

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 2010-1237-D

BOSTON POLICE DEPARTMENT

vs.

RICHARD SAVICKAS & another<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER ON  
CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS**

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The plaintiff, Boston Police Department (Department), brought this administrative appeal pursuant to G. L. c. 30A, § 14 and G. L. c. 31, § 44 from a decision by the Massachusetts Civil Service Commission (Commission) granting relief to the defendant, Richard Savickas (Savickas). The Department withdrew Savickas' conditional offer of employment when the Department's psychiatrists determined that Savickas failed the required psychological evaluation. Savickas appealed the Department's decision to the Commission, which ruled that the Department was not justified in bypassing Savickas and ordered the Department to reinstate Savickas' name to the eligibility list with the option to conduct a new psychological screening with different examiners. The Department moved under Massachusetts Rule of Civil Procedure 12(c) for judgment on the pleadings, requesting reversal of the Commission's decision in favor of Savickas. Savickas cross-moved for judgment on the pleadings. After reviewing the administrative record, the relevant law, and the parties' submissions, the plaintiff's Motion for Judgment on the Pleadings is **ALLOWED** and the defendant's Motion for Judgment on the Pleadings is **DENIED**.

<sup>1</sup> Massachusetts Civil Service Commission

## BACKGROUND

In June 2006, Savickas' name appeared on an eligibility list for employment with the Boston Police Department.<sup>2</sup> After completing the background portion of the application process, the Department extended to Savickas a conditional employment offer. The offer was contingent upon Savickas' successful completion of the Department's approved three-phase psychological screening procedure.<sup>3</sup>

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<sup>2</sup> The Department, specifically the Commissioner of the Boston Police Department and his duly appointed agents, is the "appointing authority" referred to in this memorandum of decision. G. L. c. 31, § 1. Under § 1, an appointing authority is "any person, board or commission with power to appoint or employ personnel in civil service positions."

<sup>3</sup> Under the Massachusetts Civil Service Law, the Department's employment decisions are supervised and regulated by the Personnel Administrator of the Massachusetts Human Resources Division (Division). See G. L. c. 31, § 5. Appointing authorities, such as the Department, seeking to conduct psychological screening procedures for entry-level public safety positions must first submit a written proposal of a psychological screening plan to the Division for approval by the Personnel Administrator. An appointing authority may not implement a plan until it receives the Personnel Administrator's approval. In 2004, the Department submitted and the Personnel Administrator approved the Boston Police Department Psychological Screening Plan (Plan).

Under the Plan, each candidate first undergoes a testing phase, in which the candidate participates in a group administration of two written, standardized psychological evaluations - the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and the Personality Assessment Inventory (PAI). The second phase of the Plan involves a thirty-minute interview with the Department's psychiatrist. The psychiatrist reviews "material from the background investigation, the candidate's mental history, test results, the biographical questionnaire" and conducts "a mental status examination of each candidate." Upon completion of the examination, the Department's psychiatrist creates a report "outlining the specific concerns" about the candidate, which report is then forwarded to the Department's second-opinion psychiatrist for further evaluation. In the third and final phase of the Plan, the second-opinion psychiatrist conducts an independent review of the candidate's application file and determines whether "there are areas available for further review." If so, the psychiatrist explores these issues with the candidate during a second clinical interview. After the third phase of the Plan is complete, the second-opinion psychiatrist makes "a final recommendation to the Appointing Authority as to the eligibility of the [candidate] to be hired [as] a police officer."

On August 26, 2006, Savickas completed Phase I of the Department's psychological evaluation by sitting for two standardized, written psychological examinations. On September 16, 2006, Savickas met with Dr. Marcia Scott, a consulting psychiatrist with the Department's Occupational Health Unit, for the Phase II clinical interview. After the interview, Dr. Scott submitted a report in which she documented a number of issues that arose during the interview warranting further exploration.

As documented in her report, Dr. Scott specifically found that the written psychological tests indicated Savickas "may have attempted to present an unrealistically favorable picture of his virtue and moral values." Additionally, Savickas' test results indicated high levels of "impulsivity, oversensitivity and dominance," as well as paranoia and antisocial thinking. During the phase II interview, Dr. Scott noted that Savickas saw "himself as a 'good guy' who is not responsible for his troubles." He was dismissive toward some of Dr. Scott's concerns about his past, including an incident in which he threatened violence to a coworker, a high school fight, and a minor vehicle infraction. In conclusion, Dr. Scott found that "Mr. Savickas' bravado reflects his insecurity and has led him to problems with relationships and aggression. He is vulnerable to overstepping in an effort to be dominant. He is likely to have relationship struggles especially in supervisory relationships and, due to an effort to be dominant and tendency to boundaries, could evoke unnecessary conflict." As a result, Dr. Scott determined that Savickas "would have difficulty making the judgments and performing the duties of an armed police officer."

