

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503

Boston, MA 02108

617-979-1900

JEFFREY SEMEXANT,

Appellant

G1-20-008

v.

BOSTON POLICE DEPARTMENT,

Respondent

Appearance for Appellant:

Jeffrey Semexant, *Pro Se*

Appearance for Respondent:

Tanya E. Dennis, Esq.

Assistant Corporation Counsel

City of Boston Law Department

One City Hall Square, Room 615

Boston, MA 02201

Commissioner:

Paul M. Stein

DECISION

The Appellant, Jeffrey Semexant, acting pursuant to G.L. c. 31, §2(b), appealed to the Civil Service Commission (Commission) from the decision of the Boston Police Department (BPD), to bypass him for appointment as a BPD Police Officer.¹ A pre-hearing conference was held on February 11, 2020 and a full hearing was held via video conference (Webex) on August 7, 2020, which was both digitally and audio/video recorded with a link to the recording provided to the parties.² The BPD filed a Proposed Decision on October 23, 2020 and Mr. Semexant filed a Post-Hearing Statement on October 22, 2020. For the reasons set forth below, Mr. Semexant's appeal is denied.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to use the recording to supply the court with the stenographic or other written transcript of the hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

FINDINGS OF FACT

Twenty-one (21) exhibits were introduced into evidence, nineteen (19) on behalf of the Respondent and two (2) on behalf of the Appellant. Based on the documents submitted and the testimony of the following witnesses:

Called by the BPD:

- Sergeant Detective John Puglia, Commander of Recruit Investigations, BPD
- Mary Flaherty, Director of Human Resources, BPD
- Detective Anthony Ortiz, Recruit Investigations Unit, BPD

Called by the Appellant:

- Jeffrey Semexant, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following facts:

Procedural Background

1. The Appellant, Jeffrey Semexant, was twenty-nine (29) years old when he first applied for the position of police officer with the Boston Police Department in April 2018. He graduated from Charlestown High School in 2007 and took courses thereafter at Mass Bay/Roxbury Community College from 2007-2010, although he has not earned a degree. (Respondent Exhibit 1).

2. On or about March 25, 2017, Mr. Semexant took the civil service examination for police officer. (Stipulated Fact).

3. On September 1, 2017, the state's Human Resource Division (HRD) established a list of eligible candidates for police officer. (Stipulated Fact).

4. In or about April 2018, Mr. Semexant signed Certification #05198 issued by HRD to the BPD for appointment of a class of BPD police officers and submitted a BPD Student Officer Application, along with the required documentation. (Respondent Exhibit 1)

5. Detective Ortiz was assigned to investigate Mr. Semexant's candidacy for the BPD in 2018. As a recruit investigator, he was responsible for investigating Mr. Semexant's background and documenting his findings in a Privileged and Confidential Memorandum (PCM). (Testimony of Ortiz; Respondent Exhibit 2).

6. Detective Anthony Ortiz is a sixteen (16)-year veteran of the Boston Police Department, assigned to the Domestic Violence Unit and detailed to the Recruit Investigations Unit as a recruit investigator. In his career as a detective, he has conducted over forty-five (45) recruit background investigations for the Recruit Investigations Unit. (Respondent Exhibit 18; Testimony of Ortiz).

7. As part of his background investigation of the Appellant, Detective Ortiz verified background information that Mr. Semexant provided in his Student Officer Application (Application) by interviewing his prior employers, educators, personal references and romantic partners. Detective Ortiz also obtained other information bearing on his candidacy, including but not limited to, criminal database queries, court records and police reports. (Respondent Exhibit 18).

8. On or about April 15, 2018, Mr. Semexant submitted his BPD application and Detective Ortiz reviewed his responses thereafter. Detective Ortiz then conducted a home visit to further observe Mr. Semexant in his own residential environment and verified the information that Mr. Semexant provided. (Testimony of Ortiz; Respondent Exhibit 18).

9. By letter dated November 7, 2018, Mary Flaherty, BPD Director of Human Resources, notified the Appellant that the BPD was bypassing him for appointment. (Respondent Exhibit 10).

