

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02111

(617) 979-1900

PEDRO SILVA,

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

Docket Number:

G1-23-222

Appearance for Appellant:

Pro Se

Pedro Silva

Appearance for Respondent:

Omar Bennani, Esq.

Boston Police Department

Office of the Legal Advisor

One Schroeder Plaza

Boston, MA 02120

Commissioner:

Angela C. McConney

SUMMARY OF DECISION

The Civil Service Commission upheld the Boston Police Department's decision to bypass the Appellant based upon his work history, criminal history and lack of good judgment.

DECISION

On October 27, 2023, the Appellant, Pedro Silva (Mr. Silva or Appellant), filed a timely appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 31, § 2(b). The appeal challenged the September 13, 2023 decision by the Boston Police Department (BPD) to

bypass the Appellant for the position of permanent full-time police officer.¹ As reasons therefor, the BPD cited Mr. Silva's work history, criminal history, including an open matter, and his lack of good judgment.

The Commission conducted a remote pre-hearing conference on December 5, 2023. On January 31, 2024, I held an evidentiary hearing at the offices of the Commission located at 100 Cambridge Street, Suite 200, Boston, Massachusetts. The hearing was audio/video recorded via Webex and copies of the recording were provided to the parties.² On March 4, 2024, the parties filed proposed decisions, whereupon the administrative record closed.

FINDINGS OF FACT

I admitted six exhibits from the BPD (R Exhibits 1-6) and five exhibits from the Appellant (A Exhibits 1-5). I admitted the October 27, 2023 bypass appeal form as A Exhibit 6. I admitted the December 1, 2023 Human Resources Division (HRD) communication to the Commission and the prepared stipulations as Joint Exhibit 1 (J Exhibit 1).

Based upon the documents submitted and the testimony of the following witnesses:

Called by the BPD:

- Deputy Director of Human Resources Teori Shaw-Boyce, Boston Police Department
- Detective William Kelley, Recruit Investigations Unit, Boston Police Department

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. §§ 1.01, et seq., apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and 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.

Called by the Appellant:

- Pedro Silva, the Appellant

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

1. On June 25, 2021, Pedro Silva passed the civil service examination to become a police officer. (J Exhibit 1; Testimony of Appellant)

2. Mr. Silva attended community college and obtained an associate's degree in criminal justice in 2015. (R Exhibit 5; Testimony of Appellant)

3. On June 25, 2021, Mr. Silva took and passed the civil service examination for police officer. (Stipulated Fact)

4. On August 6, 2021, the state's Human Resources Division (HRD) established the eligible list for Boston Police Officer. (Stipulated Facts)

5. Between September 2022 and January 2023, HRD issued Certification No. 08848 to the Department, upon which Mr. Silva was ranked 80th among those willing to accept appointment. (Stipulated Facts)

6. The Department ultimately appointed 140 candidates for appointment, 80 of whom were ranked below the Appellant. (Stipulated Facts)

7. On October 27, 2023, the Department notified the Appellant of the reasons for bypassing him for appointment. This timely appeal to the Commission followed. (Stipulated Facts)

Employment History

8. Mr. Silva began working as a security officer for a private security company in 2015 and took the police officer examination in 2017. He left that position with proper notice and in good standing. (R Exhibit 5; Testimony of Appellant)

9. In January 2017, Mr. Silva began working as a special police officer for another private security company. He was assigned to patrol two buildings located in a public housing development in the South End neighborhood of Boston. (R Exhibit 5; Testimony of Appellant)

10. Each shift, Mr. Silva filed a report for the two buildings that he patrolled. One evening in August 2021, the property manager at the public housing development noticed that the daily report did not match the record of Mr. Silva's patrol and complained to the private security company. (R Exhibit 5; Testimony of Appellant)

11. The housing authority management did not like how Mr. Silva had conducted a patrol, and the private security company offered him the "out" of blaming his supervisor. When Mr. Silva refused to do so, the private security company terminated him. (R Exhibit 5; Testimony of Appellant)

12. Mr. Silva began working as an armed guard for another private security company in September 2021. He was assigned to the Department of Transitional Assistance (DTA)'s Chelsea office. Mr. Silva reported to Capt. Brian Wilson. (R Exhibit 5; Testimony of Appellant)

13. Mr. Silva and a co-worker for the private security company (Mr. A) had a strained relationship at work. Cpt. Wilson had asked Mr. Silva "to keep an eye on" Mr. A due to his unsatisfactory work performance. When Mr. Silva asked Mr. A to "clock in" to his shift, Mr. A told him that he was not his supervisor. (R Exhibit 5; Testimony of Appellant)

14. On March 9, 2022, Chelsea police officers reported to the DTA Chelsea office after Mr. A accused him of pointing a firearm at him in the bathroom. When the officers arrived, Mr. A stated that the Appellant pulled his firearm out of its holster and pointed it at his face, before lowering the firearm and returning it to his holster. (R Exhibit 5; Testimony of Appellant)

