

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MICHAEL W. SITAR III,
Appellant

v.

G1-15-119

CITY OF LAWRENCE,
Respondent

Appearance for Appellant:

Pro Se
Michael W. Sitar III

Appearance for Respondent:

Nicholas J. Dominello, Esq.
Deutch Williams Brooks
Derensis & Holland, P.C.
One Design Center Place
Suite 600
Boston, MA 02110

Commissioner:

Christopher C. Bowman¹

DECISION

On June 11, 2015, pursuant to G.L. c. 31, § 2(b), Michael W. Sitar III (Mr. Sitar), filed an appeal with the Civil Service Commission (Commission), challenging the decision of the City of Lawrence (City) to bypass him for original appointment to the position of Firefighter in the City's Fire Department. On July 7, 2015, I held a pre-hearing conference at the offices of the Commission. A full hearing was conducted at the same location on August 31, 2015.² All witnesses, with the exception of Mr. Sitar, were sequestered. The full hearing was digitally

¹ The Commission acknowledges the assistance of Law Clerk Demetrios Spanos in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

recorded and both parties received a CD of the proceeding³. At my request, the parties made closing arguments in lieu of submitting post-hearing briefs.

FINDINGS OF FACT

Thirteen (13) exhibits were entered. Based on the documents submitted, the testimony of the following witnesses:

Called by the City:

- Frank Bonet, Director of Personnel, Human Resources for the City of Lawrence;

Called by Mr. Sitar:

- Michael W. Sitar III, Appellant;
- Nicole Sitar (previously Nicole Fairweather), wife of Mr. Sitar (previously girlfriend);
- Peter Torchio, Detective Sergeant, Boston University Police Department;

Called by Human Resources Division (HRD):

- Regina Caggiano, HRD, Deputy Director of the Civil Service Unit;

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

1. Mr. Sitar is thirty-one (31) years old and currently lives in Tewksbury. He has been married to Nicole Fairweather⁴ since 2009 and has two (2) children, including one (1) child from a prior relationship who is twelve (12) years old. (Testimony of Mr. Sitar)

³ If there is 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 he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, these CDs should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

⁴ To avoid confusion, Nicole Fairweather is referred to as “Ms. Fairweather” throughout this decision even though she is now married to Mr. Sitar and has changed her last name to Sitar.

2. Mr. Sitar has a long lineage of firefighters in his family including his father who formerly served as a Captain in the Tewksbury Fire Department and is now the Chief of the Tilton Northfield Fire District in New Hampshire. (Testimony of Mr. Sitar)
3. Mr. Sitar graduated from Tewksbury Memorial High School. He attended Middlesex Community College for two (2) years and then transferred to Emerson College. Prior to obtaining a bachelor's degree, he left Emerson College to attend the Tewksbury Police Academy. (Testimony of Mr. Sitar)
4. From 2005 to 2008, Mr. Sitar worked as a dispatcher for the Tewksbury Police Department. (Testimony of Mr. Sitar)
5. When Mr. Sitar began working for Tewksbury in 2005, his mother, Melanie Sitar⁵, was also employed by Tewksbury. Ms. Sitar oversaw employee benefits in Tewksbury's Administrative Services Department. His father was also serving as a Tewksbury Fire Captain at the time. (Testimony of Mr. Sitar and Exhibit 11)
6. In her capacity overseeing employee benefits, Ms. Sitar processed her son's application for individual health insurance benefits with Blue Cross / Blue Shield through the Town of Tewksbury in 2005. (Testimony of Mr. Sitar)
7. Mr. Sitar (the Appellant) was also elected to the Tewksbury School Committee in 2006 and served a three (3)-year term, until April 2009. (Testimony of Mr. Sitar)
8. In 2007, a paternity judgment entered against Mr. Sitar regarding his son from a prior relationship which required Mr. Sitar to pay child support and provide health insurance for his son. (Testimony of Mr. Sitar)

⁵ Mr. Sitar's mother, Melonie G. Sitar passed away in 2014.

