

COMMONWEALTH OF MASSACHUSETTS

Decision mailed: 9/23/11  
Civil Service Commission 03

SUFFOLK, ss.

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

CHRISTOPHER SOLBO,  
Appellant

v.

Docket No. G1-11-189

DEPARTMENT OF CORRECTION,  
Respondent

Appellant:

Christopher Solbo  
*Pro Se*

Respondent's Representative:

Jeffrey S. Bolger  
Department of Correction  
P.O. Box 946  
Industries Drive  
Norfolk, MA 02056

Commissioner:

Daniel M. Henderson

**DECISION**

Pursuant to the provisions of G.L. c. 31 § 2(b), the Appellant, Christopher Solbo (hereinafter "Solbo" or "Appellant"), filed an appeal regarding the Department of Correction's (hereinafter "DOC" or "Appointing Authority") decision to bypass him for original appointment to the position of Correction Officer I. The reason given for bypass was an "unsatisfactory CJIS report", more specifically an unsatisfactory criminal history and driver's history. The Appellant filed a timely appeal at the Civil Service Commission, (hereinafter "Commission"). A full hearing was held on August 4, 2011 at the offices of the Commission. The full hearing was digitally recorded and 1 CD was made of the proceeding. A copy of the CD was provided to the parties. The parties submitted post-hearing briefs.



## **FINDINGS OF FACT**

Nineteen (19) exhibits and a stipulation of facts were entered into evidence. Based upon the documents entered into evidence and the testimony of:

*For the Appointing Authority:*

- Alexandra McInnis, Director of Personnel Department of Correction;

*For the Appellant:*

- Christopher Solbo, Appellant
- “SS”, Appellant’s wife
- Karen Veccione, Appellant’s mother in law

### **I make the following findings of facts:**

1. The Appellant, Christopher Solbo is a resident of Foxboro, MA. He is an Army veteran who served in Iraq (Exhibit 7).
2. Mr. Solbo is currently employed as an armed security guard. He possesses a license to carry Firearms (Exhibit 19 and testimony of Appellant).
3. On September 26, 2009, an examination was held for the position of Correction Officer I (Stipulated Facts).
4. Mr. Solbo passed the examination with a score of Vet. 88% (Stipulated Facts).
5. On February 8, 2010, the Division of Human Resources established an eligible list for the title of Correction Officer I (Stipulated Facts).
6. On October 12, 2010, an eligible list, certification # 4010033, was issued for Correction Officer I (Stipulated Facts).
7. On the Certification, Mr. Solbo was ranked 165<sup>th</sup> among those willing to accept employment (Stipulated Facts).



8. The Department of Correction did not appoint Mr. Solbo, but instead bypassed him (Stipulated Facts).
9. The bypass reason stated by the DOC in a May 6, 2011 letter to the Appellant was “Unsatisfactory CJIS report”, a criminal history check. (Stipulated Facts, Exhibit #2).
10. The Appointing Authority conduct a CJIS report on each applicant. Solbo’s CJIS report revealed that he had been arrested and/or charged with Domestic Assault and Battery. In addition, the Appellant had been the subject of numerous Motor Vehicular offenses, and had been found responsible for some of them. (Exhibits 4 and 6; Testimony of McInnis).
11. It is the Department of Correction’s practice to bypass any applicant whose CJIS report reflects an arrest for Assault and Battery within the past five years, unless there was a not guilty finding (Testimony of McInnis).
12. The DOC did its criminal background check (“CJIS”) on December 3, 2010; the Appellant’s CJIS report indicated that as of 8/17/10 he had a non-renewable Driver’s license indefinite (Exhibit 6).
13. Applicants for Correction Officer must have a current and valid Massachusetts Class D Motor Vehicle License. (Testimony of McInnis).
14. The Appellant’s arrest and arraignment for assault and battery in Wrentham District Court on September 17, 2009, his non-renewable driver’s license status, and his numerous motor vehicle offenses were all the concerns that founded the DOC’s decision to bypass the Appellant as unsuitable. (Testimony of McInnis).
15. The seven essential duties of a Correction Officer common to all incumbents of this series include but are not limited to: maintain custodial care and control of inmates by



escorting or transporting inmates under restraints ..., remaining vigilant and observing conduct and behavior of inmates ...to prevent violence, disturbances, suicides, escapes..., developing working cooperative relationships with inmates, prepare reports regularly and upon specified occurrences in order to have accurate and updated information available, respond to emergency situations ..., perform related duties such as visitor screening, carrying and operating firearms, two-way radios and alarm and safety apparatus ... (Exhibit 14)

16. The DOC did not have the Appellant's submitted hearing Exhibits 15 through 19, at the time that the bypass decision was made. (Testimony of McInnis).
17. The Appellant testified at the hearing before the Commission. He denied that he had committed Assault and Battery on his wife. He instead offered the alibi that he was on Drill with the Army National Guard at Camp Edwards, Cape Cod at the time of the alleged offense. He testified that he was present at the Drill from Friday, September 11, 2009 at 0800 hours until Sunday, September 13, 2009 at 1700 hours. He produced an e-mail copy of a memorandum of record from Commander Marc F. Harris, SFC, MA ARNG in support thereof (Testimony of Appellant; Exhibit 18)
18. The Appellant also submitted into evidence a certified copy of the criminal docket 0957CR002554, Wrentham District Court, for the offense of c. 265§ 13A(a), Assault and Batter, with the date of offense is Monday, September 14, 2009. The matter was arraigned on September 17, 2009 and disposed of on December 16, 2009 when it was dismissed without prejudice upon the request of the Defendant and the alleged victim. (Exhibit 16).



