

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

NANA SEREBOUR,

Appellant

v.

G1-22-131

BOSTON POLICE DEPARTMENT,

Respondent

Appearance for Appellant:

James Gilden, Esq.
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Sharon, MA, 02067-1230

Appearance for Respondent:

Joseph McClellan, Esq.
Boston Police Department
Office of the Legal Advisor
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Commissioner:

Angela C. McConney

SUMMARY OF AMENDED DECISION

The Commission denied the Appellant's bypass appeal, concluding that the Boston Police Department had reasonable justification to bypass the Appellant for original appointment as a permanent full-time police officer due to his criminal record and numerous driving infractions and violations.

AMENDED DECISION¹

On September 28, 2022, the Appellant, Nana Serebour (Mr. Serebour or Appellant), acting pursuant to G.L. c. 31, § 2(b), timely appealed to the Civil Service Commission

¹ The Commission issued the original decision on September 21, 2023. This amended decision corrects scrivener's errors **-noted in bold**.

(Commission) from the decision of the Boston Police Department (Respondent or Department), the Appointing Authority, to bypass him for appointment to the position of police officer in the Department (Department).

The Commission held a pre-hearing conference on October 18, 2022 via videoconference. On March 21, 2023, I conducted a full evidentiary hearing at the offices of the Commission, located at 100 Cambridge Street, Boston, MA.² I recorded the hearing via the Webex platform, which serves as the official recording of the hearing.³ On March 22, 2023, I sent copies of the video recording to both parties via electronic mail. The Appellant submitted his post-hearing brief on April 18, 2023. The Respondent submitted its post hearing brief on May 20, 2023, whereupon the administrative record closed.

FINDINGS OF FACT

I admitted 11 exhibits into evidence. I admitted the October 21, 2022 letter from the state's Human Resources Department (HRD) as Exhibit 12. I marked the Respondent's Pre-hearing Memorandum as "A" for identification. Based on the documents submitted, the witness testimony of:

Called by Department:

- Deputy Superintendent Philip Owens

Called by Appellant

- Nana Serebour, Appellant

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

³ Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Mr. Serebour is a 42-year-old African American male who resides in Boston. He holds an associate degree in electrical engineering. (Testimony of Serebour)

2. Mr. Serebour served as a private first class for the National Guard from 2016 to 2019, working as a “surface mechanic.” In May 2019, he assumed the dual roles of working in water treatment and serving in the honor guard. He is now a sergeant, with the responsibility of training six other soldiers in the performance of military funeral duties. (Exhibit 11)

3. In the past, Mr. Serebour worked more than one job on occasion. He worked as a security officer from June 2008 to September 2012, as a taxicab driver from June 2010 to March 2014, and as a concierge from May 2015 to October 2017. (Exhibit 11; Testimony of Serebour)

4. When he was 39 years old, Mr. Serebour took the civil service examination for police officer on June 28, 2021. On September 1, 2021, the state’s Human Resources Division established an eligible list for Boston Police Officer. On September 23, 2021, HRD issued Certification No. 09099 to the Department, from which it could appoint 115 permanent full-time police officers. Mr. Serebour ranked 41st on the certification. (Exhibit 12)

5. It is the Department’s practice to send out employment packets to the candidates who indicate that they will accept appointment, seeking information related to work history, residency, criminal offender registry information (CORI), interviews and references. The Department then convenes a roundtable with representatives from Human Resources, the Legal Department and detective investigators. (Testimony of Owens)

OUI and Subsequent Driving while License Suspended

6. On March 13, 2014 at 11:45 p.m., Mr. Serebour hit a telephone pole while traveling, causing his motor vehicle to turn 180 degrees and face eastbound in the westbound lane. The motor vehicle sustained major front-end damage. When the Watertown police arrived, they found Mr. Serebour standing outside the motor vehicle with no apparent injuries. He had already refused medical treatment after being evaluated by the fire department. A Watertown Police Officer Mark Donovan asked Mr. Serebour to walk over to the sidewalk so that he could question him. Mr. Serebour appeared unsteady on his feet, and his eyes were bloodshot and appeared drowsy. He denied any alcohol or drug use and denied smoking cigarettes or being a diabetic. Mr. Serebour denied speeding, and said that he had been traveling 40 mph. He said that he had been visiting a friend who was a concierge in a Cambridge apartment complex. (Exhibit 7)