9. Upon the paternity judgment entering, Mr. Sitar went to his mother and changed his individual health insurance plan in Tewksbury to a family plan to cover his son. (Testimony of Mr. Sitar)
10. In May 2008, Mr. Sitar was appointed as a reserve police officer in Tewksbury. Later that year, in October 2008, he was appointed as a permanent, full-time police officer in Tewksbury. (Testimony of Mr. Sitar)
11. Prior to marrying Nicole Fairweather in May 2009, Mr. Sitar and Ms. Fairweather had a long-term dating relationship. (Testimony of Mr. Sitar and Ms. Fairweather)
12. Mr. Sitar and Ms. Fairweather were engaged to be married on December 31, 2007. Around this time, Ms. Sitar and Ms. Fairweather discussed that, when they became married, Mr. Sitar would be able to add Ms. Fairweather to his family health insurance plan with Tewksbury. (Testimony of Mr. Sitar)
13. It is undisputed that the Town of Tewksbury, at all times relevant to this appeal, did not offer health insurance benefits for domestic partnerships.
14. Ms. Fairweather graduated from UMASS Lowell in December 2007. While enrolled at UMASS Lowell, she received health insurance through MassHealth. Those MassHealth benefits continued after she graduated. (Testimony of Ms. Fairweather)
15. It is undisputed that, on February 19, 2008, approximately one (1) year prior to their marriage, Ms. Fairweather was added to Mr. Sitar's family health insurance plan with the Town of Tewksbury. (Stipulated) The circumstances surrounding how this change came about is central to the underlying issue regarding the instant appeal.

16. On or around late February 2008 or early March 2008, Ms. Fairweather, who was Mr. Sitar's fiancée at the time, was handed a Blue Cross / Blue Shield card by Melanie Sitar, Mr. Sitar's mother. (Testimony of Ms. Fairweather)
17. Prior to being handed the Blue Cross / Blue Shield membership card, Ms. Fairweather was unaware that Ms. Sitar had taken any action to add her to Mr. Sitar's health insurance plan with Tewksbury. (Testimony of Ms. Fairweather)
18. Ms. Fairweather was "confused" as to how she could have been added to Mr. Sitar's health insurance plan with Tewksbury prior to marrying Mr. Sitar. (Testimony of Ms. Fairweather)
19. Shortly after Ms. Sitar received the Blue Cross / Blue Shield card from Ms. Sitar, she brought this to the attention of Mr. Sitar. (Testimony of Ms. Fairweather)
20. Mr. Sitar was also "confused" about how Ms. Fairweather could have been added to his health insurance plan prior to the two marrying. (Testimony of Mr. Sitar)
21. Mr. Sitar and Ms. Fairweather subsequently spoke with Ms. Sitar together. When they asked Ms. Sitar how Ms. Fairweather could be added to his health insurance plan prior to their marriage, they were told "don't worry; it's all set" by Ms. Sitar. (Testimony of Mr. Sitar)
22. For the next approximately fifteen (15) months, while Mr. Sitar and Ms. Fairweather were not married, Ms. Fairweather was listed as a dependent on Mr. Sitar's health insurance plan. During that time period, Ms. Fairweather utilized those benefits at least once. (Testimony of Ms. Fairweather)
23. In May 2009, Mr. Sitar and Ms. Fairweather were married. (Testimony of Mr. Sitar and Ms. Fairweather)

24. On June 1, 2009, Mr. Sitar received a letter from a Fraud Investigator for Blue Cross / Blue Shield of Massachusetts, stating that they needed verification of the eligibility of his dependent, Nicole Fairweather. (Testimony of Mr. Sitar and Exhibit 13)
25. The June 1, 2009 letter from Blue Cross / Blue Shield was addressed to Mr. Sitar and stated in relevant part:
- “As part of a Blue Cross and Blue Shield eligibility audit, I am writing to you to request verification of the eligibility of the dependent(s) under BCBSMA policy. Please indicate, by checking the appropriate information below, your relationship to the following dependent listed on your policy: Nicole Sitar ...” (Exhibit 13)
26. The June 1, 2009 letter allows the subscriber (Mr. Sitar) to check one (1) of four (4) responses including: 1) eligible spouse (with marriage date); 2) divorced or legal separation; 3) Domestic partner; and 4) other. (Exhibit 13)
27. The June 1, 2009 letter requires the subscriber (Mr. Sitar) to sign the response with the following disclaimer:
- “I hereby certify that information provided above is true and accurate. I further agree to inform Blue Cross Blue Shield of Massachusetts immediately of any changes in this information. I understand and agree that the information will be used to determine whether my dependent is entitled to health care coverage. If I misrepresent or provide false or incomplete information, my membership may be terminated at the discretion of Blue Cross Blue Shield of Massachusetts.”
- (Testimony of Mr. Sitar, Exhibit 13)
28. Mr. Sitar brought the June 1, 2009 letter to his mother and asked her what he should do.
- (Testimony of Mr. Sitar)
29. Mr. Sitar was told by his mother that she (Ms. Sitar) would take care of it. Upon hearing this, Mr. Sitar left the letter with his mother. (Testimony of Mr. Sitar)
30. Exhibit 13 contains a copy of the June 1, 2009 letter that I infer was returned to Blue Cross / Blue Shield. There are markings next to two (2) options on the letter: “eligible spouse” with

