respect to the question of the thirty-one year old Appellant's current fitness to be a Boston Police Officer. (Testimony of Beck, Tr. 223-224).

52. According to Dr. Reade, the Appellant's MMPI results also indicated the Appellant might have harbored "feelings of persecution, that other people had it out for him..." (Testimony of Reade, Tr. 53). Dr. Reade described a test answer to a statement as "sometimes true" is an endorsement of that sentiment. However, If the answer on the PAI test is marked "slightly true, very true, extremely true, that is an endorsement. Or if he - - sometimes a common mistake on the PAI is to mark something that is framed as a double negative false and that trips people up a lot." (Testimony of Reade, Tr. 54). That mistaken answer, due to misunderstanding or misinterpretation is later corrected by Dr. Reade in her interview with the candidate. (Testimony of Reade, Tr. 55)
53. Dr. Reade further testified that the Appellant's PAI results suggested that "he seemed to harbor a lot of feelings of resentment." She further claimed that the PAI showed "an elevation on a sub scale related to egocentricity, which is sometimes seen in people who really don't feel that great about themselves; and therefore, need to put themselves in a position of power where they can kind of lorded over other people or they are people who need a lot of action and excitement in order to, and sort of to be the center of that action and excitement." Testimony of Reade, Tr. 53).
54. Finally, according to Dr. Reade, the Appellant's examination results suggested some resentment or that he had antisocial beliefs. (Testimony of Reade, Tr. 54).
55. The Appellant, as do all applicants for the position of police officer in the BPD, complete a detailed BPD Student Officer Application. The questionnaire form questions for the *personal references* and *employer-supervisor* and *other* sections contained in the voluminous BPD Student Officer Application are designed to secure detailed written information from familiar people regarding the Appellant's qualifications to be a Boston Police Officer. Additionally, the areas of inquiry directed at the applicant include the following: personal history, residences, relationships, protective court orders; c. 208, c. 209 & c. 209A , educational history, employment history-with details for 10 yr. period, employee discipline, sick days taken for 3 yr. period, licenses, military record, driver's license information including suspensions, written citations, auto crashes, operation while under influence of alcohol or drugs, financial background including property ownership and civil court actions, gaming and gambling, use of alcohol, drug use or experimentation, detailed personal declarations regarding sex and other matters and lastly

regarding a police record. The responses must be detailed and supported by explanations or documentation. The Applicant is required to sign a release of all information and waiver of confidentiality and an affirmation of the information provided with his/her signature being notarized. The written information provided by the applicant in this application is used as the basis of any follow-up investigation by the BPD Recruit Investigation Unit. (Administrative notice, Exhibits 9 - 15)

56. The BPD also requires each applicant to complete a detailed voluminous Health History form or medical questionnaire. This questionnaire is a preliminary step in the Department's medical-psychological screening process and requires the disclosure of any and all medical or psychological treatment, medication and hospitalization. The volume and detail of these questions have been outlined in a prior Commission appeal decision. See Ida Candreva v Boston Police Department G1-06-185, allowed, dated January 15, 2009. (administrative notice)
57. Dr. Reade was specifically questioned on cross-examination, regarding her review of the extensive application related, background-documentation for her own investigation of, preparation for interview and evaluation of the Appellant. (Testimony of Reade, Tr. 171-172). Surprisingly, Dr. Reade answered that she does not review the "actual documents" but that she only gets "... a summary statement from the police detective that summarizes all of that information." (Testimony of Reade, Tr. 172). When further questioned as to an explanation for not reviewing all of the documents; Dr. Reade answered: "I think the Police Department views the summary as adequate information for me to understand the data they consider significant and also potentially concerning. If I have questions, I can call the Department and ask for additional information or I can speak with the detective." (Testimony of Reade, Tr. 172-173 and Reade on direct Tr. 141, 145)
58. The cross-examination of Dr. Reade continued and she was questioned on a reference she made on direct-examination, regarding the appellant's time management and the statement read by Attorney Simoneau from the third paragraph of an exhibit. (Exhibit 15). That statement being: "Rich occasionally needs to focus in on his specific assigned tasks rather than helping people with their tasks" Dr. Reade also made a similar reference, quoting an employer in her second level opinion report, (Exhibit 4) (Testimony of Reade, Tr. 172-173). Then Dr. Reade volunteered to show Attorney

Simoneau exactly where she got the statement. Dr. Reade then began to read from a document. Attorney Simoneau asked her to identify the document. Dr. Reade identified the document as “the Recruit Investigation Unit summary that gets sent to me as part of an applicant’s package”. (Testimony of Reade, Tr. 173-174)

59. The sudden disclosure of the document, the Recruit Investigation Unit summary for the Appellant (Exhibit 22) prompted a discussion on the record regarding its admissibility since Attorney Simoneau had not received it in response to his discovery request, while Attorney Chisholm took the position that it was work product, confidential and merely the summary of what was contained in the other documents. (Testimony of Reade, Tr. 174-182). Attorney Simoneau argued that the BPD had produced what documents Dr. Reade had not seen and failed to produce what she had actually seen. (Testimony of Reade, Tr. 175) The Recruit Investigation Unit summary was admitted into evidence as joint exhibit 22. (Exhibit 22).
60. Dr. Reade was further questioned on examples of the Appellant’s time management issues. Dr. Reade found the reference on page 5 of the Recruit Investigation Unit summary under the heading of Steve Rubin, owner of Huntington Avenue Wine and Spirits. She quoted Mr. Rubin’s alleged assessment of the Appellant; “The applicant needs a little more time management. He spends too much time on customer service and needs a little extra with managerial duties, while at the store.” However, it would be erroneous or misleading to assume that this was a summary assessment or opinion statement by Mr. Rubin regarding the Appellant. This statement is from the Recruit Investigation Unit summary at page 5. Apparently, this is not a spontaneous or voluntary statement made by Mr. Rubin. The statement apparently was prompted by the query as to whether the Appellant could make any improvement. Since Exhibit 22 is a hearsay report and the Investigator (Izzard-Stinson) did not testify at this hearing we are not sure of the exact understanding or other circumstances of that response to the query. However, we are sure of the remainder of that summary of Mr. Rubin’s comments at page 5, is very positive regarding the Appellant. *Why Dr. Reade chose to extract this interpretively negative and misleading comment out of context in an otherwise positive report is a concern.* (Exhibit 22, testimony of Dr. Reade)

61. Mr. Rubin testified at this hearing on the Appellant's behalf, despite being a very busy businessman and a father with young twin sons. He was subject to rigorous cross-examination after describing the Appellant's character, judgment, emotional stability, work ethic and accomplished performance as being at the highest level. He was pressed to critique the Appellant and find anything negative to say about him- He answered "No, nothing". He was further pressed as to whether he conveyed this very high opinion of the Appellant to the Investigator and the BPD. He answered repeatedly "Absolutely". Mr. Rubin was unshakeable in his testimony. I find his testimony to be credible, reliable and accurate. (Exhibit 22, Testimony and demeanor of Rubin Tr. 295-301).
62. Mr. Rubin, among other personal references completed a questionnaire type statement regarding the Appellant. These statements were signed and notarized and they were overwhelmingly approbative. Mr. Rubin did write the previously referred to statement regarding the Appellant's time-management, in his answer to question 3. "**Personal Improvements**: What personal improvements could the applicant make to become a good public servant?" However, a general question regarding personal improvements would prompt some sort of answer that the reasonably prudent person might not consider as being a criticism but only as a required response; since we as human beings, could all stand some degree of personal improvement in some area of our lives. I do not find his written answer to the above question to be in any way contradictory or inconsistent with his testimony or other statements. Mr. Rubin appeared in a suit and tie. He has known the Appellant for 17 years. He has the demeanor of a calm, self-assured, experienced business man. His answers were unhesitant yet thoughtful and confident. His body language including eye-contact and tone/inflection of voice conveyed resolute confidence and reliability in the content of his testimony. At times he seemed genuinely perplexed as to why Savickas' qualifications and character were being questioned. I find him to be a reliable, honest and credible witness. (Administrative notice, Exhibits 9-15, Testimony and demeanor of Rubin)
63. Dr. Reade testified that, as compared to Boston Police Officers, BIDMC police officers are responsible for a geographically smaller area. However, beyond that, she admitted that she was not fully conversant with the Appellant's duties as a BIDMC Police Officer

and knew nothing of the substantive about duties and responsibilities of BIDMC Police Officers. (Testimony of Reade, Tr. 169).

64. On February 1, 2007, HRD accepted the Department's reasons for bypassing the Appellant and notified him in writing. (Stipulated Fact).
65. On April 4, 2006, while in the performance of his duties as a BIDMC Police Officer, the Appellant jokingly made an inappropriate comment to a co-worker. Specifically, the Appellant threatened to shoot a security officer when the officer touched him. (Exhibit 21).
66. Dr. Reade "considered his comment about the gun to actually be quite a hostile remark, even though he passed it off as a joke." (Testimony of Dr. Reade, Tr. 156). Nevertheless, she admitted that the Appellant had meant the statement as a joke and his co-workers perceived it that way. (Testimony of Reade, Tr. 65). She further admitted that she believed the Appellant made the statement in a joking manner. (Testimony of Reade, Tr. 143).
67. Dr. Reade stated five times, in her testimony, that the Appellant made this inappropriate comment within earshot of a patient. (Testimony of Reade, Tr. 63-66, 142-143). However, both the Appellant and Sergeant Vito Costa, a percipient witness, testified that this was not the case. (Testimony of Appellant, Tr. 353-354, 357-358, Testimony of Costa 310-311).
68. Sergeant Costa, who in addition to being a percipient witness of the incident was the Appellant's supervisor at the time the incident occurred, testified that the statement was made in a joking manner and the Appellant as well as those who heard it laughed. (Testimony of Costa, Tr. 310, 328). He relayed this information to the Boston Police Background Investigator. (Testimony of Costa, Tr. 326). Sgt. Costa testified that if the BIDMC viewed the incident as serious, the Appellant would have been summarily terminated. (Testimony of Costa, Tr. 329). Sgt. Costa had been promoted to Sergeant in February, 2005 and subsequently left BIDMC to take a position in a municipal Police Department, where he is now serving. (Testimony of Costa, Tr. 302). He had worked along side the Appellant as well as supervising him in a wide variety of police activity including dangerous and hostile situations, while at BIDMC. He found the Appellant very intelligent, with good judgment and capable of handling any situations which arose at