Dr. Scott's report was forwarded to Dr. Julia Reade, the Department's second-opinion psychiatrist. On October 6, 2006, after reviewing Dr. Scott's report, Dr. Reade met with Savickas

and conducted the Phase III second-opinion psychiatric interview. In her post-interview report, Dr. Reade noted that Savickas' test scores "endorsed several critical items related to antisocial attitude, racing thoughts, persecutory ideas . . . dominance, resentment, anger, negative relationships and antisocial behaviors." During the interview, although Savickas discussed several past incidents involving aggression or impulsive behavior, he "repeatedly minimized his actions - dismissing them as insignificant lapses or 'stupid mistakes.'" At one point, while exploring a past work-related disciplinary action, Dr. Reade had to press Savickas to discuss the full nature of his indiscretion. Ultimately, he admitted that during the incident he "threatened to shoot a coworker with his gun." As she stated in her testimony at the hearing before the Commission, Dr. Reade's evaluation led her to conclude that 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." Dr. Reade concluded in her written report that 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. . . . [He] 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."

On November 22, 2006, relying on Dr. Reade's reported findings, the Department sent a bypass letter to the Personnel Administrator (Administrator) of the Massachusetts Human Resources Division (Division), stating its intention not to hire Savickas. The Administrator approved the Department's reasons for bypassing Savickas, and notified him of such in writing.

Pursuant to G. L. c. 31, § 2(b), Savickas filed an appeal to the Commission, requesting reversal of the Administrator's decision to accept Department's conclusion that he was psychologically unfit to become a police officer.

At a hearing conducted by the Commission, Savickas presented the testimony of Dr. James Beck, a certified psychiatrist. Dr. Beck testified that, after conducting an independent psychological evaluation of Savickas in March 2008, Savickas was "psychologically fit to serve as a Boston police officer" and that 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." His conclusion was based in large part on an extensive review of Savickas' work history and references. The evaluation, however, was not completed in accordance with the Department's Plan.<sup>4</sup> Savickas also presented the testimony of Mr. Steven Rubin and Mr. Vito Costa, his former work supervisors. Each testified to Savickas' competence and excellent work attitude.

On January 8, 2010, the Commission issued a decision allowing Savickas' appeal. In its decision, the Commission ordered the Department to place Savickas at the top of the Department's eligibility list and to extend him another employment offer subject to a fresh psychological interview conducted by a qualified professional other than Dr. Reade.<sup>5</sup> On January

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<sup>4</sup> In fact, Dr. Beck spent a significant portion of his testimony criticizing the Department's Plan and the manner in which Dr. Scott and Dr. Reade conducted their psychological evaluations of Savickas and other former candidates for appointment to the Department. The Commission made several factual findings in its decision noting Dr. Beck's criticisms.

<sup>5</sup> The Commission ordered that Savickas' name "be placed at the top of the eligibility list for original appointment to the position of Police Officer . . . so that he shall receive at least one opportunity for consideration from the next certification for appointment as a [Boston police officer]." The Commission further concluded that the Department "may elect to require

18, 2010, the Department filed a motion to strike and a motion for reconsideration with the Commission. The Commission denied the Department's motions on February 26, 2010. On March 26, 2010, pursuant to G. L. c. 30A, § 14 and G. L. c. 31, § 44, the Department filed a civil action in this court, requesting reversal of the Commission's decision.

### **DISCUSSION**

The Department asserts that the Commission's decision is based upon errors of law, unsupported by substantial evidence, arbitrary and capricious and otherwise not in accordance with the law. Its argument essentially is that the Commission abused its discretion by substituting its judgment for that of the Department by invalidating the Department's decision to rely on its psychiatrists' determinations about Savickas' psychological fitness to be a Boston police officer. The Department has sufficiently shown that the Commission overstepped the bounds of its authority by granting the relief it did to Savickas. Accordingly, the Commission's ruling is reversed.

#### **I. Standards of Review**

Pursuant to G. L. c. 30A, § 14(7), the court may reverse, remand, or modify an administrative agency's final decision where the decision is based on an error of law, is in excess of the agency's statutory authority, is arbitrary, capricious, or an abuse of discretion, or where the agency lacked substantial evidence to warrant the decision. Connolly v. Suffolk County Sheriff's Dep't, 62 Mass. App. Ct. 187, 192 (2004). The court's review must be confined to the

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[Savickas] to submit to an appropriate psychiatric medical screening in accordance with current [Division] regulations . . . as a condition to further processing of his application for appointment," but that 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."

administrative record. G. L. c. 30A, § 14(5). When reviewing the agency's action, the court may not substitute its judgment for that of the agency, Brackett v. Civil Service Comm'n, 447 Mass. 233, 241 (2006), but must grant due weight to the "experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14(7); Friends and Fishers of Edgartown Great Pond, Inc. v. Dep't of Environmental Protection, 446 Mass. 830, 836 (2006) (citation omitted). The burden of proving the invalidity of the agency's decision is on the party making the appeal. Lincoln Pharmacy of Milford, Inc. v. Comm'r of the Div. of Unemployment Assistance, 74 Mass. App. Ct. 428, 431 (2009).