10. On or about December 26, 2018, Mr. Semexant filed an appeal of the BPD's 2018 bypass decision with the Commission, Docket No. G1-19-009. (Respondent Exhibit 11).

11. On or about March 28, 2019, the Commission dismissed Mr. Semexant's appeal based on his voluntary withdrawal. (Respondent Exhibit 12).

12. On or about March 29, 2019, HRD, at the request of the BPD, sent Certification #06203 to the BPD. (Stipulated Fact).

13. Mr. Semexant reapplied for the position of BPD Police Officer, submitting his second application on or about June 2, 2019. (Respondent Exhibit 13).

14. Mr. Semexant was ranked tied for forty-eighth (48th) among those willing to accept employment. (Stipulated Fact).

15. Detective Melody Nash was assigned to provide an updated background investigation of Mr. Semexant's application, which she submitted on or about July 22, 2019. (Respondent Exhibit 14)

16. By letter dated November 15, 2019, Mary Flaherty, BPD Director of Human Resources, notified Mr. Semexant that the BPD was bypassing him for appointment. The November 15, 2019 bypass letter delineated the reasons and reads in part:

“As detailed herein, the Boston Police Department has significant concern with your work performance and untruthful responses in your application to be a Boston Police Officer. The Department is concerned with discrepancies in your 2018 and 2019 applications and information from previous employers.... Police officers must report for duty when expected and prepared to work. The discipline contained in your personnel files reflect negatively on your ability to complete these job-related responsibilities and your commitment to the position and deem you unsuitable for employment as a Boston Police Officer. Truthfulness is an essential job requirement for a police officer. When an officer is found to be untruthful, it damages the officer's ability to testify in future court proceedings.... As a result, the untruthfulness identified in your application as well as the other concerns detailed herein, deems you unsuitable for employment as a Boston Police Officer....

(Respondent Exhibit 15).

17. Of the one hundred twenty-one (121) candidates selected for employment by the BPD from Certification #06203, fourteen (14) were ranked below Mr. Semexant. (Stipulated Fact).

18. On or about December 28, 2019, Mr. Semexant filed his current appeal of the BPD's 2019 bypass decision with the Commission. (Claim of Appeal).

Appellant's Prior Employment History

19. Pursuant to the instructions on the application, every candidate is advised to "answer all questions asked of you truthfully, completely and to the best of your ability. Failure to do so may result in a 'Bypass' or non-selection from employment with the Boston Police Department." (Respondent Exhibits 1 & 13).

20. Additionally, on page 39 of the 2018 application (page 34 of the 2019 application), the Declaration of Acceptance states that a candidate is aware that willfully withholding information or making false statements will result in the rejection of the application. This Declaration of Acceptance acknowledges that all statements on the application are true and complete. (Respondent Exhibits 1 & 13).

21. In his 2018 application, Mr. Semexant answered "No" to Question 3 when asked "Have you ever received a written warning, been officially reprimanded, suspended or disciplined for any misconduct in the workplace, including but not limited to, use of accrued time and violation of a company policy or security rule?" (Testimony of Semexant; Respondent Exhibit 1).

22. Additionally, Mr. Semexant answered "No" to Question 4 in his 2018 application, which asked "Have you ever quit a job without giving proper notice?" (Testimony of Semexant; Respondent Exhibit 1).

23. Mr. Semexant worked for a security company from 2009 to January 2018. (Testimony of Ortiz; Respondent Exhibits 1, 18).

24. Mr. Semexant's personnel file was provided to Mr. Semexant by the security company at his request during the 2018 BPD application process and forwarded to Detective Ortiz. Within that

file, the security company provided copies of ten (10) instances of discipline from September 2010 through September 2014 for unexcused absences, tardiness, and failure to follow procedure. (Testimony of Ortiz; Respondent Exhibits 1, 4, 5, 18, 19; Appellant's Exhibit 21).³

25. Detective Ortiz contacted the security company to inquire about his work history and performance with that company. (Testimony of Ortiz; Respondent Exhibits 1, 18).

26. Detective Ortiz learned that Mr. Semexant was not eligible for rehire because he resigned without notice and had a record of disciplinary reports and violations of the attendance policy. This was in direct contradiction to Mr. Semexant's negative responses to Questions 3 and 4 on his Application. (Testimony of Ortiz; Respondent Exhibits 1, 2, 14 & 18).