7. As Officer Ryan Vaughan was preparing the motor vehicle for towing, he found an open bottle of alcohol in the back seat of the driver's side. The bottle was quarter-full. Mr. Serebour said that the bottle had been there, but he did not drink that night. (Exhibit 7)

8. Officer Donovan administered four field sobriety tests, and Mr. Serebour failed three of them. First, Mr. Serebour failed the one leg stand test twice. He then passed the Alphabet test. Before attempting the nine-step walk and turn test, Mr. Serebour was unable to stand with his heels together or his hands by his side. He leaned toward the left and had trouble keeping his balance. Mr. Serebour blew 0.111% on a blood alcohol content (BAC) test. (Exhibit 7)

9. Officer Donovan concluded that Mr. Serebour had been operating under the influence of alcohol and placed him under arrest. At the station, Mr. Serebour was advised of his rights and booked in the usual manner. Mr. Serebour agreed to submit to the breathalyzer test,

and provided breath samples of 0.096%. Sgt. Joseph Kelly informed Mr. Serebour that he had failed the test and issued him a Notice of Suspension for a Chemical Test Failure. Mr. Serebour's Massachusetts driver's license was suspended. (Exhibit 7)

10. Officer Donovan cited Mr. Serebour for OUI liquor (G.L. c. 90, §24), operating negligently (G.L. c. 90, §24), and driving with an open container (G.L. c. 90, §24I). (Exhibit 7)

11. Mr. Serebour was arraigned the next day, March 14, 2014, on the offenses of OUI liquor and operating negligently. On July 1, 2014, the negligent operating charge was dismissed, and Mr. Serebour received a one-year continuance without a finding (CWOFF) on the OUI liquor offense. (Exhibit 7)

12. Mr. Serebour testified that the evening of the March 13, 2014 incident was the first time he had ever imbibed alcohol. He stated that he was the designated driver for taking professional soccer player friends to a game because they knew that he did not drink alcohol. However, in celebration of the soccer victory, he had been goaded into drinking one glass of unknown brown liquor. He threw up immediately, left the celebration because he was embarrassed, and fell asleep while driving home. He stated that one glass was the only alcohol he consumed that night. He asserted that the quarter-full bottle of port bottle of wine found in the vehicle belonged to one of the soccer players. (Testimony of Appellant)

13. With his driver's license suspended for the March 13, 2014 incident, Mr. Serebour was driving in Watertown on July 24, 2014 at 2:34 a.m. When a Watertown Police Officer ran the motor vehicle's registration plate, he learned that the registered owner of the plate had a suspended license. Officer Menton pulled over Mr. Serebour and asked for his driver's license. Mr. Serebour produced a temporary paper license that had expired in June 2014. After Officer Menton confirmed that Mr. Serebour's license had been suspended, he advised Mr.

Serebour of his license status. Mr. Serebour said that his case had been closed with a CWOFF. He also said that he knew he should not be driving, but that he needed to go to Children's Hospital and could neither afford cab fare nor get a ride. (Exhibit 8)

14. Officer Menton arrested Mr. Serebour for operating a motor vehicle with a suspended license for an OUI (G.L. c. 90, §23). He was taken to the station and booked in the usual manner. Mr. Serebour was unable to post bail in the amount of \$500, so was released to the court the next day for arraignment. (Exhibit 8.)

15. **On July 24, 2014, Mr. Serebour was arraigned on the offense of operating a motor vehicle with a suspended license for an OUI. (Exhibit 8)**

16. On November 3, 2014, after a guilty finding, Mr. Serebour was committed to the house of correction for 60 days. Mr. Serebour remained under court supervision until September 2, 2015. (Exhibit 5)

17. The Appellant testified he knowingly drove with a suspended license because he had to visit his hospitalized daughter. (Testimony of the Appellant)