The Commission, for its part, is responsible for determining "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." Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). Reasonable justification, in the context of the Commission's review of an appointing authority's decision, means "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 304 (1997) (citation omitted). The Commission, in reviewing an appointing authority's decision, is not free "to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority." Falmouth v. Civil Service Comm'n, 61 Mass. App. Ct. 796, 800 (2004) (citation omitted); see also Cambridge, 43 Mass. App. Ct. at 304-05 (stating that "[i]n the task of selecting public employees of skill and integrity, appointing authorities are invested with broad

discretion"). Rather, the Commission must "focus on the fundamental purposes of the civil service system - to guard against political considerations, favoritism, and bias in governmental employment decisions . . . ." Id. (citation omitted).

## **II. Abuse of Discretion**

The Department has met its burden of showing that the Commission abused its discretion in reversing its determination that Savickas is psychologically unfit to be a Boston police officer. Savickas' psychological evaluation consisted of independent interviews with two qualified psychiatrists in accordance with the Department's Psychological Screening Plan. The Plan was expressly approved by the Division in 2004 as a qualifying procedure for conducting psychological evaluations of candidates. As directed by the Plan, Dr. Scott and Dr. Reade concluded that Savickas is psychologically unfit based on a review of his application materials, the Department's background investigation of Savickas, his psychological test results, the clinical interviews, and their findings about his relevant psychological or behavioral characteristics. Furthermore, each doctor documented her specific findings justifying her decision. Dr. Scott found that Savickas demonstrated several serious, destructive behavioral characteristics and that he may struggle to properly respect the authority of his supervisors. Likewise, Dr. Reade noted that Savickas failed to be forthcoming with the details of his past disciplinary matters and had acted impulsively and aggressively in conflict situations in the past.

The Commission abused its discretion by failing to restrict its review to whether Dr. Scott and Dr. Reade followed the Department's approved Plan and whether the Department was reasonably justified in relying on their conclusions about Savickas psychological fitness. Instead, the Commission focused on the testimony of Dr. Beck, Mr. Rubin, and Mr. Costa in reversing



the Department's bypass decision. Dr. Beck's extensive opinion testimony does not undermine the justification for the Department's decision.<sup>6</sup> Furthermore, the testimony of Dr. Beck, Mr. Rubin, and Mr. Costa regarding Savickas' meritorious work history is not relevant to the Commission's determination. Savickas' employment record, however meritorious, could not displace the psychological testing and interviews conducted by Dr. Scott and Dr. Reade in accordance with the Department's approved Plan.

Both Savickas and the Commission refer to two decisions of this court - Boston Police Dep't v. Cawley, SUVC2006-5331-C (Mass. Super. June 30, 2008) (Lauriat, J.) and Boston Police Dep't v. Roberts, SUCV2008-4775-G (Mass. Super. December 30, 2009) (Roach, J.) - in arguing that the Commission appropriately rejected the Department's bypass decision. Both cases involved instances in which this court upheld the Commission's ruling to overturn the Department's bypass decision based on a candidate's psychological unfitness. However, in each case this court based its decision on the Commission's determination that the Department's psychiatrists held personal biases toward the candidate. In this case, the Commission made no factual finding that either Dr. Scott or Dr. Reade held a personal bias against Savickas, or that either based her conclusion that he is psychologically unfit on anything other than her professional opinion. Having in mind that the Commission cannot simply substitute its judgment

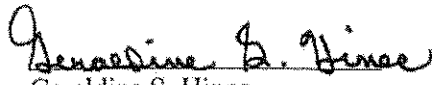
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<sup>6</sup> The Commission inappropriately relied on Dr. Beck's testimony regarding Savickas' psychological fitness to become a Boston police officer, as well as his testimony criticizing the Department's Plan, in making its determination whether the Department's decision to bypass Savickas for employment was reasonably justified. First, Dr. Beck performed his psychological examination of Savickas in March 2008, almost eighteen months after the Department conducted its evaluation. Second, as stated above, Dr. Beck did not comply with the Department's Division-approved Plan in conducting his evaluation. Third, Dr. Beck admitted to having little experience evaluating police department candidates for psychological unfitness, having pre-screened only six candidates for law enforcement positions in his entire career.

for that of the Department, Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. at 304, I am compelled to conclude that the Commission had no legally cognizable basis to reject the Department's decision to bypass Savickas.

**ORDER**

The plaintiff's motion for judgment on the pleadings is **ALLOWED**. The defendant's cross-motion for judgment on the pleadings is **DENIED**. Judgment shall enter vacating the decision of the Commission.

  
Geraldine S. Hines  
Justice of the Superior Court

Date: September 30, 2011

Noted SENT  
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