a marriage date of 5/2/09 and “domestic partner.” The letter contains a signature of “Michael Sitar III” followed by a back slash (/) and the initials of Mr. Sitar’s mother. (Exhibit 13)

31. Sometime in July 2009, Mr. Sitar was questioned by the Tewksbury Police Chief about his involvement in having Ms. Fairweather added to his health insurance plan prior to their marriage. Specifically, Mr. Sitar was asked when he first became aware of the change in his insurance policy. Mr. Sitar told the Tewksbury Police Chief that he became aware that Ms. Fairweather had been added to his health insurance plan when Ms. Fairweather showed him the Blue Cross / Blue Shield card that had been given to her by Mr. Sitar’s mother. Mr. Sitar was placed on paid administrative leave pending an investigation. (Testimony of Mr. Sitar)
32. An investigative report by the Tewksbury Police Chief dated July 27, 2009 stated in relevant part that: “I find by a preponderance of the evidence presented that on February 19th, 2008, Melanie Sitar went on the BCBSMA Website and fraudulently entered her son’s (Michael Sitar III) girlfriend (Nicole Fairweather) as his spouse under Michael Sitar’s III Health Insurance Policy thereby making her eligible to receive health insurance coverage and benefits that she was not entitled to under Michael Sitar’s III plan and under Massachusetts state law.”⁶ The Police Chief’s investigative report also stated in relevant part that, “Melanie Sitar admitted that neither her son (Michael Sitar III) nor his girlfriend (Nicole Fairweather) had contacted her regarding the change. (Exhibit 13)
33. According to the investigative report, the Police Chief was told by the District Attorney that he was not inclined to prosecute Ms. Sitar “so long as Melanie Sitar was removed from her office and that she paid restitution in an amount that was agreeable to the Town of Tewksbury.” (Exhibit 13)

⁶ There is nothing in Massachusetts state law that prohibits insurance carriers from providing benefits to those engaged in domestic partnerships. As previously referenced however, Tewksbury does not provide such domestic partnership benefits to its employees.

34. In a letter dated July 16, 2009, Melanie Sitar penned a letter to the Tewksbury Town

Manager stating:

“It has come to my attention that there have been allegations regarding the status of my son Michael W. Sitar’s health insurance. Apparently there have been allegations of misconduct regarding the start date of my daughter in laws health insurance. My son in no way had any knowledge of any thing related to the status of his health insurance. I was the person who enrolled Nicolle Fairweather on to his policy. Michael was not aware of this at all. As a point of clarification I was under the assumption that as they were living together and had made financial and legal decisions that qualified as a domestic partner under Massachusetts law. My son was already paying for the family plan. There was no intent what so ever to defraud the Town or Blue Cross Blue Shield. As I am ultimately responsible for this action intentional or not, I am the one who will take responsibility for this.

Please find a check made out to the Town of Tewksbury for monies that the Town feels are owed to them for the difference in cost for the period of time.

I will reiterate my original statement by saying my son nor my daughter in law were knowledgeable of this. Also as a point of further clarification there has been many times that I have signed and put my initials in place of many signatures that were required but could not have the original sign them. Any of these instances were clearly documented and had my initials after them.

In closing let me say that I never had the intention to defraud the Town or its tax payers. As I was writing this I received a call from Chief Donovan requesting that I speak with him regarding this issue.

As I will continue to say no one other than my self had anything to do with this. As such I am terminating my employment with the Town effective immediately. As I will continue to say Michael had nothing what so ever to do with this and he had no knowledge until today that this was what had transpired. It goes without saying that I am the one that will take the full responsibility of this action.”