15. Mr. Silva informed the officers that he had gone to the bathroom, and was unloading the firearm by clearing the chamber when Mr. A walked in. Mr. Silva told the responding officers that his firearm was not loaded at the time of the incident, and denied ever pointing it at Mr. A. (R Exhibit 5; Testimony of Appellant)

16. After Mr. A identified the Appellant in the parking lot, the officers arrested Mr. Silva and transported him to the Chelsea Police Department for booking. (R Exhibit 5; Testimony of Appellant)

17. As the police officers were leaving, the Chief Operating Officer and Cpt. Wilson approached. Cpt. Wilson said that Mr. Silva had called him and stated that he had pointed a gun at Mr. A. The COO informed the officers that loaded firearms were not allowed in the building, and as a result Mr. Silva was terminated immediately. (R Exhibit 5; Testimony of Appellant)

18. In its termination letter to Mr. Silva, the private security company wrote:

On March 9, 2022 [private security company] was made aware of an accusation made against you by another [private security company] Officer that you drew your firearm on him in a state facility bathroom. When confronted by Captain Wilson about the matter you made several conflicting statements. The continued and deliberate misrepresentation in this matter posed an immense legal liability to your employer and is a clear example of willful omission of pertinent details, insubordination, violation of safety rules and unsatisfactory conduct.

(R Exhibit 5; Testimony of Appellant)

19. On March 10, 2022, Mr. Silva was arraigned on the charge of assault and battery with a dangerous weapon (G.L. c. 265, §15B(b)) in the Chelsea Division of the Boston Municipal Court. (R Exhibit 2)

20. As a result of the criminal charge, Mr. Silva was deemed unsuitable and his license to carry a firearm (LTC) was suspended. Mr. Silva surrendered his firearms to Northeast Ballistic Services for safekeeping. (Exhibit 5, Testimony of Appellant)

21. On March 30, 2023 the charge against Mr. Silva was dismissed for lack of prosecution. (Exhibit 5, Testimony of Appellant)

Bypass of Mr. Silva

22. On or about September of 2022, Mr. Silva submitted his Recruit Officer Application (Application) to the Department. (R Exhibit 1)

23. Det. William Kelly has been partially detailed to the Recruit Investigations Unit (RIU) since 2020. When RIU Commander Sgt. Det. John Puglia assigned him to conduct Mr. Silva's background investigation, it was Det. Kelly's fourth hiring cycle of being involved in the recruitment process. (R Exhibit 5; Testimony of Kelly)

24. Det. Kelly performed the standard database checks, and spoke to Mr. Silva's neighbors, personal references, employers and schools. Within the application, Mr. Silva disclosed that he had been terminated from a job. In response to the question requesting further information, he wrote, "08/15/2021 I don't remember what the reason was, [private security company]" and "03/09/2022 I was terminated from [private security company] because I was accused by a coworker that I had pointed my firearm at him, which was not true but however because of that I was arrested by Chelsea Police". (R Exhibit 1; Testimony of Kelly)

25. When Det. Kelly contacted the second private security company referenced in the Appellant's application, he was informed that it was not within company policy to discuss employees' record at work. However, he was able to contact Mr. Silva's former supervisor at this company who gave the Appellant a strong recommendation. (Exhibit 5, Testimony of Kelly)

26. When he contacted his most recent employer, the private security company that had assigned him to the Chelsea DTA office, the company provided Det. Kelly with Mr. Silva's termination letter. Det. Kelley then contacted Cpt. Wilson, who not only provided a strong reference for Mr. Silva, but was unsure if the incident in question had ever occurred. (Exhibit 5; Testimony of Kelly)

27. Det. Kelley also reached out to the Chelsea Police Department and received a copy of the incident report from March 9, 2022. (Exhibit 5, Testimony of Kelly)

28. Det. Kelley opined that as a veteran police officer, having handled firearms his entire career, even if Mr. Silva's version of events was true, he exhibited poor judgment in his unsafe handling of his firearm. (Testimony of Kelley)

29. On February 23, 2023, he submitted a Privileged and Confidential Memorandum (PCM) to Commander Puglia and Teri Shaw-Boyce, Deputy Director of Human Resources. (R Exhibit 5; Testimony of Kelly)

30. On or about February 24, 2023, Det. Kelley presented his PCM to the Department roundtable, which included Commander Puglia and Dep. Dir. Shaw-Boyce. After making his presentation, Det. Kelly left the room and the roundtable decided whether to advance Mr. Silva's application. (Testimony of Kelly)

31. The roundtable discussed the PCM, Mr. Silva's terminations, the then-open criminal charge for assault and battery with a dangerous weapon (G.L. c. 265, §15B(b)), and his poor judgment. (Testimony of Shaw-Boyce)

32. Dep. Dir. Shaw-Boyce expressed concern at the roundtable discussion that the Appellant exhibited poor judgment, and that hiring an individual with a suspended license to carry (LTC) because he had been deemed "unsuitable" would present a liability for the Department. (Testimony of Shaw-Boyce)