BIDMC, including court testimony and cross-examination. He confirmed the Appellant's version of the incident as a joke which occurred out of the ear shot of patients and staff, which ended immediately and was over with. (Testimony of Costa, Tr. 301-322)

69. Vito Costa appeared and testified in a business suit and tie. He testified in a straight forward unhesitant manner. He has a professional law-enforcement bearing. His answers rang true in content, phraseology and delivery. He made good eye-contact and held-up well under cross-examination. He testified with specific detail of events, mental state, and police explanations that rang true and are indicia of reliability. He emphatically affirmed that he had relayed all of the relevant information to the BPD, regarding the incident at BIDMC. That information included: that he was present at the incident and he was also the Appellant's supervisor and that the incident was a joke, out of ear shot of patients and staff, it was over with immediately and the belated alleged complainant left the employment of BIDMC a short time later. (Testimony of Costa, Tr. 322-331). I find the testimony of Vito Costa to be reliable, honest and credible. (Testimony and demeanor of Costa)
70. In his interview with Dr. Reade, the Appellant openly acknowledged that he made the statement at issue. (Testimony of Reade, Tr. 66). However, Dr. Reade characterized his response as consistent with a "pattern of either sort of fending off responsibility for it, not really considering his behavior, or blaming external circumstances for it." (Testimony of Reade, Tr. 67).
71. In a letter dated August 8, 2006, addressed to the Boston Police Background Investigator regarding the incident, BIDMC Police Chief Paul J. Baratta wrote that the Appellant "admitted that he made a mistake in judgment with the officer in their exchange of words. At no time did he lie or mislead the investigating officer. He was forthwith and truthful throughout the entire process. He apologized to the security officer that he had the encounter with and the matter has been closed. Both Richard and the command staff have put this matter behind them and he has shown a great amount of maturity in dealing with the matter after the fact." (Exhibit 21).
72. In the same letter, Chief Baratta further wrote that "...the security officer who made the original complaint has been terminated from his position with the Medical Center with cause." He closed the letter by stating that, "[i]t is without hesitation that I highly

recommend Richard to move on in the process for a position as a recruit with the Boston Police.” (Exhibit 21).

73. Although the letter was included in the Appellant’s recruit investigation package, Dr.

Reade testified that she had never seen it before. (Testimony of Reade, Tr. 145).

74. Dr. Reade also characterized the Appellant as not being fully forthcoming and reluctant to take responsibility for attaching the wrong license plates to his vehicle in 2002.

(Testimony of Reade, Tr. 61-62).

75. Dr. Beck testified that the Appellant “...told [him] the story in great detail, perfectly well acknowledged that what he had done was wrong.” (Testimony of Beck, Tr. 226). In fact, Dr. Beck testified that the Appellant consistently addressed his history in a straightforward way and took responsibility for his mistakes (Testimony of Beck, Tr. 225-226).

76. During his interview with Dr. Reade, the Appellant admitted that his credit rating “wasn’t very good,” and that he had taken on more loans than he could handle, and that he ran up balances on credit cards when he was in his early 20s, and that he missed loan payments. (Testimony of Reade, Tr. 68-69).

77. Dr. Reade testified that this “bad credit” was indicative of poor problem solving and that the Appellant was not forthcoming with respect to having “defaulted” on student loans. (Testimony of Reade, Tr. 68-73). She testified that the Appellant “had made some pretty big miscalculations in terms of the money” (Testimony of Reade, Tr. 70). However, she admitted “[t]hat about five years earlier, so when he was around 26, he had started working to clean up his debt and make his financial obligations more responsibly.”

78. Dr. Reade seemed to focus on a few past incidents or events in the Appellant’s life with intent to derive some negative, inductive determination. Dr. Reade referred to her determinations as based on “markers”, “concerns”, “endorsements of some critical items”, “pieces of information” which then became “significant parts of the bigger story” or “a series of problematic decisions”, etc. However, they appear to be isolated and sometimes stale events which she subjectively mischaracterized, or had insufficient information on, or took out of context or misunderstood as negative indicators of the Appellant’s character. In any event, the isolated incidents she used as the basis of her opinion are vastly outweighed by the large volume of consistent, long-term, substantial,

corroborated indicators of sound thinking and performance in the appellant's life.

(testimony of Dr. Reade, Tr. 11-209, reasonable inferences)

79. Dr. Beck testified that the Appellant's handling of his financial affairs were indicative of good character. (Testimony of Beck, Tr. 220-221). Specifically, he described how, during a period of limited income, rather than paying off the loans in his name, the Appellant elected to pay off a student loan which his mother had assumed for him in her name, so that her credit would not suffer. (Testimony of Beck, Tr. 220-221). The Appellant further stated that he has learned about the importance of good credit and he has increased his score. (Testimony of Beck, Tr. 221).
80. Dr. Reade took issue with the Appellant's explanation regarding his having utilized 13 sick days during the end of his employment with the Curry College. (Testimony of Reade, Tr. 78-79). Even though she acknowledged that the Appellant had his supervisor's permission to take the sick time, he was careful in taking the days so as not to leave the Department short-handed, and his supervisor "praised him" for using his sick time in such a manner so as to avoid disrupting operations, Reade nevertheless "had some worries about it as somebody who seemed to be sort of shaving the edges or sometimes working the angles." (Testimony of Reade, Tr. 79-80, 171, Testimony of Appellant, Tr. 368). Yet, Dr. Reade viewed the Appellant's approved and expected use of sick leave as supporting her opinion that the Appellant sometimes feels entitled to things. (Testimony of Reade, Tr. 87).
81. Dr. Reade was concerned because, "for all of [the Appellant's] expressed interest in public safety work, that his first real sort of public safety related job wasn't until he was 28." (Testimony of Reade, Tr. 77). However, the Appellant testified that he began taking civil service examinations for police officer positions in 1997, as soon as he was eligible and continued to take them regularly thereafter. (Testimony of Appellant, Tr. 359).
82. Also of concern to Dr. Reade was the fact that the Appellant admitted that, while he was employed by the BIDMC Police Department, he took some "post-it notes" for his car. (Testimony of Reade, Tr. 83). She was struck by "the discrepancy between on the one hand his ability to acknowledge that what he had done was a violation of some kind of rule; on the other hand, to be dismissive and then irritable when I asked him about it as if I were the one making the big fuss about it." (Testimony of Reade, Tr. 83-84).

83. On cross examination, Dr. Reade admitted that she assumed that the post-it notes were for use in the Appellant's personal vehicle and she did not ask if he took them for use in his police cruiser. (Testimony of Reade, Tr. 165).
84. The Appellant testified that he took post-it notes for use in his police cruiser and would sometimes find items such as pens in his uniform pockets, which he had inadvertently taken from work. Because of this, he may have indicated, on the MMPI-2, that he took items from an employer. (Testimony of Appellant, Tr. 371-373).
85. When discussing the rigors of the police academy, Dr. Reade claimed that the Appellant was cavalier and told her that the Police Academy staff would help him get through. The Appellant contradicted Dr. Reade and testified that he did not say that and that he acknowledged to Dr. Reade during the interview that the Police Academy probably would "be one of the toughest things" he had to do in his life. (Testimony of Appellant, Tr. 373-374).
86. When asked if she had any difficulty communicating with the Appellant during the interview or if information "got lost in translation," Dr. Reade could not answer the question since the question is "very general". (Testimony of Reade, Tr. 171). Dr. Reade proved herself to be a feisty and challenging witness during cross-examination. She parried effectively with the examiner. She asserted several times that she could not answer a question because it was hypothetical, yet in between created a hypothetical person in her own answer. She finally conceded that the examiner might have a different model of how humans are put together than her own model. (Testimony and demeanor of Reade, Tr. 111-114)
87. Dr. Reade described her purpose in the psychological screening process for the BPD is "to choose the very best candidates who have the best fit psychologically, and to screen out individuals who we [she and Dr. Scott] think have indications in their record or in their testing or in their presentation or in all three that would make them a risk to themselves, to their colleagues, or to the public in some fashion". (Testimony of Reade, Tr. 16)
88. Yet, **Dr. Reade** admitted to regularly encountering some test misunderstanding by test-takers and the expected interview nervousness on the part of the candidates, while she looks for "some kind of pattern or some kind of difficulty", in the candidate. The

standards applied (“our standards”) by Dr. Reade appear to be vague, overly broad or overly subjective in either their definition or application. Dr. Reade admits this potential generally, despite her claim to personally avoiding abuse in this subjective realm. She admitted that: **“Yes. There have been a lot of abuses by psychiatrists over the years who thought, who have had their own idiosyncratic ideas about what they should be asking. And we try very hard to be job and employment specific in our questions.”** (Testimony of Reade, Tr. 20-21)

89. Dr. Reade in her evaluations looks into six “fairly broad” domains in a candidate’s experience or background to evaluate them as potential police officer. They include: experience, problem solving, interest, communication skills, interpersonal skills and ability to relate to different communities of people. (Testimony of Reade, Tr. 21-24)
90. However, Dr. Reade admits that she subjectively looks for inferences, subtleties, nuances and interpretations in evaluating the candidates in the six “fairly broad” domains. She attempts to evaluate their personal life and how they have learned and grown from experiences; how they have persisted and persevered to resolve encountered difficulties; how they have pursued a particular interest; how well they listen and get their written and spoken meaning across (“Can they paint a picture that allows the person listening to get a full picture of what they are being asked about.”); how well they pick up on cues including nonverbal ones and how well they get along with people. (Testimony of Reade, Tr. 22-24)
91. In a previous Commission decision, the Roberts appeal, it was found: “The design, administration, scoring and interpretation of psychological tests such as the MMPI-2 and the PAI fall within the professional discipline of psychology, as opposed to medicine and psychiatry. While psychiatrists make use of such tests in their practices, all the expert witnesses who testified in this case agree that a *qualified psychologist* is the recommended professional with the necessary expertise to which a psychiatrist generally defers when it comes to the subject of psychological testing. The evidence also established that no conclusions about psychological fitness should be based solely on the scores of a psychological test.” The foregoing is finding of fact # 30, page 11 of the decision allowing the Appeal: Roberts v Boston Police Department, No. G1-07-282,

dated September 25, 2008. (*Testimony of Reade, Schaffer, Beck; Exhibits 6, 7 & 8 Roberts v Boston Police Department*, No. G1-07-282, dated September 25, 2008.)