Other Driving Infractions for which Appellant was found Responsible

18. On March 21, 2008, Mr. Serebour failed to yield at an intersection (R). On June 10, 2009, Mr. Serebour was cited for failure to signal (R) and improper operation of a motor vehicle (R). Likewise, Mr. Serebour was found responsible for failing to wear a seatbelt on September 22, 2011. On October 25, 2011, October 21, 2012, and March 31, 2013, he was speeding in violation of a special regulation and found responsible. Mr. Serebour was later found responsible for a March 13, 2012 equipment violation. On October 22, 2017, Mr. Serebour was found responsible for speeding, a breakdown lane violation, and a marked lanes violation. (Exhibit 3)

19. Mr. Serebour was found responsible for speeding on March 18, 2018 while traveling to pick up a flag for a military funeral. (Exhibit 3; Testimony of Serebour)

20. In addition to the driving infractions and violations, Mr. Serebour had to attend six separate National Safety Council classes.⁴ Mr. Serebour attended the NSC classes on May 19, August 11 and October 20 of 2013, August 27, 2014, January 15, 2015, and June 11, 2019. Each NSC had a duration of eight hours. (Exhibit 3)

21. Mr. Serebour was also involved in surchargeable motor vehicle accidents on July 1, 2008, April 21, 2012, and March 6, 2013. (Exhibit 4)

22. On December 20, 2009, Mr. Serebour rear-ended a motor vehicle that was in the middle of a Dedham intersection. However, the road conditions were slippery, and only partially treated after heavy snow. The other vehicle had reversed into the intersection, having completed a U-turn after traveling the wrong way on a one-way street. (Exhibit 9)

23. At the time of the 2021 hiring cycle, the Department had a policy of automatically disqualifying candidates who had taken a NSC course within the last five years. Thus, Mr. Serebour's June 11, 2019 NSC class rendered him ineligible. (Testimony of Owens)

24. The Department bypassed Mr. Serebour. Mr. Serebour filed a timely appeal with the Commission. (Testimony of Owens)

25. In the interim, the Department decreased the NSC course automatic ineligibility window from five years to three years. The parties agreed that if Mr. Serebour withdrew his appeal from the Commission, the Department would allow him to present his application to the Department during the 2022 hiring cycle. The Commission issued a dismissal nisi on October 20,

⁴ <https://www.nsc.org/safety-training/defensive-driving/nsc-defensive-driving-courses/nsc-state-certified-defensive-driving-courses/massachusetts-ddc/massachusetts-rmv-approved-defensive-driving-cours>

2022, effective April 1, 2023. (Testimony of Owens)

26. Philip Owens became a Deputy Superintendent of the Department in 2022, and served on the 2022 roundtable reviewing the candidates on Certification #08099. (Testimony of Owens)

27. In accordance with the agreement to withdraw his Commission appeal for the 2021 bypass, Mr. Serebour's application was presented to the 2022 roundtable. Det. Anthony Cutone was assigned to conduct Mr. Serebour's investigation. (Testimony of Owens)

28. On or about December 2022, Det. Cutone presented the roundtable with a Privileged and Confidential Memorandum (PCM), containing a summary of Mr. Serebour's background investigation. After a review and discussion, the roundtable concluded that Mr. Serebour's application should not proceed. (Exhibits 2 and 11; Testimony of Owens)

29. The roundtable made the decision based on the totality of Mr. Serebour's driving record. They considered the fact that the Appellant had a continuance without a finding for operating under the influence, a guilty finding for driving with a license suspended for operating under the influence and had taken multiple NSC courses. (Testimony of Owens; Exhibits 2, 3-10)

30. The roundtable had concerns that the NSC had not had a remedying effect. Mr. Serebour underwent an NSC course as recently as June 11, 2019 despite his previous driving infractions, violations and five prior NSC courses. (Exhibits 3, 4 and 10)

31. Mr. Serebour's driving record was the worst among the candidates in the 2022 hiring cycle. (Testimony of Owens; Exhibits 4 and 10)

32. The Department notified Mr. Serebour of his bypass in a December 21, 2022 letter, enclosing his appeal rights. (Exhibit 1)

Applicable Law

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

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

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

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. *See, e.g., Falmouth v. Civil Serv. Comm’n*, 61 Mass. App. Ct. 796, 801 (2004), citing *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303-305, rev. den.,

428 Mass. 1102 (1997); *Police Comm'r v. Civil Serv. Comm'n*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

Analysis

By a preponderance of the evidence, I find that the Department had reasonable justification to bypass Mr. Serebour based on his driving history. Mr. Serebour's numerous driving infractions, violations and multiple NSC courses (totaling at least forty (40) hours), which failed to cure his behavior, gave the Department a reasonable justification to bypass his application for employment. The administrative record supports the Department's decision that Mr. Serebour is not a suitable candidate to serve as a Boston police officer.