27. Mr. Semexant resigned from the security company with no notice. He sent an email to his manager on January 14, 2018 stating that he was resigning effective that *same date*, January 14, 2018. (Respondent Exhibits 7, 18).

28. The security company suspected that Mr. Semexant resigned to avoid termination due to his poor work performance. Internal emails amongst management at the security company provided to the BPD reveal that the company believed that Mr. Semexant may have been alerted to the fact that he was going to be terminated, so it was the security company's belief that Mr. Semexant resigned before this could take place. (Respondent Exhibit 1).

29. Mr. Semexant knew that the security company believed that he was repeatedly not following company procedure by clocking in late and failing to clock out at the end of his shift, possibly leaving early, just prior to his resignation. (Testimony of Semexant)

30. Additionally, the security company completed a form that the BPD provided, entitled the Human Resource Data Form (Form), which was part of the 2018 BPD application. A human

³ Mr. Semexant signed for six (6) of the disciplinary reports signifying that he had received, at a minimum, those six. (*Exhs 20 & 21; Testimony of Appellant*)

resources employee at the security company filled out the form and wrote that: “we were having problems with [the Appellant] at the site and his attendance is bad.” She attached a letter to the form, dated April 13, 2018, which stated that during Mr. Semexant’s employment from February 1, 2010 to January 14, 2018, he quit with no notice and was out sick 17 times, was late to work 118 times, had 6 unexcused absences, and 1 no call/no show. (Respondent Exhibit 8, 18).

31. Detective Ortiz sent a follow-up email to the human resources employee on September 4, 2018 to get more information as to what her statement, that “we were having problems with [the Appellant] at the site and his attendance is bad,” meant. In her response-email dated September 4, 2018, she explained to the detective that the company was having problems with Mr. Semexant’s “attendance in that he would show up late and was leaving early without clocking out or telling anyone.” (Respondent Exhibit 1; Respondent Exhibit 18; Testimony of Ortiz).

32. On September 7, 2018, Detective Ortiz contacted Mr. Semexant via telephone to discuss the conflict between Mr. Semexant’s answers to Application Questions 3 and 4 and the information provided by the security company about the discipline he received and that he resigned without proper notice. During that phone conversation, Mr. Semexant admitted that he received *several warnings* for his attendance issues within the years he worked there because his schedule with the MBTA conflicted with this job. He told Detective Ortiz that he sent an email *two (2) weeks prior* to resigning from the security company. Detective Ortiz requested that Mr. Semexant submit an explanation in writing relative to his discipline and notice of resignation at that job. (Testimony of Ortiz; Respondent Exhibits 2, 18).

33. On September 7, 2018, Mr. Semexant sent Detective Ortiz an email which conflicted with the telephone conversation they had that same day. In the email, Mr. Semexant said that, in his long career with the security company, he received a *single warning* due to being tardy. He did not

remember the date, but he believed that it happened in 2014-2015 when his mother was terminally ill. He provided her end-of-life care. He ended the explanation with “JS 8-15-18”. This document was added to his April 2018 application in August 2018. (Testimony of Ortiz; Respondent Exhibits 9, 18).

34. At the Commission hearing, Mr. Semexant offered a new excuse for not mentioning his disciplinary record, claiming that he had only remembered “one or two” and did not inquire because “everything would be erased” in 30-60 days and it would “disappear.” (Testimony of Semexant).

35. Mr. Semexant is currently employed by the Massachusetts Bay Transportation Agency (MBTA), where he began working in 2014. In conflict with Mr. Semexant’s negative answer to Question 3 in his application regarding prior discipline, Detective Ortiz discovered that Mr. Semexant received written counselling on August 24, 2017 from the MBTA for 2-5 continuous unexcused absences in a 3-month period. An MBTA supervisor explained that the attendance program only allowed him to view the previous two years of his records. Mr. Semexant had twelve (12) protected and six (6) unexcused sick days off in a sixty (60) day period. There had been no attendance issues since the warning. (Testimony of Ortiz; Respondent Exhibits 1, 3, 18).