92. Dr. Reade testified in the Kavaleski appeal that she has colleagues, who are psychologists specially trained to interpret the MMPI-2 and PAI test results. She consults with these colleagues from time to time on cases. However, she did not consult with one of these specially trained psychologists on the Appellant- Savickas' test results. No evidence was offered to show that Dr. Scott consulted with such a psychologist regarding the Appellant- Savickas' test results. (Exhibits and testimony in this present appeal and administrative notice of *Testimony of Dr. Reade in Kavaleski v Boston Police Department*, G1-07-299, decision dated October 22, 2009)
93. After having subsequently **interviewed approximately a dozen candidates** who the Boston Police Department "screened out" for psychological reasons, **Dr. Beck** concluded that "[t]he screeners for the City of Boston rely primarily on their impressions from their interview and on the responses to the multiple-choice tests. And when there is a conflict between the life history on the conflict between the life history on the results on the other hand, they rely on the interview and test results to disqualify people who on their life histories would make entirely appropriate candidates, life histories in which there is no evidence that I saw of mental disorder or character problems that would raise issues for them as Boston police officers." Dr. Beck further testified that the above-described flawed screening occurred in the Appellant's case. (Testimony of Dr. Beck, Tr. 211). Dr. Beck testified that of those twelve cases of candidates including Savickas, screened out by the BPD for psychological reasons; only one was psychologically problematic and he agreed with Dr. Reade, that candidate later withdrew. There was also one candidate, on which Dr. Beck disagreed with Dr. Reade, but he admitted that a fact existed on which Dr. Reade could hang her hat on. Dr. Beck believed that the **remaining nine candidates "were all qualified. And some of them were more than qualified. Some of them, I thought were excellent to outstanding"** (Testimony of Dr. Beck, Tr. 212)
94. Dr. Beck described the statistical error rate associated with the BPD's "computer-generated test score" on the "pencil and paper" (MMPI-2 and PAI) psychological tests as "huge." (Testimony of Beck, Tr. 213). According to Dr. Beck, "The tests are useful for alerting the Appointing Authority to somebody that may be a problem, but then you look

to see in the person's life, I mean if, if the tests are identifying something that is real, you are going to find evidence in the person's life going to find evidence in the person's life that there is something the matter with them" (Testimony of Beck, Tr. 212-214).

95. Dr. Beck, a licensed Psychiatrist and a licensed Psychologist believes that MMPI-2 and PAI "tests should be evaluated by a clinical psychologist who has experience using the tests that don't disqualify people based on that kind of computer-generated response." Dr. Beck believes that a candidate should not be disqualified based on the computer-generated test profiling that the BPD employs. Dr. Beck clearly stated that a proper evaluation or diagnosis can not be made on the basis of just the tests and interview,"... in the absence of a pattern of conduct ...that exists over time."(Testimony of Dr. Beck, Tr. 213-215)
96. The Appellant testified in a business suit and tie. He is a tall heavy-set man. He testified with the presentation of a law-enforcement professional witness. His demeanor and responses were appropriate. He made good eye contact while testifying. He answered promptly and without hesitation even if his answer amounted to a negative event or admission, e.g. Past credit rating. He did not volunteer extraneous or advantageous material to his answers. His answers were corroborated by or in conformity with other evidence, except for Dr. Reade's version of statements made at and his dress for the interview. He appears to be bright, accomplished and motivated. His answers rang true. I find him to be credible, honest and reliable witnesses. (Testimony and demeanor of Appellant)
97. Dr. Reade testified that the Appellant arrived at the interview wearing a track suit. It seems that Dr. Read intended by this reference to wardrobe choice, that the Appellant dressed inappropriately or did not take the interview or sought after police officer position seriously. However, the Appellant testified clearly and convincingly that he wore a shirt and tie, slacks and an outer fleece jacket to the interview. (Testimony of Appellant, Tr. 369-370)
98. Dr. Beck had reviewed the appellant's background history and psychological testing results before he interviewed him. Dr. Beck found the Appellant's personal, educational and employment history to be stable and accomplished if not outstanding. Dr. Beck found that the Appellant regularly exhibited sound thinking, responsibility and solid character in

his life's activity and addressed problems such as credit rating and eventually solved them. Additionally, Dr. Beck expressed amazement at the Appellant's presentation in his own interview, being contrary to that as expressed by Dr. Reade in her interview of the Appellant. The Appellant responsibly discussed with Dr. Beck, the areas Dr. Reade found "problematic". The Appellant "simply flat out contradicted the factual accuracy of some of what Dr. Reade said that he said. He simply said I did not say those things." The Appellant also claimed that Dr. Reade interrupted him sometimes during the interview so that he could not finish his story or explanation. A good example of this is when the Appellant quit his job at the BIDMC Police Department because the employer would not change his shift as he requested. Dr. Reade negatively characterized this action as an example of the Appellant's immaturity, superiority or irresponsibility. Dr. Beck on the other hand, after hearing the Appellant's explanation determined it to be an example of the Appellant's good character and responsibility. The Appellant needed the shift change in order to help out one of his parents during the day, to care for the other parent who just had a stroke. Another "problematic" matter that Dr. Reade found was the Appellant's low credit rating when he fell behind in paying his student loans. Again, Dr. Beck actually found the Appellant's explanation to be another example of good character and responsibility. The Appellant, during a time of insufficient funds, had fallen behind on his own student loans, so that he could make timely payments on his other student loans taken out in his mother's name, in order to protect his mother's credit rating. It is noted that the Appellant for much of the background time in question, worked two jobs and also attended school. (Testimony of Beck, Tr. 217-222).

99. Dr. Beck has "repeatedly" experienced this dissimilitude in the past, when evaluating candidates who had previously been evaluated by Dr. Scott and Dr. Reade for the BPD. He testified that he **"had the experience repeatedly, these people come across very differently in interviews with me than they come across in the interviews with [Dr.] Scott and [Dr.] Reade"**. (Testimony of Beck, Tr. 218).

100. After having examined the Appellant and reviewed his recruit investigation package and test results, Dr. Beck found no evidence of the negative attributes listed in Dr. Reade's report. (Testimony of Beck, Tr. 222-229).

101. Dr. Reade concluded, “In summary” after her only interview of the Appellant the following: “Mr. Savickas appears to be a gregarious, hard-working man, who has shown a clear interest in police work, but has a history of well-intentioned but impulsive behavior and poor judgment. The examples include recent behavior at work, his decisions related to school, his decisions regarding his car and his problems managing or attending to his financial obligations. ...Individually, these lapses are not grave, but taken as a whole indicate, in my opinion, a lack of maturity and willingness to take full responsibility for his actions. For these reasons, Mr. Savickas is currently found not acceptable for the police department.” (Exhibit 4)
102. There is a clear difficulty in verifying or weighing Dr. Reade’s claimed observations of and conversations with the Appellant during her interview of him. Dr. Reade is the sole observer during the critical interview, without any independent means of substantiating her claims. The preferred method would be by review of an audio-video recording of the interview. Thereby, this hearing officer could gain access to those events she described. Independent investigation is needed to determine what, if any, Dr. Reade may have missed or edited in or out of the events. Without any independent access to or investigation of Dr. Reade’s claimed observations and conversation; Dr. Reade attempts to force acceptance of her version of events. This is a profound disservice to the Appellant since his significant, serious career choice is at stake.(Exhibits and testimony and reasonable inferences)
103. By contrast, Dr. Beck concluded in his report: “**Opinion.** In my opinion Mr. Savickas is psychologically fit to serve as a Boston police officer. I find no evidence that he has any mental disorder or behavioral characteristics which would significantly interfere with him performing the essential functions of a Boston Police Officer. I think Dr. Reade is in error in finding a pattern of irresponsible behavior, and my report below provides the basis for that opinion. To the contrary, Mr. Savickas has generally shown himself in recent years to be a responsible, well functioning adult with good values.” “...His past work in law enforcement and security provide evidence that he can perform well in this role. “**Conclusions: I hold these opinions to a reasonable medical certainty.**” (Exhibit 17)

104. Likewise, having worked alongside of the Appellant and supervised him at BIDMC, Sgt. Costa contradicted Dr. Reade's conclusions regarding the Appellant. For example, he testified that the Appellant has never had difficulty explaining himself and he has fully explained his police actions and judgments. (Testimony of Costa, Tr. 318-319). Costa has never known the Appellant to "shave the edges or work the angles." (Testimony of Costa 319). In fact, Costa testified of a situation where the Appellant was faced with a very tedious and difficult task, which he completed when he could have easily avoided it. (Testimony of Costa, Tr. 320). Costa has never known the Appellant to act impulsively. (Testimony of Costa, Tr. 321). The Appellant relates to both his co-workers and members of the public very well. (Testimony of Costa, Tr. 321). Steven Rubin owner of the Huntington Market and long term employer of the Appellant corroborated his high reliability, capability under stress and excellent judgment among other stable and good character traits. (Testimony of Rubin, Tr.281-301)

105. The Appellant also provided the BPD with detailed background documentation from a variety of people familiar with his employment and personal history. This documentation included sworn statements and answers by some of those people. Mr. Steven Rubin has known the Appellant for seventeen years as a family friend and employer at the Huntington Market. (Ex 15C). Ms. Kathy Foley is the mother of his live-in girlfriend. (Ex 22). His girlfriend (Ex 11). His supervisor Chris Bossi, at the Huntington Market. (Ex. 14, 22). His personal reference Jonathan Sullivan, nineteen years. (Ex. 15B, 22). Sgt. David Correia of the BIDMC Police Department (Ex. 12, 22) Michael Huff, former co-worker of the Appellant. (Ex. 15A, 22). Lt. Brian DeMayo of the Curry College Police Department (Ex. 13, 22). Police Chief Brian Greeley of the Curry College Public Safety Dept., a former State Police Lieutenant and former Commandant of the State Police Academy (Ex. 22). Chief Paul Baratta of the BIDMC Police Dept. (Ex. 21). Sergeant Vito Costa, formerly of the BIDMC Police Dept. and presently at a municipal Police Dept. (Ex. 22). The above named individuals all gave glowing recommendations to the BPD regarding the Appellant's qualifications to be a Boston Police officer. They praised the Appellant specifically regarding characteristics, based on their experience and observations, which they felt qualified him to be a Boston Police officer, such as:

responsible, respectful, reliable, mature, patient, intelligent, good judgment, tolerant, trustworthy, experienced in police matters, excellent work history, good people and communication skills and ability to diffuse volatile situations. (administrative notice)

106. There has been at least one prior appeal heard at the Commission in which it was concluded that Dr. Reade's evaluation of the candidate was tainted by some bias held by Dr. Reade against the candidate. The Commission concluded in that appeal that "... intervention is warranted in cases such as this where personal bias has tainted a hiring process." (administrative notice: See Kerri Cawley v Boston Police Dept., No. G1-06-95 decision page 18, *Allowed*, dated November 22, 2006.)