33. As of the date of the roundtable and the date of this evidentiary hearing, Mr. Silva's LTC was still suspended. (Testimony of Shaw-Boyce)

34. Upon discussion and review of the entire PCM, including Mr. Silva's employment history and the criminal charges, the roundtable decided to bypass Mr. Silva. (R Exhibit 6; Testimony of Shaw-Boyce)

35. On September 13, 2023, the BPD notified Mr. Silva of his bypass for original appointment to the position of police officer, referencing its "significant concern with your work and criminal history and your judgment." The letter cited Mr. Silva's open criminal case docket based on allegations that occurred while he was on duty as a security officer and led to his termination; and a separate security job from which he was also terminated after a disagreement with management. Further, the letter concluded that police officers "are required to provide sound judgment and have the ability to render decisions quickly," while Mr. Silva's conduct and inability to conduct himself in a reasonable manner consistent with the laws render him "unsuitable for employment for employment" as a Boston police officer. (R Exhibit 6)

APPLICABLE CIVIL SERVICE LAW

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

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

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

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

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

ANALYSIS

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

Det. Kelley's investigation was reasonably thorough and detailed, and he provided Mr. Silva with the opportunity to provide information and explain his statements on the application. I find that he conducted a fair investigation.

It is undisputed that Mr. Silva was terminated from two security positions and had an open criminal matter at the time of the February 2023 roundtable meeting. In fact, his scheduled January 2023 trial date had been continued to March 2023.

The Commission has consistently held that to uphold a bypass based on a candidate's prior misconduct, an appointing authority must show a nexus between the past misconduct and the candidate's *present* ability to perform the duties and responsibilities of a civil service position. *See Finklea v. Boston Police Dep't*, 30 MCSR 93 (2017) (unanimously concluding that the BPD failed to show a nexus between the Appellant's admission to receiving stolen property 14 years prior and his current ability to serve as a police officer); *Finklea v Civil Service Commission and Boston Police Department*, No. 1784CV00999 (Suff. Sup. Ct., Feb. 5, 2018) (affirmed as to this point); *Morgan v. Boston Police Dep't*, 33 MCSR 131 (2020) (unanimously concluding that the BPD failed to prove a nexus between the Appellant's criminal conduct 16 years prior and his current ability to serve as a police officer); *Teixeira v. Department of Correction*, 27 MCSR 471 (2014) (unanimously concluding that DOC failed to show a nexus between the Appellant's criminal conduct from 20 years prior and his current ability to perform

the duties of a Correction Officer); *Stylien v. Boston Police Dep't*, 31 MCSR 154, 209 (2018) (overturning bypass based on a lack of evidence, and consequent failure to indicate a pattern of criminal behavior or poor driving habits).

Applied here, the Department rightfully places considerable weight on Mr. Silva's arrest and subsequent charge for assault and battery with a dangerous weapon even though those charges were ultimately dismissed. Rather than solely rely on the Appellant's criminal record, Det. Kelley obtained additional information related to the underlying alleged misconduct. He reached out to the Appellant's former employer and obtained the Appellant's termination letter wherein it alleged that the Appellant's conduct to have been "[a] clear example of the willful omission of pertinent details, insubordination, violation of safety rules, and unsatisfactory conduct." (R Exhibit 4, Testimony of Det. Kelley).

The Appellant adamantly denies the conduct underlying his criminal charge. Rather, the Appellant testified that he had merely performed a "safety check" of his firearm in the bathroom when Mr. A walked in. Standing alone, portions of the Appellant's testimony regarding what occurred while he was employed at this private security company are plausible and cast doubt on what actually occurred.

Based on the Appellant's own testimony, he was inspecting a loaded firearm in a bathroom when anyone could walk in. The COO of the private security company terminated Mr. Silva immediately when he learned of the incident because of the potential legal liability to his company.

Further, the Department was justified in considering the fact that the Appellant's LTC was, and still remained, suspended in relation to this incident. The Department stated that being able to properly handle a firearm and being suitable to possess an LTC are key requirements in

order to perform the essential job duties of the position. Accordingly, the Department gave considerable weight to the Appellant's current LTC suspension and judgment in handling his firearm.

Lastly, I find that the Department was justified in giving weight to the fact that the Appellant had been twice terminated from his employment as a security officer, due to concerns with his judgment and conduct. Viewed in totality with the other information provided, the Department had reasonable justification to support its concern that the Appellant, at the time he was being considered for appointment, lacked the good judgment necessary for performing the job duties of the position.

I find that the Boston Police Department was reasonably justified in bypassing Pedro Silva for all of the reasons contained in the bypass letter.

CONCLUSION

For all of the above reasons, the appeal filed under Docket No. G1-23-222 is hereby *denied*.

Civil Service Commission

/s/ Angela C. McConney
Angela C. McConney
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey and McConney, Commissioners [Stein, absent]) on July 25, 2024.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 C.M.R. 1.01(7)(l), the motion must identify a clerical or mechanical error in the 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:

Pedro Silva (Appellant)

Omar Bennani, Esq. (for Respondent)