Ms. Sitar enclosed a check for \$1850 with the letter. (Exhibit 13)

35. On July 31, 2009, the Town of Tewksbury, after completing its own internal investigation, rejected Ms. Sitar’s resignation and launched discharge proceedings against her. (Testimony of Mr. Sitar and Exhibit 11)

36. In August 2009, Mr. Sitar, during his probationary period, resigned his position as a police officer from the Town of Tewksbury. Part of the reason for tendering his resignation was that his father was a candidate for the position of Chief of a Fire and Rescue District in New

Hampshire and Mr. Sitar wanted to stop “the noise” and ensure that this issue did not “distract” from his father’s candidacy. (Testimony of Mr. Sitar)

37. Since resigning from Tewksbury, Mr. Sitar has been employed as a campus police officer at Emerson College and as a campus police officer with Boston University, where he has been employed for over four (4) years. (Testimony of Mr. Sitar)

38. On April 26, 2014 and July 15, 2014, Mr. Sitar took the two (2)-part civil service examination for firefighter and received a score of 97. (Stipulated Facts)

39. On March 3, 2015, Mr. Sitar was required to complete an application for the firefighter position listing his employment experience, references, educational and/or military training, special skills and qualifications, certification and release form, and finally a CORI request form. (Exhibit 6)

40. On February 27, 2015, Mr. Sitar was ranked ninth (9th) on Certification No. 02615 and one (1) of the candidates subsequently appointed was ranked below Mr. Sitar, thus creating a “bypass”. (Stipulated Facts)

41. Frank Bonet is employed with the City of Lawrence as the Human Resources Personnel Director. He has served in that capacity for eleven (11) years and previously served in a similar capacity for the City’s School Department for six (6) years. (Testimony of Frank Bonet)

42. As part of the background investigation regarding Mr. Sitar, Mr. Bonet did an online search, which showed various news articles regarding Ms. Sitar’s termination from the Town of Tewksbury and the reasons behind it. (Testimony of Mr. Bonet)

43. After reviewing the news articles, Mr. Bonet contacted a member of the Tewksbury Board of Selectmen and inquired about Ms. Sitar’s termination. That selectman, whose name Mr.

Bonet cannot remember, could not offer any information beyond what was referenced in the news articles. (Testimony of Mr. Bonet)

44. Mr. Bonet did not contact Tewksbury's Town Manager, Police Chief or any other professional staff in Tewksbury regarding Ms. Sitar's termination and/or any investigation that may have been conducted regarding the matter. Further, Mr. Bonet never spoke with Mr. Sitar to inquire about the allegations against his mother and/or his involvement in the matter. (Testimony of Mr. Bonet)

45. Based solely on his review of the news articles from his online search, Mr. Bonet decided to recommend to the City's Mayor, who is the Appointing Authority, to bypass Mr. Sitar for appointment as a firefighter. (Testimony of Mr. Bonet)

46. When Mr. Bonet met with the City's Mayor, they discussed the contents of the news articles and both concluded that Mr. Sitar must have known at the time that his mother had erroneously added his fiancée to his family health insurance plan. Mr. Bonet also gave weight to the fact that the matter had been referred to the District Attorney's office. (Testimony of Mr. Bonet)

47. On May 1, 2015, Mr. Bonet drafted a bypass letter for the Mayor's signature, which was sent to the Human Resources Division for approval. (Exhibit 2)

48. The letter stated:

"Dear Ms. Caggiano:

The purpose of this letter is to notify you that I bypassed Mr. Michael Sitar for appointment to the position of Firefighter for the City of Lawrence.

The reason for this bypass is because of my concerns of Mr. Sitar's integrity while working for the Town of Tewksbury in his capacity of Police Officer. I've reached the bypass conclusion based on the following information provided to me, which was revealed during a background check of this individual, by the Lawrence Personnel Department.

An audit of the Town of Tewksbury healthcare personnel records revealed that former Town employee Melanie Sitar (mother of Michael Sitar) added his girlfriend to Michael's healthcare plan months before the two were married.

Melanie and her son, Michael Sitar III, were both town employees before the scandal resulted in her termination and his resignation.

According to Town Manager David Cressman, the Town was notified by Blue Cross / Blue Shield on July 15, 2009 of the possible irregularities to its health insurance program enrollment. Cressman and Tewksbury Police Chief ... Donovan initiated an investigation of the irregularities.

On July 15, according to Cressman, Melanie Sitar reimbursed the Town \$1850 and tendered her resignation.