107. There have been a series of appeals heard at the Commission involving the bypass of the Appellants by the Boston Police Department for psychiatric reasons, based primarily on the opinions of Dr. Scott as the first level screener and Dr. Reade as the second level screener. The decisions in the following seven appeals were allowed with remedial orders issued precluding Dr. Reade and Dr. Scott from participating in any subsequent psychiatric screening of the Appellants. Those appeals are: Kerri Cawley v Boston Police Department, No. G1-06-95, allowed November 22, 2006. Shawn Roberts v Boston Police Department, No. G1-06-321, allowed September 25, 2008. Jessica Boutin v Boston Police Department, No. G1-06-139 & G1-07-317, allowed January 29, 2009, Daniel Moriarty v Boston Police Department, No. G1-05-442, allowed April 9, 2009, Kelley Coutts v Boston Police Department, No. G1-07-277, allowed May 7, 2009, Kevin O'Loughlin v Boston Police Department, No. G1-07-282, allowed on May 29, 2009 and Jill Kavaleski v. Boston Police Department, No. G1-07-299, allowed October 22, 2009. (administrative notice)

CONCLUSION

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on

adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

Pursuant to G.L. c. 31, § 2(b) bypass cases are to be determined by a preponderance of the credible evidence in the record. 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 Service Commission, 31 Mass. App. Ct. 315 (1991) and See G.L. c. 31, § 43.

Appointing Authorities are expected to exercise sound discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The appointing authority may also decline to make any appointment. See Commissioner of the Metropolitan Dist. Commn. v. Director of Civil Serv. 348 Mass. 184, 187-193 (1964). See also Corliss v. Civil Serv. Commrs. 242 Mass. 61, 65; (1922) Seskevich v. City Clerk of Worcester, 353 Mass. 354, 356 (1967); Starr v. Board of Health of Clinton, 356 Mass. 426, 430-431 (1969). Cf. Younie v. Director of Div. of Unemployment Compensation, 306 Mass. 567, 571-572 (1940). A judicial judgment should “not be substituted for that of . . . [a] public officer” who acts in good faith in the performance of a duty. See M. Doyle & Co. Inc. v. Commissioner of Pub. Works of Boston, 328 Mass. 269, 271-272.” Goldblatt vs. Corporation Counsel of Boston, 360 Mass 660, 666, (1971)

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.” Town of Falmouth v. Civil Service Commission, et al, 447 Mass. 814 (2006), quoting Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

However, 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. City of Cambridge, 43 Mass. App. Ct. at 304. All candidates must be adequately and fairly considered. The Commission has been clear that a bypass is not justified where “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988).

The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001). “Abuse of discretion occurs . . . when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and improper factors are assessed but the [fact-finder] makes a serious mistake in weighing them.” E.g., I.P.Lund Trading ApS v. Kohler Co., 163 F.3d 27, 33 (1st Cir.1998).

When an Appointing Authority relies on scientific evidence provided through expert witnesses to support the justification for a by-pass decision, the Commission is mindful of the responsibility to ensure: (a) the scientific principles and methodology on which an expert’s

opinion is based are grounded on an adequate foundation, either by establishing “general acceptance in the scientific community” or by showing that the evidence is “reliable or valid” through an alternative means, e.g., Canavan’s Case, 432 Mass. 304, 311, 733 N.E.2d 1042, 1048 (2000) *citing* Commonwealth v. Lanigan, 419 Mass. 15, 641 N.E.2d 1342 (1994); (b) the witness is qualified by “education, training, experience and familiarity” with special knowledge bearing on the subject matter of the testimony, e.g., Letch v. Daniels, 401 Mass. 65, 69-69, 514 N.E.2d 675, 677 (1987); and (c) the witness has sufficient knowledge of the particular facts from personal observation or other evidence, e.g., Sacco v. Roupenian, 409 Mass. 25, 28-29, 564 N.E.2d 386, 388 (1990).¹

Experts’ conclusions are not binding on the trier of fact, who may decline to adopt them in whole or in part. *See, e.g.,* Turners Falls Ltd. Partnership v. Board of Assessors, 54 Mass.App.Ct. 732, 737-38, 767 N.E.2d 629, 634, *rev. den.*, 437 Mass 1109, 747 N.E.2d 1099 (2002). As a corollary, when the fact-finder is presented with conflicting expert evidence, the fact-finder may accept or reject all or parts of the opinions offered. *See, e.g.,* Ward v. Commonwealth, 407 Mass. 434, 438, 554 N.E.2d 25, 27 (1990); New Boston Garden Corp. v. Board of Assessors, 383 Mass. 456, 467-73, 420 N.E.2d 298, 305-308 (1991); Dewan v. Dewan, 30 Mass.App.Ct. 133, 135, 566 N.E.2d 1132, 1133, *rev.den.*, 409 Mass. 1104, 569 N.E.2d 832 (1991).

No specific degree of certitude is required for expert testimony and it may be accepted if the opinion is “reasonable” and expressed with sufficient firmness and clarity. *See, e.g.,* Commonwealth v. Rodriguez, 437 Mass. 554, 562-63, 773 N.E.2d 946, 954 (2002); Bailey v. Cataldo Ambulance Service, Inc., 64 Mass.App.Ct. 228, 235, 832 N.E.2d 12, 11-18 (2005);

¹ As to the latter point, the Commission’s notes that it is granted broader discretion in the admission of evidence than permitted in the Massachusetts courts. *Compare* G.L.c.30A, §11(2) *with* Department of Youth Services v. A Juvenile, 398 Mass. 516, 531, 499 N.E.2d 812, 821 (1986).

Resendes v. Boston Edison Co., 38 Mass.App.Ct. 344, 352, 648, N.E.2d 757, 763, rev.den., 420 Mass. 1106, 651 N.E.2d 410 (1995). So long as the expert's opinion is sufficiently grounded in the evidence, but certain facts were unknown or mistakes were made in some of the expert's assumptions that generally goes to the weight of the evidence. Commonwealth v. DelValle, 443 Mass. 782, 792, 824 N.E.2d 830, 839 (2005); Sullivan v. First Mass. Fin. Corp., 409 Mass. 783, 79-92, 569 N.E.2d 814, 819-20 (1991). However, "it is also a familiar principle that testimony may not rest wholly on conjecture, and that is no less the case when the conjecture flows from the mouth of an expert. [Citations] Qualification as an expert does not confer a license to spout nonsense." Fourth Street Pub, Inc. v. National Union Fire Ins. Co., 28 Mass.App.Ct. 157, 547 N.E.2d 935, 939 (1989) (Kass.J., dissenting), rev.den., 406 Mass. 1104, 550 N.E.2d 396 (1990). See also Board of Assessors v. Odgen Suffolk Downs, 398 Mass. 604, 606-607, 499 N.E.2d 1200, 1202-1203 (1986) (expert testimony stricken which blatantly overlooked critical facts)

Applying these applicable standards to the circumstances of the present case, the Commission concludes that the BPD's bypass of The Appellant for appointment to the position of Boston police officer did not comport with basic merit principles resulting in harm to his employment status through no fault of his own.

The rules under which the BPD may justify a bypass for medical reasons, including psychiatric conditions, are spelled out by HRD's regulations for "Initial Medical and Physical Fitness Standards Tests for Municipal Public Safety Personnel" (the HRD Regulations), which is supposedly incorporated into the BPD's Proposed Psychological Screening Plan (PPSP). The standards for a "Category A" psychiatric medical condition, which is an automatic disqualifying condition, requires proof that a police officer applicant carries a psychiatric diagnosis of certain specific psychiatric "disorders", as defined by the DSM-IV. [HRD Regulations, §10(6)(o)(1)]. A

“Category B” psychiatric medical condition includes (a) a “history” of any “psychiatric condition, behavior disorder, or substance abuse problem not covered by 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”, [HRD Regulations, §10(6)(o)(2)(a)] and (b) “any other psychiatric condition that results in an individual not being able to perform as a police officer.” [HRD Regulations, §10(6)(o)(2)(b)].

The Appellant denied ever having any problems with depression, anxiety or other psychological condition or substance abuse and Dr. Reade did not make any determination that he did.

Dr. Reade concluded, “In summary” after her only interview of the Appellant the following: “Mr. Savickas appears to be a gregarious, hard-working man, who has shown a clear interest in police work, but has a history of well-intentioned but impulsive behavior and poor judgment. The examples include recent behavior at work, his decisions related to school, his decisions regarding his car and his problems managing or attending to his financial obligations. ...Individually, these lapses are not grave, but taken as a whole indicate, in my opinion, a lack of maturity and willingness to take full responsibility for his actions. For these reasons, Mr. Savickas is currently found not acceptable for the police department.”