36. Mr. Semexant did not disclose his attendance issues at the MBTA on his April 2018 application. (Respondent Exhibit 1).

2018 Decision to Bypass Appellant

37. On or about September 20, 2018, a roundtable panel at the BPD convened to review Mr. Semexant’s 2018 application and discussed his suitability for employment. The members of the roundtable panel included the Deputy Superintendent of the Internal Affairs Division, the Commander of the Recruit Investigations Unit, the Director of Human Resources, and an attorney

from the Legal Advisor's Office ("Round Table"). (Testimony of Flaherty; Respondent Exhibit 19).

38. Detective Ortiz undertook the background investigation of Mr. Semexant and authored the Privileged and Confidential Memorandum (PCM) dated September 19, 2018 outlining the results of the investigation. He presented the details to the Round Table. Detective Ortiz did not give any input as to his opinion about the Appellant's suitability for the position. He only presented the findings of his investigation. (Testimony of Ortiz; Testimony of Flaherty; Respondent Exhibit 2).

39. Members of the Roundtable at the BPD considered the fact that Mr. Semexant's personnel file from the security company contained ten (10) instances of discipline from 2010 to 2014 for unexcused absences, tardiness, and failure to follow procedures. Further, the BPD also considered that Mr. Semexant had failed to give proper notice when he resigned from that job, resigning on the same day that he gave his notice. Members of the Roundtable also considered that the Appellant had received written counselling from the MBTA in August 2017 for 2-5 continuous absences in a three-month period. (Testimony of Flaherty; Respondent Exhibits 2, 3, 4, 10, 18, 19).

40. Members of the Roundtable considered the fact that Mr. Semexant, in contradiction with the personnel files received by the BPD investigator, as well as conversations with former employers, denied that he ever received discipline from his employer or that he had failed to properly resign from a prior job. Members of the Roundtable believed that Mr. Semexant had been untruthful in his responses to both Questions 3 and 4 in his application. (Testimony of Mary Flaherty; Respondent Exhibits 1, 7, 8, 19).

41. Members of the Roundtable concluded that Mr. Semexant was not suitable to perform the essential job functions of a police officer based on his untruthfulness. (Testimony of Flaherty; Respondent Exhibit 19).

42. Additionally, members of the Roundtable were concerned with Mr. Semexant's work history based on the ten (10) disciplinary reports in the security company y personnel file, his attendance records at the security company and the written counselling from the MBTA. (Testimony of Flaherty; Respondent Exhibits 10, 19).

43. Members of the Roundtable considered whether the prior employment history was stale, where the last written discipline occurred in September 2014 at the security company and September 2017 at the MBTA. Ultimately, members of the Roundtable determined that, because the extensive history of written discipline and the attendance violations for tardiness spanned his entire employment at the security company, Mr. Semexant's work performance was relevant and of great concern. (Respondent Exhibits 3, 4, 19).

44. Based on his untruthfulness and his poor work history, Mr. Semexant was bypassed for appointment as a Boston Police Officer and was notified via correspondence dated November 7, 2018. (Testimony of Flaherty; Respondent Exhibits 10, 19).

45. Prior to any evidentiary hearing, Mr. Semexant withdrew this appeal. (Respondent Exhibit 12)

2019 Decision to Bypass Appellant

46. On August 6, 2019, Detective Melody Nash presented Mr. Semexant's background investigation to the Round Table. Detective Nash's findings indicated no new issues regarding Mr. Semexant, noting, in particular, that he had not had any further attendance issues at the MBTA since 2017. (Respondent Exhibits 14, 19; Testimony of Flaherty).

47. Detective Nash also reported to members of the Roundtable that Mr. Semexant changed his answers to Questions 3 and 4 in his 2019 application from "No" (in 2018) to "Yes", and listed

the ten (10) disciplinary instances at the security company and the written counselling at the MBTA. (Testimony of Flaherty; Respondent Exhibits 1, 13, 14, 19).

48. It was also noted that Mr. Semexant's explanation for his answer to Question 4 in the 2019 application stated that he "resigned from [the security company] without giving proper two-week notice." (Respondent Exhibit 13).