The Town continued its investigation and notified Sitar on July 30 that it was commencing discharge proceedings. On July 31, the Town officially terminated her employment. On July 29, 2009, Michael Sitar III, resigned from the Tewksbury Police Department. Michael's connection to this matter had not been made public until the findings of the audit were concluded.

Michael had been a Tewksbury Police Officer for less than a year. He had worked as a permanent and reserve dispatcher for the Tewksbury Police Department since roughly 2006. He also held public office in town, serving one term on the School Committee. He won his seat in an uncontested race in 2006. He pulled and returned nomination papers for reelection in 2009, but pulled out of the race just prior to Election Day.

The audit, performed by the accounting firm of Powers & Sullivan, reviewed a random sampling of the 451 personnel changes and transactions that occurred between January 1, 2007 and July 15, 2009. It revealed that Melanie amended Michael's health plan, and classified her son's girlfriend as his spouse, in February 2008. Michael and his girlfriend did not marry, however, until May of 2009. Michael knew of the amended plan and so did his girlfriend.

Mr. Sitar's credibility is in question. As you know, there are specific rules, laws, and regulations that address the issues of who is eligible for health insurance for public employees. More importantly is that Mr. Sitar benefitted from his position and his family members position while thieving (through benefits) from the taxpayers. The Commonwealth and many health insurance plans do not recognize or authorize domestic partners as eligible participants on a subscriber health-insurance policy.

The City of Lawrence will not consider applicants who do not demonstrate maturity, responsible behavior and sound decision making skills, for hire. The personal characteristics and values that I feel are deemed essential to performing the duties and responsibilities of a Firefighter include the following: honesty; integrity; personal ethics; compliance with laws, rules, regulations and orders; dependability; good judgment; self-control; interpersonal skills;

respect for others; respect for diversity; and teamwork. An applicant's prior conduct is an indication of whether the applicant possesses these personal characteristics and values.

....

Sincerely,

Daniel Rivera
Mayor & CEO

...." (Exhibit 2)

49. The City of Lawrence is one (1) of the seven (7) civil service fire departments in Massachusetts still subject to a consent decree to bring about parity in minority hiring.
50. When a vacancy requisition is filed with the state's Human Resources Division (HRD) by an appointing authority, a list of candidates is forwarded to the appointing authority consistent with the provisions of Personnel Administration Rule .09, which requires that the referral contain enough names to reflect at least twice the number of vacancies plus one ($2n + 1$). Additionally, for referrals in a consent decree community, one minority candidate is certified first, followed by the names of three non-minority candidates.
51. If a consent decree community appoints individuals other than those ranked highest on the Certification, they are required to submit sound and sufficient reasons to HRD for review and approval. HRD reviews those reasons with plaintiffs' counsel in the Beecher case and then notifies the appointing authority and the bypassed candidate if the bypass is approved. Bypassed candidates then have sixty (60) days from the date of notification of the bypass approval to file an appeal with the Commission.
52. Regina Caggiano is employed with the Human Resources Division as the Deputy Director, Organizational Development Group and Civil Service. She has served in that position for six

(6) years. She was Assistant Director, Organizational Development Group and Civil Service, for ten (10) years prior. (Testimony of Ms. Caggiano)

53. On June 4, 2015, Ms. Caggiano from the Human Resources Division approved the bypass and notified the applicant that the bypass reasons were approved. (Exhibit 3)

54. HRD relies on the cities and towns to conduct background investigations to support the bypass reasons. Ms. Caggiano was not aware of the limited nature of the background investigation here and does not consider an online search of news articles to be a thorough background investigation. (Testimony of Ms. Caggiano)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16

Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Beverly citing Cambridge at 305, and cases cited. "It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree." Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

Analysis

As referenced above, the analysis here needs to consider both whether the City conducted an "impartial and reasonably thorough review" as well as assessing the "legitimacy and reasonableness" of the reasons for bypass.

The City's review process here was shockingly deficient, relying almost entirely on information contained in news articles and then representing to HRD that the information contained in the bypass letter was "revealed during a background check of this individual by the Lawrence Personnel Department." While technically true, the Mayor failed to inform HRD that the "background check" which produced this information was limited to an online search of news articles.