However, Dr. Reade in forming this opinion after only one interview seems to have relied on isolated negative circumstances, which she emphasized while ignoring the vast bulk of substantiated positives in his background. She mischaracterized some of those circumstances, formed erroneous assumptions or ignored explanations for them. The Appellant is hard-working, usually holding down more than one job simultaneously while also attending school. Financial stress on the Appellant, resulting in part from school expenses affected his credit rating for a

period. Yet, Dr. Reade found that his low credit rating in the past from missed student loan payments was “mismanagement”. She didn’t credit him for having subsequently rectified his low credit score or his decision of non-payment of his own student loans in order to payoff his mother’s co-signed loan to avoid impacting her credit rating. Lack of sufficient financial resources during the relevant period is characterized by Dr. Reade as “mismanagement”. A poor credit rating, like a criminal or driving record should have been measured by the application of a clear established standard, administratively by the BPD, to disqualify a candidate. The Appellant’s strong and long-term behavior/character traits were attested to by numerous people in writing and several in testimony at this hearing. All of those witnesses were available to Dr. Reade, if she chose to contact them to corroborate or test her opinion of unfitness. This conclusion of Dr. Reade is contraindicated by the Appellant’s extensive background history. Indeed, the Appellant’s impressive personal, community volunteer, employment and educational background in conjunction with his above average testimonial performance, substantially counterweigh that conclusion.

The evidence here establishes that The Appellant does not carry, and has never been diagnosed with any “Category A” or “Category B” psychiatric or behavior disorder contained within the DSM-IV, has no history of any such disorders, and has no history of substance abuse problems within the meaning of the HRD Regulations. cf. Adesso v. City of New Bedford, 20 MCSR 426 (2007) (multiple hospitalizations and treatment for substance abuse and schizophrenia); Melchionno v. Sommerville Police Dep’t, 20 MCSR 443 (2007) (diagnosis of Schizotypal Personality Disorder and repeated, bizarre job-related problems); Hart v. Boston Police Dep’t, 19 MCSR 397 (2006) (history of substance abuse and prior treatment); Lerro v. Boston Police Dep’t, 19 MCSR 402 (history of Obsessive Compulsive Disorder and treatment

for Acute Stress Disorder); Mitchell v. Marblehead Fire Dep't, 19 MCSR 23 (history of bipolar disorder and substance abuse).

Thus, the justification for bypassing The Appellant turns on whether the evidence supports a conclusion that she fits one of the “Category B” definitions of a “psychiatric condition” of sufficient severity and degree to disqualify her to serve as a police officer.

A “psychiatric condition” would seem to be virtually synonymous with a mental or emotional “disorder”. See, e.g., MERRIAM-WEBSTER’S MEDICAL DICTIONARY (2002) (“psychiatric” means “dealing with cases of mental disorders”); AMERICAN HERITAGE DICTIONARY (2006) (“psychiatry” means “the branch of medicine that deals with the diagnosis, treatment and prevention of mental and emotional disorders”). The experts who testified in the Roberts appeal, however, all seem to use the term more broadly to encompass behavior that does not necessarily qualify as a “disorder”. Dr. Beck testifying in the Roberts appeal defined a Category B disqualifying “psychiatric condition” to mean evidence of “some aspect of a person’s behavior or trait that appears over a range of circumstances or in a variety of situations”, either in the “historical past” [§10(6)(o)(2)(a)] and/or the “historical present” [§10(6)(o)(2)(b)]. This interpretation is substantially similar to Dr. Reade’s distinction between “enduring traits” or “enduring pattern” that she saw to be disqualifying and a “bump in the road” or a diagnosed mental disorder whose symptoms are “in remission” that she would not consider disqualifying. However, Dr. Reade failed to sufficiently identify and substantiate in this present matter, any enduring trait(s) or patterns that would render Savickas unfit psychologically or emotionally to serve as a police officer.

The Commission accepts this premise. An applicant may be disqualified for having a Category B “psychiatric condition” so long as the applicant has a “psychiatric condition” which

has historically manifested itself by a preponderance of scientifically reliable and credible proof of deficient mental health behavior, but not necessarily proof of a psychiatric “disorder” found within the DSM-IV.

The scientifically appropriate role of clinical interview impressions and standardized testing in the psychological evaluation process must be clearly established and documented by the appointing authority. The psychological evaluation process cannot be so subjective and/or indefinite that it amounts to an opinion, which is incapable of proof or verification. The BPD’s bypass reasons are essentially Dr. Reade’s opinion that the Appellant is psychologically unfit to perform the essential functions of a police officer. Any reference to historical facts by Dr. Reade seems to be relatively minor and atypical when balanced against the Appellant’s total background. Dr. Reade’s opinion is founded primarily on the Appellant’s alleged presentation at and performance in her interviews with Dr. Reade. Dr. Reade did not audio/video record his interview so we are left only with the participants’ conflicting descriptions, as evidence. The Appellant offers in opposition to Dr. Reade’s opinion; his substantiated record, including his very impressive, detailed accomplishments in employment, personal, community volunteer and educational aspects of his life. Neither Dr. Reade nor the BPD attempted to corroborate their opinion of psychological unfitness with any of the Appellant’s numerous personal and professional references, familiar with his background.

In a bypass appeal, the Commission must decide whether, based on a preponderance of the evidence before it, the Appointing Authority sustained its burden of proving there was "reasonable justification" for the bypass. City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 303 (1997). It is well settled that reasonable justification requires that the Appointing Authority's actions be based on adequate reasons supported by credible evidence,

when weighed by an unprejudiced mind guided by common sense and correct rules of law.

Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928).

Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

In determining whether the Appointing Authority had reasonable justification to take the action of bypassing the Appellant, the Commission must consider the fundamental purpose of the Civil Service System which is "to protect against overtones of political control, objectives unrelated to merit standards and assure neutrally applied public policy." If the Commission finds that there are "overtones of political control or objectives unrelated to merit standards or neutrally applied public policy," then it should intervene. Otherwise, the Commission cannot substitute its judgment for the judgment of the Appointing Authority. City of Cambridge at 304.

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 Service Commission, 31 Mass. App. Ct. 315 (1991). All candidates must be adequately and fairly considered. The Commission will not uphold the bypass of an Appellant where it finds that "the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons." Borelli v. MBTA, 1 MCSR 6 (1988). Also, Basic merit principles, as defined by Chapter 31 of the General Laws, require that employees be selected and advanced "on the basis of their relative ability, knowledge and skills, assured of fair and equal

treatment in all aspects of personnel administration, and that they be protected from arbitrary and capricious actions." Sammataro v. Chicopee Police Department, 6 MCSR 145 (1993).

The Boston Police Department employs approximately 2,000 sworn officers. Inherent in their responsibilities is the ability to confront dangerous, stressful and life-threatening situations on a daily basis. (Testimony of Reade, Tr. 59).

Given the dangerous and stressful nature of the job, the psychological screening of potential candidates is a critical part of any police department's screening process and should be undertaken with the utmost seriousness and objectivity. To that end, the Boston Police Department developed a psychological screening plan for all police officer candidates that was approved by the state's Human Resources Division. (Stipulations of Fact, Exhibit 19). As part of this screening process, every candidate who is given a conditional offer of employment must take the MMPI-2 and PAI exams. The candidate must then meet with a 1st Level Psychiatrist. If the candidate is given an unfavorable 1st Opinion, he or she is referred to Dr. Julia Reade for a 2nd Level Screening review. (Exhibit 19).

In the instant case, it is the Respondent's burden to demonstrate, by a preponderance of the evidence, that the Appellant was psychologically unfit to perform the duties of a Boston Police Officer. Masiello v. Town of Framingham, Case No.: G-00-4571 (2002). Furthermore, "[t]he Appellant had the right to be considered for appointment based on a fair consideration of his relative ability, knowledge and skills or 'basic merit principles' pursuant to G.L. c. 31§ 1."

Aponte v. Boston Police Department, Docket No.: G-01-1072 (August 4, 2004). These principles further require that applicants receive fair and equal treatment in all aspects of personnel administration, and that they be protected from arbitrary and capricious action. See Tallman v.

City of Holyoke, et al., G-2134, and compare Flynn v. Civil Service Commission, 15 Mass. App. Ct. 206 (1983).

As explained herein, the Appellant was not fairly and adequately considered and he has not received “fair and equal treatment,” free from “arbitrary and capricious action.” Specifically, in deciding that he was psychologically “unqualified for appointment as a Boston Police Officer,” the Respondent applied the wrong standard and inexplicably failed to adequately consider his documented successful performance in the field of law enforcement and security. In order to be appointed as a Beth Israel Deaconess Medical Center Police Officer, the Appellant successfully underwent a screening process which consisted of an oral interview, in-depth background investigation and a physical abilities test. (Testimony of Appellant Tr. 345). In November, 2006, incident to his employment as a BIDMC Police Officer, the Appellant took the MMPI-2 psychological examination, underwent a psychological evaluation, and was found suitable for continued employment as an armed police officer. (Testimony of Appellant, Tr. 345-348, Exhibit 18).

As a BIDMC Police Officer, the Appellant successfully completed police academy training, wore a traditional police uniform, and operated a fully marked police cruiser. (Testimony of Appellant, Tr. 372, Testimony of Costa, Tr. 306-307). BIDMC Police Officers possess what Sergeant Costa describes as “full arrest powers.” They are appointed as Special State Police Officers and Suffolk County Deputy Sheriffs. (Testimony of Costa, Tr. 303). The Commission has previously recognized that officers who were so appointed were vested with “full police powers.” See McNulty v. Human Resources Division, Docket No.: B-99-476 (2001) (Mass. Eye & Ear Infirmary Police Officer granted Training & Experience Credit as they exercise “full police powers.”). His work at BIDMC required him to make split-second

judgments and reflect on his actions after the fact. (Testimony of Appellant, Tr. 349). As a BIDMC Police Officer and Detective, the Appellant frequently appeared in court where he testified effectively and withstood cross examination. (Testimony of Appellant, Tr. 350, Testimony of Costa, Tr. 321-322).