On March 13, 2014, Mr. Serebour was arrested for operating under the influence, possession of an open container, and negligent operation of a motor vehicle. His driver's license was suspended. On July 1, 2014, the negligent operating charge was dismissed, and Mr. Serebour received a one-year continuance without a finding (CWOFF) on the OUI offense. On July 24, 2014,⁵ Mr. Serebour was arrested for operating a motor vehicle with a suspended license for an OUI, and was committed to the house of correction for 60 days.

At the time of the 2021 roundtable, the Department automatically excluded any candidate who had attended an NSC course within the immediately preceding five years. By the time Mr. Serebour's application was presented to the 2022 roundtable, an amended policy had reduced the five-year ineligibility window to three years. Thus, Mr. Serebour could qualify for appointment. Nevertheless, although he attended six NSC classes, each with a duration of eight hours, they failed to cure his problematic driving behavior.

⁵ **Scrivener's error: The September 21, 2023 Commission decision incorrectly stated June 24, 2014 as the date of the arrest for the July 24, 2014 arrest for operating with a license suspended for an OUI offense.**

The Commission has also ruled that a candidate's driving history should be considered in context and given appropriate consideration when the candidate operates a motor vehicle for a living. *See, e.g., Stylien v. Boston Police Dep't*, 31 MCSR 154 (2018); 31 MCSR 209 (2018). Furthermore, the Commission may decide whether there is a nexus among the candidate's prior poor conduct, the position applied for and the candidate's current abilities. *Morgan v. Boston Police Dep't*, 33 MCSR 131 (2020).

Here, there is a nexus between Mr. Serebour's driving history and the position applied for. As a police officer, the incumbent would be responsible for operating expensive Department vehicles. While he was a student, Mr. Serebour worked as a taxicab driver from June 2010 to March 2014. On October 25, 2011, October 21, 2012, and March 31, 2013, he was found responsible for speeding in violation of a special regulation; found responsible for an equipment violation on March 13, 2012; and was involved in surchargeable motor vehicle accidents on April 21, 2012 and March 6, 2013. On June 27, 2013, the RMV reported that he had failed to pay court fines and costs. Due to these infractions, Mr. Serebour was required to attend NSC classes three times in one year: on May 19, August 11 and October 20, 2013.

Mr. Serebour testified that most of his driving infractions took place during his tenure as a taxicab driver. However, Mr. Serebour was found responsible three times before he became a taxicab driver, and his most serious driving infractions leading to a criminal history did not occur while he was operating a taxicab. He also testified that he had no driving violations after his last NSC class in 2019. That is true but does not allay the Department's concerns about his driving history. *Rodrigo Montemor v. Lawrence*, 33 MCSR 303 (2020).

The undisputed testimony in the record – that the “totality” of Mr. Serebour's driving record was the “worst” of any candidate hired by the Department, compels the Commission to

affirm the roundtable's decision to bypass Mr. Serebour, notwithstanding his clean driving record since 2018, the positive qualities this minority candidate and military veteran possesses, and his keen desire to become a Boston Police Officer.

However, it would be remiss of me not to state that, had the roundtable's position been more thoroughly probed, a viable claim of disparate treatment could have emerged. Here, Mr. Serebour had just one serious brush with the law in 2014 – an OUI dismissed on a CWOFF and driving later that year while his case was pending and his license suspended to see his daughter in the hospital, which led to a sixty-day incarceration. He has no OUIs or criminal infractions since and was stopped for speeding just twice thereafter (once while taking a flag to a military funeral).

Conclusion

Accordingly, the Boston Police Department's decision to bypass Nana Serebour for the position of police officer is affirmed. The appeal filed under Docket No. G1-22-131 is hereby ***denied.***

CIVIL SERVICE COMMISSION

/s/ *Angela C. McConney*

Angela C. McConney, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on September 21, 2023.

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:

James Gilden, Esq. (for Appellant)

Joseph McClellan, Esq. (for Respondent)