The City failed to inquire with anyone who had reliable first-hand information regarding how Mr. Sitar's girlfriend was added to his health insurance plan prior to their marriage. The City could have, but didn't, speak with Tewksbury's Town Manager, the Police Chief who conducted the investigation, the Personnel Director --- or Mr. Sitar himself.

Mr. Bonet's testimony before the Commission was, at best, eyebrow-raising. He was unable to remember the name of the Tewksbury Selectman that he contacted and then spoke about the seriousness of the matter being referred to the District Attorney's office, without even knowing if Mr. Sitar was ever part of that referral. Apparently, that wasn't clear to Mr. Bonet from his review of online news articles.

Public officials who undertake "background investigations" of candidates for public employment must do so with a degree of seriousness and professionalism. The written findings submitted to HRD, and then the Commission, are public records that will be tied to the candidate for a lifetime. If those findings are purely the result of what the background investigator gleaned from reviewing news articles, then he/she has a moral obligation to state that, instead of leaving the reader with the impression that the information was independently obtained or verified through a competent background investigation.

The Commission's review, however, includes a *de novo* hearing in which the Commission may review additional information to support the bypass reasons that may not have been available at the time of bypass. Here, as part of the *de novo* review, *Mr. Sitar* submitted the investigative report completed by the Tewksbury Police Chief; he testified on his own behalf; and offered the testimony of his now-wife.

Based on Mr. Sitar's own testimony and that of Ms. Fairweather, Mr. Sitar knew that his mother had added his then-girlfriend to his family health insurance plan several months prior to

their marriage, despite the fact that Tewksbury does not provide domestic partnership benefits to its employees.

Even assuming that Mr. Sitar and his girlfriend at the time met the definition of domestic partners for insurance purposes (they did not live together at the time), there are several problems with Mr. Sitar's argument that he simply relied on his mother's assurance that everything was "all set", as discussed in detail below.

First, at the time that Mr. Sitar became aware that his girlfriend had been added to his Town health insurance plan, he was no stranger to obtaining and modifying health insurance. He first signed up for an individual health insurance plan with Tewksbury when he was appointed as a dispatcher. Then, after a paternity judgment entered that ordered him to cover his son from a prior relationship, Mr. Sitar complied with the order and had his individual plan changed to a family health insurance plan. Clearly, Mr. Sitar was aware that it took a court order to obtain coverage for a child that did not involve a marriage.

Second, even Mr. Sitar, during his testimony before the Commission, acknowledged that he and his then-girlfriend discussed that she could be added to his Town health insurance plan *after* they got married, only reinforcing that Mr. Sitar was aware that such a change could not occur before they were married.

Third, at the time his girlfriend was added to his health insurance plan, Mr. Sitar was a police officer and elected member of the School Committee. As such, it is reasonable to expect that he would – or should – engage in a minimum degree of due diligence to independently verify that the change was permitted under the Town's health insurance plan, beyond accepting his mother's assurance that everything was "all set."

Fourth, and most troubling, is the letter that Mr. Sitar was sent from Blue Cross / Blue Shield regarding the audit. The plain language of that letter stated that *Mr. Sitar* was required to complete the questions asked in the letter, sign it and return it to Blue Cross / Blue Shield. Mr. Sitar failed to comply with the audit's instructions. Instead, he turned the letter over to his mother to complete and return to Blue Cross / Blue Shield. Not only did Mr. Sitar fail to follow the audit's instructions, but, by handing this letter off to his mother, I have concluded that he decided to avoid responsibility and to have his mother face the consequences for an action that he knew was wrong – adding his girlfriend to his health insurance plan prior to their marriage. Instead, Mr. Sitar should have followed the audit's instructions, answered the questions truthfully, signed the document and returned it to Blue Cross / Blue Shield. Failing to do so calls into question Mr. Sitar's ability to be forthright and honest, two (2) characteristics that Lawrence has a right to expect of its firefighters.

For these reasons, notwithstanding the deficiencies in the review process here, the preponderance of the evidence establishes that the City has reasonable justification to bypass Mr. Sitar for the position of firefighter.

Conclusion

The City's decision to bypass Mr. Sitar for firefighter is affirmed and his appeal under Docket No. G1-15-119 is hereby ***denied***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, Stein and Tivnan, Commissioners) on October 29, 2015.

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)(l), 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:

Michael Sitar III (Appellant)

Nicholas Dominello, Esq. (for Respondent)

Michael Downey, Esq. (for HRD)