In his current position as a Plymouth County Deputy Sheriff, the Appellant has county-wide arrest powers, maintains custody over inmates, and performs certain police functions in twenty eight communities. (Testimony of Appellant, Tr. 340-341). See Commonwealth v. Baez, 42 Mass. App. Ct. 565, 566 (1997) (“...a deputy sheriff is authorized both to serve criminal process and to make arrests in certain circumstances. It follows that, for purposes of G.L. c. 90C, § 3(A)(1), a deputy sheriff is a police officer authorized to issue a citation for a civil motor vehicle infraction.”); See Commonwealth v. Howe, 405 Mass. 332, 333-334 (1989) (A “...deputy sheriff was authorized to stop the defendant's vehicle and to arrest him for operating a motor vehicle in Plymouth County while under the influence of intoxicating liquor. A deputy sheriff has authority to act that a private person would not have in similar circumstances.) See G.L. c. 147 § 8A (Authorizing Deputy Sheriff to carry “revolvers, clubs, handcuffs and twisters and such other weapons as are necessary in the performance of their duties.”) In summary, at all times relevant, the Appellant has had “badge, a gun, and all the considerable powers of a police officer.” Boston Police Department v. Munroe, 14 Mass.L.Rptr. 446 (2002). As outlined herein, the Appellant has exercised his police powers responsibly and there is little, if any, support in his background for the conclusions contained in Dr. Reade’s Report.

Indeed, as explained herein, the City’s decision to bypass the Appellant based on Dr. Reade’s Report was in no way “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.” (Citations omitted). First, when declaring the Appellant psychologically unfit, Dr. Reade applied an erroneous standard. For example, she disagreed that the function of psychological screening is to determine whether a candidate can properly discharge the duties of a Boston Police Officer and testified that whether or not the candidate can perform the essential functions of the job is only part of the question that she is attempting to answer. (Testimony of Reade, Tr. 108, 110). Instead, she testified that she tries “to evaluate candidates to determine who would be a good fit for the particular job they are being screened for.” (Testimony of Reade, Tr. 13). More troubling was her testimony that her function is “to choose the very best candidates who have the best fit psychologically” and to screen others out who might, by virtue of psychological characteristics, pose a risk to themselves, their co-workers, or the community. (Testimony of Reade, Tr. 16). This mandate to select those candidates who “would be a good fit” and “the very best candidates who have the best fit psychologically” appears absolutely nowhere in the HRD approved psychological screening plan. (Exhibit 19). According to the plan, the screening process is to be “used to detect through a review of the background investigation, personal history as provided by the candidate, psychological testing, interviews, and any psychological or behavioral characteristics, **which would significantly interfere with the candidate’s successful performance of the essential functions duties (sic) of the position of Boston Police Officer.**” (Exhibit 19) (Emphasis supplied). Indeed that heavy burden that must be met to properly disqualify a candidate for a psychological condition, is further increased by the requirement that the candidate be offered a “**reasonable accommodation**” to be able to perform those essential functions. No such “**reasonable accommodation**” was ever explored or offered to the Appellant by the BPD. Nevertheless, Dr. Reade responded to a line of questioning regarding whether she

would disqualify a candidate who could successfully perform the essential functions duties of the position of Boston Police Officer by saying critically, “[y]ou keep coming back to this very narrow definition of performing the essential functions of the job.” (Testimony of Reade, Tr. 119). This strongly suggests that she misunderstood her role and exceeded the parameters established by the HRD approved psychological screening plan. Her acknowledgement that she and Dr. Beck may have different screening standards and criteria further supports the conclusion that she employed the wrong standard. (Testimony of Reade, Tr. 93). Also supporting the finding that she applied the wrong standard is her testimony that she excludes candidates who have “a psychiatric illness or a mental illness or a mental disorder that might **or might not interfere** with an individual's abilities to function...” (Emphasis supplied). This is completely contrary to the HRD Screening Plan, which disqualifies only those candidates who exhibit such illnesses or disorders “which would **significantly interfere** with the candidate’s successful performance of the **essential functions duties** of the position of Boston Police Officer.” (Emphasis added) (sic). This is a very specific and narrow standard which Dr. Reade clearly misapplied.

The aforementioned mandate to screen out only those candidates who exhibit evidence of only certain mental disorders is based on the American’s with Disabilities Act, 42 U.S.C. 12112(d)(4)(A), which prohibits an employer from examining or inquiring into the disability status of an employee “unless such examination or inquiry is shown to be job-related and consistent with business necessity.” *Id.* To survive scrutiny, the asserted “business necessity” must be vital to the business and the request for an examination or inquiry must be no broader or more intrusive than necessary. Conroy v. N.Y. State Dep’t of Corr. Servs., 333 F.3d 88, 97-98 (2d Cir.2003). Indeed, contrary to Dr. Reade’s view, the sole question to be answered in

psychological screening examinations is whether the candidate can safely perform the essential duties of the position. See e.g. International Association of Chiefs of Police Pre-employment Psychological Evaluation Services Guidelines, Ratified by the IACP Police Psychological Services Section, Los Angeles, California, 2004 (referenced in the HRD Screening Plan) (“In all cases, the screening should be focused on an individual candidate's ability to perform the essential functions of the position under consideration.”); See e.g. Conte v. Horcher, 50 Ill.App.3d 151, 8 Ill. Dec. 329, 365 N.E.2d 567, 568-69 (1977) (Police Chief may order a psychiatric examination of a police officer to determine whether the officer is able to perform his duties).

When questioned further about what she believed was her responsibility “to choose the very best candidates who have the best fit psychologically,” Dr. Reade attempted to backpedal by claiming that she made a poor choice of words to describe her job. (Testimony of Reade, Tr. 106). However, it was obvious that throughout the proceeding, Dr. Reade was very careful, if not evasive, in her testimony. For example, she refused to answer reasonable hypothetical questions designed to explore her understanding of the applicable standard. (Testimony of Reade, Tr. 112-114). In one instance she refused to answer whether she would find suitable an individual who suffered from stress which did not “substantially interfere with his successful performance of the essential functions duties of the position of Boston Police Officer.” In refusing to do so, she claimed “I don't -- I can't answer that question because I have never seen a person who met those.” (Testimony of Reade, Tr. 115). When it was explained that the question was a hypothetical and she was asked what she would do if evaluating such a person, she stated, “I can't tell you because I have never encountered that.” (Testimony of Reade, Tr. 115-116). When

pressed further and instructed by the Commissioner to answer the question if she was able to do so, she stated that she could not answer the question and gave a lengthy unresponsive answer. (Testimony of Reade, Tr. 116-117). Also, when asked if she would find the Appellant psychologically fit if he were successfully performing police duties, free from interference by a psychological or behavioral trait or characteristics, she described the question as “a big mouthful of a question that includes lots of parts that I don't agree with,” complained that it was a hypothetical, and ultimately failed to answer the question as asked. (Testimony of Dr. Reade, Tr. 123).

In addition to applying the wrong standard, Dr. Reade unfairly discounted the Appellant's successful performance as a public safety officer and police detective. Furthermore, in violation of the Plan, which required her to conduct a “through a review of the background investigation,” she failed to adequately consider the overwhelmingly positive opinions of the Appellant which did not support and completely contradicted her opinion. For example, when it was pointed out that a neighbor who was familiar with the Appellant expressed her belief that the Appellant would “act as duty calls and that he will take his job seriously and responsibly,” Dr. Reade stated that “I don't know. I -- you know, it may be that Mr. Savickas has been, has discharged all of his duties responsibly. **What I am concerned about is not him discharging his duties responsibly.**” (Testimony of Reade, Tr. 184) (emphasis supplied). By her own admission, she ignored the Appellant's successful performance as a police officer and admitted that she was not concerned with his Appellant's ability to perform the essential tasks of the position at issue. This demonstrates that not only did she apply an erroneous standard but also that she further violated the Plan which required her to thoroughly review and consider the background investigation results in making her determination. (Exhibit 19).

The only aspect of the Appellant's employment history which might possibly support Dr. Reade's concern is the interaction he had with a co-worker, wherein he allegedly threatened or used inappropriate language with the co-worker. However, with full knowledge of the incident, BIDMC Police Chief Paul J. Baratta praised the Appellant and wrote that "[i]t is without hesitation that I highly recommend Richard to move on in the process for a position as a recruit with the Boston Police." (Exhibit 21). Also, Chief Baratta commended the Appellant for his maturity in dealing with the after effects of the situation and noted that the recipient of the alleged threat, who did not file a complaint until approximately ten days after the incident, was terminated for cause. (Exhibit 21). Furthermore, Sgt. Costa's account and opinion of the incident, which he personally witnessed, does not support disqualifying the Appellant from employment because of it. (Testimony of Costa, Tr. 309). Also, he testified that since BIDMC Police Officers were "employees at will," there was little margin for unprofessional behavior and that "every time [he] was with [the Appellant] and witnessing him interacting with people, it was always on a professional level because had to be. It meant our job." (Testimony of Costa, Tr. 312).

Likewise, Ms. Kathy Foley, the mother of the Appellant's live-in girlfriend, who has known the Appellant for over three years, described him as "a mature person who takes care of things when they need to be addressed." She further described him as "patient with [his girlfriend] and level headed." According to BPD background investigator Bernadette Stinson, the Appellant's patience particularly impressed Ms. Foley because the Appellant's girlfriend "can be moody at times" and "is not the easiest person to live with." (Exhibit 10). Furthermore, according to the background investigator's report, Ms. Foley believes that the Appellant "will maintain composure when faced with difficult situations and that his background in security has already tested his patience and proved him to be trustworthy, confident, and intelligent when

faced with difficult choices.” (Exhibit 22). These statements directly contradict Dr. Reade’s opinion that the Appellant is immature and might “pop a gasket and blow up or explode...” (Testimony of Reade, Tr. 52-53, Exhibit 4). Ms. Foley, who is the Appellant’s landlord, also noted that the Appellant always pays his rent on time. (Exhibit 10). This does not support Dr. Reade’s concerns about the Appellant’s credit. (Testimony of Reade, Tr. 68-69).