49. Members of the Roundtable acknowledged the positive aspect of Mr. Semexant answering these two questions accurately and truthfully. However, the BPD remained concerned about Mr. Semexant's untruthfulness in his 2018 application just one year prior, his untruthfulness with Detective Ortiz in 2018, as well as the underlying facts disclosed about his prior poor work performance and attendance history. (Testimony of Flaherty; Respondent Exhibit 19).

50. Members of the Roundtable determined that Mr. Semexant was unsuitable to perform the essential functions of a Boston Police Officer based on his untruthfulness and poor work performance. (Testimony of Flaherty; Respondent Exhibit 19).

51. On November 17, 2019, the BPD notified Mr. Semexant that he had been bypassed for providing untruthful statements in connection with his 2018 application and his poor work performance. (Testimony of Flaherty; Respondent Exhibit 15).

APPLICABLE CIVIL SERVICE LAW

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

Original and promotional appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G.L.c. 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L.c.31, §27; PAR.08(4)

A person may appeal a bypass decision under G.L.c.31, §2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

“Reasonable justification . . . 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’”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”)

The governing statute, G.L. c. 31, gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary that the

Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) The commission “. . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority” but, when there are “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy,” then the occasion is appropriate for intervention by the commission.” Id. (*emphasis added*) See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct:

“Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”

Police Comm’r v. Civil Service Comm’n, 22 Mass.App.Ct. 364, 371, 494 N.E.2d 27, 32 rev.den. 398 Mass. 1103, 497 N.E.2d 1096 (1986).

The duty imposed upon a police officer to be truthful is one of the most serious obligations he or she assumes. “[P]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” Falmouth v. Civil Service Comm’n, 61Mass. App. Ct. 796, 801 (2004) citing City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (“The city was hardly espousing a position devoid of reason when it held that a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer.... It requires no strength of character to speak the truth when it does not hurt.”) See, e.g., Desmond v. Town of West Bridgewater, 27 MCSR 645 (2014); Ung v. Lowell Police Dep’t, 24 MCRS 567 (2011); Gallo v.

City of Lynn, 23 MCSR 348 (2010). See also Minoie v. Town of Braintree, 27 MCSR 216 (2014); Everton v. Town of Falmouth, 26 MCSR 488 (2013) and cases cited, aff'd, SUCV13-4382 (2014); Gonsalves v. Town of Falmouth and cases cited, 25 MCSR 231 (2012), aff'd, SUCV12-2655 (2014); Keating v. Town of Marblehead, 24 MCSR 334 (2011) and cases cited.

Providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” Kerr v. Boston Police Dep’t, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016) Moreover, a bypass letter is available for public inspection upon request, so the consequences to an applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L.c. 31, § 27, ¶2.

Thus, the corollary to the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness requires that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. See, e.g., Boyd v. City of New Bedford, 29 MCSR 471 (2016) (honest mistakes in answering ambiguous questions on NBPD Personal History Questionnaire); Morley v. Boston Police Dep’t, CSC No. G1-16-096, 29 MCSR 456 (2016) (candidate unlawfully bypassed on misunderstanding appellant’s responses about his “combat” experience); Lucas v. Boston Police Dep’t, 25 MCSR 420 (2012) (mistake about appellant’s characterization of past medical history).

ANALYSIS

The BPD established reasonable justification to bypass Mr. Semexant for appointment as a BPD police officer based on the preponderance of the evidence presented relative to his poor employment history that includes performance issues, a history of absenteeism, tardiness and failure to give proper notice of resignation, together with his lack of candor in providing information about his employment record.

First, the facts about Mr. Semexant's employment history are now largely undisputed. He had a history of tardiness with two employers. He resigned from the security company in 2018 without notice after learning that his termination was imminent. He is not eligible for rehire there. While his record of employment at the MBTA was only available for the two years prior to his 2018 BPD application, he had multiple unexcused absences during that period, including a written counselling in August 2017. Thus, this record contains undisputed evidence of sufficiently recent, problematic behavior that, alone, supports the BPD's conclusion that Mr. Semexant was not a suitable candidate for appointment as a BPD police officer in 2018 and remained unsuitable in 2019 for the same reasons.