Dr. Reade testified that the ability to remain calm in the face of provocation is “highly relevant because people are being, you know, police officers are frequently viewed as in a very unfavorable negative light and they have to have a capacity to tolerate a lot of, a lot of rude behavior, provocative behavior, personal insults directed at them. And they have to be able to keep their cool and keep it in perspective.” (Testimony of Reade, Tr. 85-86). She implied that the Appellant apparently did not have this ability to remain calm when provoked, because he harbored concerns about how other people perceived him and “that seemed to be an area that he was still sensitive about and still kind of prickly about.” (Testimony of Reade, Tr. 84-85). In contrast to this, the Appellant’s girlfriend described him as “a level headed person who is fair minded.” She further stated that he resolves conflicts with others by listening and trying to be fair. (Exhibit 11). Also, in a sworn statement, Mr. Michael L. Huff, a former co-worker of the Appellant, makes no mention of anything in the Appellant’s history which would support Dr. Reade’s opinion. In fact, he provides an example of a situation where a belligerent individual attempted to draw the Appellant into a physical confrontation. (Exhibit 15A, Exhibit 22). According to Mr. Huff’s sworn statement, the individual “specifically directed his anger at [the Appellant], trying to cause a confrontation.” (Exhibit 15A). Despite this provocation, the Appellant “remained clam and professional in the face of a chaotic scene.” (Exhibit 15A, Exhibit 22). There was no evidence of him “blowing a gasket” or exhibiting any behavior consistent with

Dr. Reade's concerns. This is especially striking since the Appellant performed well in exactly the type of situation which Dr. Reade had concerns about him handling as a Boston Police Officer. (Testimony of Reade, Tr. 85-86). Acting in the capacity of a uniformed public safety official, he properly handled an irate and antagonistic individual who deliberately attempted to provoke him. By his actual documented real life performance as a public safety officer the Appellant has proven that Dr. Reade's subjective concerns are unfounded and lack validity. At no time in her testimony or report did Dr. Reade address this glaring contradiction between the Appellant's successful performance of his police duties and her opinion that he was psychologically unfit. Instead, she persisted in her claim that that the Appellant "was still was a sensitive guy who was bothered when annoying people kind of poked at him." (Testimony of Reade, Tr. 199).

Similarly, Mr. Steven Rubin, the Appellant's supervisor at Huntington Wine & Spirits, who has known the Appellant for over fifteen years, describes in a sworn statement how the Appellant properly and calmly handled angry homeless customers who were complaining about prices. (Exhibit 15C). Mr. Rubin makes absolutely no mention of anything in the Appellant's background which would support Dr. Reade's concerns. (Exhibit 15C). Mr. Rubin further described how the Appellant has properly handled stressful situations and properly resolved conflicts between employees. (Exhibit 14). He testified that the Appellant has properly handled numerous situations involving angry and upset customers. (Testimony of Rubin, Tr. 284-286). According to Mr. Rubin, the Appellant "will be an asset to the BPD." (Exhibit 14). Mr. Rubin further testified that having employed the Appellant for the past seventeen years, in a management position where the Appellant has a very high level of interaction with the public and subordinates, he has seen nothing in his behavior which would support Dr. Reade's opinion.

(Testimony of Rubin, Tr. 286-294). Another of the Appellant's supervisors at Huntington Wine & Spirits, Mr. Chris Bossi, described the Appellant as punctual, dependable, respectful, reliable, and appropriately dressed. He characterized the Appellant's job performance as excellent.

(Exhibit 14). Mr. Bossi stated that he was "confident that the applicant will be an asset to the Boston Police Department and will serve the people of Boston with compassion, honor, and attention to duty." (Exhibit 14, 22). Mr. Bossi also stated that the Appellant was always punctual and never abused sick leave. (Exhibit 14, 22).

Mr. Jonathan Sullivan, a personal reference who has known the Appellant for nineteen years, writes in a sworn statement that the Appellant "has the unique ability to diffuse any stressful situation with humor and sincere willingness to find a positive outcome." (Exhibit 15B, Exhibit 22). Mr. Sullivan states further that he observed the Appellant step in between individuals and break up fights. (Exhibit 15B, Exhibit 22). Again, Dr. Reade's opinion is squarely contradicted and Dr. Beck's opinion that the Appellant is psychologically fit is supported.

Sergeant David R. Correia of the Beth Israel Deaconess Medical Center Police Department describes the Appellant as a "well rounded individual" with "an excellent work history." (Exhibit 12, Exhibit 22). He further states that the Appellant "...is always courteous and respectful when dealing with fellow employees and the public." (Exhibit 12). He also mentions that the Appellant "has excellent people skills. He has shown a great ability to de-escalate situations" and "he has been involved with numerous situations while performing his duties as a police officer." Sgt. Correia goes on to state that the Appellant is a "very well rounded individual who has the ability and desire to become a Boston Police Officer." (Exhibit 22). According to Sgt. Correia, the Appellant "works well under stress and [he] has demonstrated this

on numerous occasions. (Exhibit 12, 22). Sgt. Correia further stated that the Appellant's job performance, as a BIDMC Police Officer met or exceeded expectations and he described the Appellant as a professional. (Exhibit 12). Sgt. Correia stated that the Appellant "has an excellent work history...treats people on an equal basis," and he "has a good working relationship with his co-workers. He is flexible and willing to assist other officers when necessary." (Exhibit 12, 22). He further states that "[a]t times, [the Appellant] is required to cover as the Shift Commander and has demonstrated good leadership skills. He treats the staff in a respectful manner." (Exhibit 12). The Appellant used only one sick day while employed by the BIDMC Police Department. (Exhibit 22). Sergeant Correia's appraisal of the Appellant's actual performance as a police officer, which is based on his firsthand observations, directly contradicts Dr. Reade's opinions.

Lieutenant Brian DeMayo of the Curry College Police Department, who has known the Appellant for two years, stated that the Appellant was a "great person to have on [his] shift." (Exhibit 13). He provided a positive reference and described the Appellant as "reliable, trusting, someone you can rely on in a pinch." (Exhibit 13, Exhibit 22). He further described the Appellant as "a calm person with good wit that he would handle the problems and could also delegate if needed." (Exhibit 13, Exhibit 22). This squarely contradicts Dr. Reade's prediction that the Appellant might "pop a gasket and blow up" and "would have difficulty solving problems." (Testimony of Reade, Tr. 52-53, 68-73, 198). According to Lt. DeMayo, the Appellant was "someone to rely on when something needed to be done and done right." (Exhibit 13). There was absolutely nothing in the information he provided which would support Dr. Reade's conclusions.

Likewise, Curry College Chief of Public Safety Brian Greeley, who is a retired Massachusetts State Police Lieutenant who formerly served as Commandant of the State Police Academy for many years, stated that the Appellant “distinguished himself as a valuable employee to not only the department but to the entire community. (Testimony of Appellant, Tr. 370-371). Chief Greeley stated that the applicant quickly became someone that his supervisors and fellow employees could rely on and that he was always punctual for his assigned shifts. Chief Greeley described Mr. Savickas as prompt, reliable, and trusted employee...” (Exhibit 22). It is noted in boldface type in the background investigator’s report that Curry College did not have a sick leave buyback benefit and that “[t]he applicant used his allowed sick time and was careful not to leave his assigned shift shorthanded.” Nevertheless, Dr. Reade believed that the Appellant’s use of sick leave was indicative of him “shaving the edges” and “working the angles.” (Testimony of Reade, Tr. 79-80, 171).

Noticeably absent in any of the aforementioned reports, or in the testimony of Sergeant Costa or Mr. Rubin, was any evidence of lack of insight or any “well-intentioned but impulsive behavior and poor judgments” which, in Dr. Reade’s view, would render the Appellant unsuitable for employment as a Boston Police Officer. (Exhibit 4). In fact, Mr. Rubin testified that he “trusts the Appellant’s judgment 100%” and that the Appellant handles millions of dollars for him. (Testimony of Rubin, Tr. 289). Likewise, Sergeant Costa saw no evidence of the Appellant making poor judgments as a police officer. (Testimony of Costa, Tr. 317-318). There is also no evidence of the Appellant demonstrating a lack of “a maturity and willingness to take full responsibility for his actions.” (Exhibit 4). For example, the Appellant apologized to the BIDMC Security Officer who complained about the allegedly threatening comment and Chief Bratta commended him for dealing with the aftermath of the incident in a mature manner

(Testimony of Appellant, Tr. 356, Exhibit 21). Furthermore, there was a complete lack of evidence of “resentment,” “egocentricity,” “antisocial beliefs” or “feelings of persecution, that other people had it out for him.” (Testimony of Reade, Tr. 53-54, Testimony of Costa, Tr. 313-315).

When assessing the Appellant’s psychological fitness, Dr. Reade ignored the aforementioned positive references, many of which were given by police and security officials, even though the Plan required her to thoroughly review them. (Exhibit 19). This is suggestive of a serious flaw in the psychological screening process in this case. Indeed, when comparing these comprehensive, detailed, and substantive references with Dr. Reade’s conclusory report, it is as if two different people are being described. See Buckley v. Boston Police Department, 13 MCSR 191, 195, Docket No.: D-4454 (2000) (Commission describes BPD psychological screening process as conducted by Dr. Reade as “imperfect and subjective.”) The foregoing reviews and the documented examples of the Appellant’s successful performance as a police officer contained therein convincingly demonstrate that he has the “relative ability, knowledge and skills” to be a successful Boston Police Officer. See Tallman v. City of Holyoke, et al., supra. Nevertheless, based on a subjective interview and the results of multiple choice tests, Dr. Reade reached the opinion that the Appellant was psychologically unfit, even after the Appellant had passed another psychological screening.

“Dr. Beck, the above-referenced psychiatrist who testified on behalf of the Appellant, has impeccable credentials.” Lerro v. Boston Police Department, 19 MCSR 402 (2006), Docket No.: G1-06-115 (2006). He testified credibly that this case fits a pattern which he discerned after having reviewed several Boston Police psychological bypass cases. See e.g. Moriarty v. Boston Police Department, Docket No.: G1-05-442 (Boston College Police Officer with an exemplary

record found psychologically unfit). Dr. Beck noted, “the screeners for the City of Boston rely primarily on their impressions from their interview and on the responses to the multiple-choice tests. And when there is a conflict between the life history on the conflict between the life history on the results on the other hand, they rely on the interview and test results to disqualify people who on their life histories would make entirely appropriate candidates, life histories in which there is no evidence that I saw of mental disorder or character problems that would raise issues for them as Boston police officers.” (Testimony of Dr. Beck, Tr. 211). See Hart v. Boston Police Department, 19 MCSR 397, Docket No.: G1-06-43 (2006); Cawley v. Boston Police Department, 19 MSCR 389, Docket No.: G1-06-95 (2006); Roberts v. Boston Police Department, Docket No. G1-06-321 (2006) (“Both Dr. Beck and Dr. Schaefer, in their written reports and their testimony before the Commission, suggested that the psychiatrists contracted by the Boston Police Department, including Dr. Reade, gave too much weight to the ‘paper and pencil’ psychological tests taken by the Appellant.”) This over-reliance on psychological testing and discounting of the Appellant’s positive work history violates both common sense and basic merit principles. See e.g. Cawley, supra (“...Dr. Reade has unwittingly established an unattainable bar for this Appellant that appears to be tinged with personal bias. Dr. Reade *first* disqualified the Appellant for psychological reasons primarily because she had difficulty “offering up information” demonstrating her rigid and inflexible manner.”)

The Commission notes that it has previously overturned a bypass where, like here, an Appointing Authority failed to adequately consider a police officer candidate’s relevant work experience and, also like here, there were conflicting opinions regarding his psychological fitness. Kilmartin v. Lowell Police Department, 10 MCSR 89 (1997). In overturning the bypass, the Commission ruled as follows:

In this matter the Appointing Authority finds itself stymied in its ability to act in a positive fashion based on obfuscated opinions concerning the Appellant's psychological profile. This Commission takes issue with such a position taken by the Appointing Authority, particularly when inconclusive evidence is used as a bar to employment. The evidence and supportive testimony concerning the Appellant's proven record of disciplined behavior in what is considered a stressed environment as a corrections officer of the Commonwealth cannot be disregarded or not considered.

We further make note of the fact that the Appointing Authority is not without recourse in redressing an error in such matters, since the legislators of this Commonwealth in their wisdom provide a one year trial period for such public safety personnel, during which time such employees can be removed from employment without recourse to this Commission.

Kilmartin, *supra*.

For all of the reasons set forth above, Dr. Reade's opinion cannot be considered "reasonable justification" for disqualifying the Appellant. See City of Cambridge, *supra*. The Appellant has convincingly proven with facts that the opinions relied on for the bypass are untrue. See MacPhail v. Montague Police Department, 11 MCSR 308 (1998) citing Borelli v. MBTA, 1 MCSR 6 (1987) (Reasons which are untrue or incapable of substantiation are insufficient to support a bypass). The Respondent's failure to conduct a balanced psychological assessment violates basic merit principles and warrants the Commission's intervention. The bypass of the Appellant on the grounds of psychological disqualification was not "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." (citations omitted).

After considering all the credible and reliable evidence in the record, I conclude that the Boston Police Department did not have sound and sufficient reasons for bypassing the Appellant, Richard J. Savickas, for selection as a police officer in the City of Boston.

For all of the above stated reasons, the Appellant's appeal under Docket No. G1-07-51 is hereby *allowed*.

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission directs that name of the Appellant, Richard Savickas, be placed at the top of the eligibility list for original appointment to the position of Police Officer so that his name appears at the top of any current certification and list and/or the next certification and list from which the next original appointment to the position of Police Officer in the Boston Police Department shall be made, so that he shall receive at least one opportunity for consideration from the next certification for appointment as a BPD police officer. The Commission further directs that, if and when Richard Savickas is selected for appointment and commences employment as a BPD police officer, his civil service records shall be retroactively adjusted to show, for seniority purposes, as his starting date, the earliest Employment Date of the other persons employed from Certification # 260616. Finally, the Commission directs that the BPD may elect to require Richard Savickas to submit to an appropriate psychiatric medical screening in accordance with current HRD regulations (1) in the ordinary course of the medical examination process or (2) immediately upon receipt of a certification in which his name appears, as a condition to further processing of his application for appointment. In either case, such screening shall be performed, de novo, by qualified professional(s) other than Dr. Scott or Dr. Reade and all screening interviews shall be audio-video recorded.

Civil Service Commission,




Daniel M. Henderson,

Commissioner

By a 3-1 vote of the Civil Service Commission (Bowman-NO, Henderson-YES, Stein-YES and Taylor-YES, Commissioners), [Marquis Absent] on January 7, 2010.

A True Record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Brian E. Simoneau, Atty.
Tara L. Chisholm, Atty. (BPD)
John Marra, Atty. (HRD)

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

RICHARD J. SAVICKAS, JR.,
Appellant

v.

CASE NO: G1-07-371

BOSTON POLICE DEPARTMENT,
Respondent

OPINION OF COMMISSIONER STEIN CONCURRING IN RESULT

I concur in the conclusion that, based on the preponderance of the credible evidence, the Boston Police Department (BPD) had failed to sustain its burden of proof to justify the bypass of Mr. Savickas with “sound and sufficient reasons” consistent with basic merit principles and, therefore, Mr. Savickas’s appeal properly should be allowed. An otherwise qualified applicant cannot be bypassed for reasons that it did not substantiate as true before this Commission, as it was the burden of the BPD to have done.

I reach the same result as the Hearing Commissioner that, after appropriately consideration of the evidence proffered by the BPD, and properly weighed that evidence, along with the other evidence he found credible, the reasons proffered by BPD for bypassing Mr. Savickas did not meet the well-established test for sufficiency under basic merit principles, i.e., they were “untrue, apply equally to [selected candidates] are incapable of substantiation, or are a pretext for other impermissible reasons.” E.g., Borelli v. MBTA, 1 MCSR 6 (1988). See G.L.c.31, §1 (definition of “basic merit principles”). See generally, Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65 (2001) (“The [Civil Service] commission properly placed the

burden on the police department to establish a reasonable justification for the bypasses [citation] and properly weighed those justifications against the fundamental purpose of the civil service system [citation] to insure decision-making in accordance with basic merit principles the commission acted well within its discretion.”); MacHenry v. Civil Service Comm’n 40 Mass.App.Ct. 632, 635, 666 N.E.2d 1029, 1031 (1995), rev.den., 423 Mass. 1106, 670 N.E.2d 996 (1996) (noting that personnel administrator [then, DPA, now HRD] (and Commission oversight thereof) in bypass cases is to “review, and not merely formally to receive bypass reasons” and evaluate them “in accordance with basic merit principles”); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 577 N.E.2d 325 (1991) (“presumptive good faith and honesty that attaches to discretionary acts of public officials . . . must yield to the statutory command that the mayor produce ‘sound and sufficient’ reasons to justify his action”). See also, Bielawski v. Personnel Admin’r, 422 Mass. 459, 466, 663 N.E.2d 821, 827 (1996) (rejecting due process challenge to bypass, stating that the statutory scheme for approval by HRD and appeal to the Commission “sufficient to satisfy due process”)

As I have previously stated, however, I have reservations about the degree and manner in which it is necessary to rely on administrative notice of the testimony of BPD’s witness, Dr. Reade, and other evidence from the many prior appeals involving the same Appointing Authority and its same psychiatric evaluators. See Kavaleski v. Boston Police Dep’t, 22 MCSR 597, 613 (Concurring Statement) As in Kavaleski, such additional findings are not necessary to reach the conclusion that, on this record, Mr. Savickas’s alleged disqualifying psychiatric conditions, based on a smorgasbord of personality traits that Dr. Reade found problematic, are not credibly supported by

substantial evidence. As in the Kavaleski case, Mr. Savaickas (1) studied for and scored highly on the rigorous entry-level police officer civil service exam; (2) passed a rigorous background check by the BPD internal affairs division during which virtually all of the deficiencies raised by Dr. Reade were disclosed and investigated, yet none of them were raised as “red flags” or found disqualifying by any of the professional BPD officials who reviewed his file and who chose to make him an offer of employment, and (3) in this case, within the very same month that Dr. Reade found him disqualified to become an armed police officer, he had successfully passed an equivalently thorough psychiatric screening conducted on behalf of his then current employer, which cleared him for continued duty in his job of being an armed police officer. Virtually none of Dr. Reade’s so-called “opinions” are beyond the grasp of an ordinary person’s normal powers of observation and common sense and do not call for any specialized training as a psychiatrist. They certainly fall within the purview of a Hearing Commissioner to assay the credibility and weight to be given to such opinions and the alleged facts that support those opinions, taken together with all of the other credible evidence presented at the hearing..

Paul M. Stein
Commissioner

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
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RICHARD J. SAVICKAS, JR.,
Appellant

v.

G1-07-51

BOSTON POLICE DEPARTMENT,
Respondent

DISSENT OF CHRISTOPHER BOWMAN

I respectfully dissent.

The instant appeal involves an original appointment to the position of police officer in the Boston Police Department. The Appellant was bypassed for appointment because he was deemed psychologically unfit for appointment as a Boston police officer.

The Appellant has been interviewed by two mental health professionals contracted by the Boston Police Department. After interviewing the Appellant and reviewing the results of the written psychological tests that were administered to him, both of these professionals, including Dr. Julia Reade, have found the Appellant not to be an acceptable candidate for appointment.

Among the concerns that resulted from the interview with the Appellant (the first of which he attended in jeans and a t-shirt and the second of which he attended in track pants) was the fact that he minimized his actions when he spoke about prior aggressive or impulsive behaviors including a statement he made threatening to shoot a co-worker with his gun.

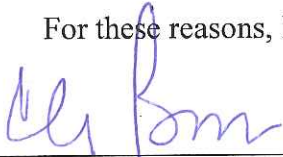
Dr. Reade testified about these concerns before the Commission. She is a Board Certified psychiatrist who has worked for the Department for 8-9 years conducting Second Level Psychiatric Interviews for police officer recruits. She is Board Certified in General Psychiatry

and Forensic Psychiatry and has extensive experience in Law and Psychiatry as well as Occupational Psychiatry.

The majority, in ruling against the BPD, disregards the findings and conclusions of these mental health professionals, including Dr. Reade, in large part because of the testimony of Dr. James Beck, who questions the overall usefulness of psychological testing as a tool for screening any candidates and the testimony of former colleagues.

The Boston Police Department bypassed the Appellant for sound and sufficient reasons based on valid policy considerations. The majority has inappropriately substituted its judgment for that of the Police Commissioner and ignored years of precedent-setting judicial decisions regarding psychological bypass cases.

For these reasons, I respectfully dissent.



Christopher C. Bowman
Chairman
January 7, 2010