Second, the BPD's reliance on Mr. Semexant's "untruthfulness" is a closer call. I credit Mr. Semexant (as did the BPD) for correcting his untruthful answers given in 2018 when he completed the 2019 application. If Mr. Semexant's original responses in 2018 were simply "honest mistakes", it would be unfair to penalize him for correcting those mistakes in a subsequent application. Here, however, there are too many errors, many of which related to very recent incidents or discipline of which he admitted he was aware, to conclude that they all were just "honest mistakes". Moreover, Mr. Semexant, in his testimony at the Commission hearing, demonstrated to me that he still has a tendency to "fudge the truth" about his employment history.

For example, he continued to revise his explanations about the attendance issues at the security company and at the MBTA during the Commission hearing.

Specifically, both the 2018 and 2019 BPD applications contain a section on employee discipline and ask, “Have you ever received a written warning, been officially reprimanded, suspended or disciplined for any misconduct in the workplace, including but not limited to, use of accrued time and violation of company policy or security rule?” Mr. Semexant answered “No” in 2018 and “Yes” in 2019. Mr. Semexant, however, continued to downplay the level of discipline, telling Detective Ortiz that he had “several” warnings from the security company, then emailing him that it had been only one warning. At the Commission hearing, Mr. Semexant testified that he did recall getting disciplined at the security company but he gave another explanation for not mentioning that discipline in his 2018 application, namely, he thought the discipline was supposed to be removed from his records after 30-60 days.

The security company personnel file, which Mr. Semexant had provided to the BPD, contains ten (10) instances of disciplinary reports from September 2010 through September 14, 2014 for unexcused absences, tardiness, and failure to follow procedure. Six of the disciplines contained his signature acknowledging receipt. I also credit Detective Ortiz testimony that Mr. Semexant never mentioned his discipline at the MBTA during the 2018 application process although the MBTA records reveal that he had received written counseling for multiple unexcused absences in three months just one year prior in 2017.⁴

⁴ At the Commission hearing, Mr. Semexant initially said that he did not initially mention the discipline at the MBTA because he believed it was covered by approved FMLA (Family Medical Leave). On cross-examination, Mr. Semexant was reminded that the discipline by the MBTA was in 2017, not 2014, and Mr. Semexant changed his response. He said his supplemental response to Question 6 concerned his answers about Northeast Security and that his MBTA absences were time he took off to help his father who was still dealing with his mother’s death but that he thought he still was covered under FMLA. (Testimony of Semexant; Respondent Exhibits 1 & 5)

Mr. Semexant's response to Question 4 is even more troubling. The question expressly asked, "Have you ever quit a job without giving proper notice?" Mr. Semexant responded "No" in 2018 and "Yes" on his 2019 Application. The undisputed fact is that, on January 14, 2018, Mr. Semexant notified the security company that he would be resigning from his position effective that *very same day*, January 14, 2018. During his telephone conversation with Detective Ortiz after he submitted his 2018 application, Mr. Semexant was asked about his resignation from [security company], specifically his "No" response to Question 4. In that phone conversation, Mr. Semexant failed to tell the truth to Detective Ortiz about his resignation, stating falsely that he gave two (2) weeks' notice to the security company via email, proved false by the actual email, sent less than a year earlier..

In sum, at the time of his 2018 and 2019 applications, the preponderance of the (largely undisputed) evidence of Mr. Semexant's poor employment history, with issues that related back barely a year or two, and his recent lack of candor about that history, proved that Mr. Semexant presented an unreasonable risk for appointment as a BPD police officer at that time. Mr. Semexant impressed me as sincerely passionate about his desire to become a BPD police officer. He must demonstrate, if he can, by his future employment record and improved candor, however, that he has overcome the problems that justified this bypass before the BPD can be expected to give him a fresh look.

CONCLUSION

For all of the above stated reasons, the bypass appeal of Jeffrey Semexant, under Docket No. G1-20-008, is *denied*

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Stein & Tivnan, Commissioners) on May 20, 2021.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Jeffrey Semexant (Appellant)

Tanya E. Dennis, Esq. (for Respondent)