19. The Appellant's now wife was the alleged victim of the assault and battery. She testified that the Appellant did not hit her or assault her on that date. She explained that she was at home with her toddler son on the date of the alleged assault. While sitting on a chair and smoking out of the window, she fell asleep, fell off of the chair and down the stairs - causing a black eye and abrasion to her chin. She was tired from having "serious trouble sleeping about 3 or 4 nights". Several days later, she appeared in Wrentham District Court as a defendant in an unrelated matter. The judge inquired about her obvious injuries. She answered: "It was domestic" trying to sound smart, meaning domicile this happened at home..." (Exhibit 15). The judge then referred her to a court employee in order to be interviewed. She was then questioned by the police prosecutor assigned to the court, which then led to a complaint and the issuance of an arrest warrant for the Appellant. She also testified that the Appellant was away on mandatory Drill from Friday, September 11, 2009 until Monday September 14, 2009. (Testimony of "SS", Exhibits 15 and 16)

20. The Appellant's wife submitted a copy of hand written document entitled North Attleboro Police Department -Witness Statement, dated June 3, 2011. I find that this document amounts to a self-serving, self-created document attempting to explain away the circumstances of the Assault and Battery complaint and arrest warrant for the Appellant. She admits that a "court officer", her lawyer and the judge spoke with her regarding her injuries in the court room and in a private room in the court house before issuing the assault and battery complaint and arrest warrant for the Appellant on September 17, 2009. (Exhibit #15)



21. This written statement is a belated self-serving statement, to deflect blame away from the Appellant. It is dated nearly nineteen (19) months after the offense and approximately a month after the date of the bypass letter from the DOC. There is no documentary evidence that it was actually filed at the North Attleboro Police Department on that date, nor the purpose for which it was filed. I believe that SS created this document as “evidence” for this Commission appeal. This document is attributed no weight and no authenticity by me. (Exhibits, Testimony of SS, Exhibit 15)

22. SS is a small, thin nervous person. Her eyes dart and avert contact. She testifies as if her subsequent explanations would be believed simply because she is stating it presently. She tries to elicit sympathy by testifying for example; that when she was interviewed in court “...I started to cry.” Regarding the Appellant’s driving record she offers in defense: “I got into several accidents with his car when he has away.” She portrays a series of scenarios that even taken individually seem unlikely and in totality even more so. Her detailed explanation of her smoking practice at home, her testimony of falling asleep, off the chair and down the stairs causing the injuries is not believable. Her thorough review in the court house by the judge and a “court officer” - with her lawyer present, and her own statements before the Commission seriously undermine her claim that a mistake was made in issuing the Assault and Battery complaint and arrest warrant for the Appellant. Her admission that she “talked too much” and she “screwed up” and she has “a smart mouth” and mistakenly using “domestic” to refer to domicile are all attempts to divert blame away from the



Appellant and on to herself. SS is not a credible witness. (Exhibits, Testimony of SS, Demeanor of SS)

## **CONCLUSION**

The role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civ. Serv. v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” Mayor of Revere v. Civil Serv. Comm’n, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

Appointing Authorities are rightfully granted sound yet significant discretion when choosing individuals for public safety positions, from a certified list of eligible candidates. 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 Civ. Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, 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, 43 Mass. App. Ct. at 304.

Solbo’s driving record reasonably calls into question his ability to operate State Vehicles safely, within the law and with a valid license. Consequently, it was reasonable for the Department of Correction to bypass him based on his driving record. *See e.g.*, Ovoian v. Watertown, 20 MCSR 507 (2007) (poor driving history was a sufficient basis for bypassing a candidate for a position as a firefighter); Driscoll v. Boston Police Dep’t, 20 MCSR 477 (2007) (Candidate who was “likeable” and had a long military record was properly bypassed due to his driving history).

After reviewing the testimony and evidence presented in this appeal, it is found that the Department of Correction has shown that there was reasonable justification for bypassing Christopher Solbo for appointment as a Correction Officer I in view of his poor driving record and the fact that he had a non-renewal license at the time his CJIS check was run on December 3, 2010.

Furthermore, based on the information which it had at the time his application was being considered, the circumstances of Solbo’s arrest and arraignment of a charge of Assault and Battery (Domestic) gave the Department of Correction a reasonable basis for concern about the Appellant’s suitability for appointment as a Correction Officer I.



The Appellant and his present wife attempted to belatedly establish an alibi defense for this offense by claiming that the Appellant had been away at National Guard Drill, from Friday, September 11, 2009 at 0800 hours until Sunday, September 13, 2009 at 1700 hours. He produced an e-mail copy of a memorandum of record from his Commander Marc F. Harris, SFC, MA ARNG in support. However, the Appellant also produced a certified copy of the criminal docket # 0957CR002554, Wrentham District Court for A&B, violation of c. 265§ 13A(a), with a date of offense is Monday, September 14, 2009 – belying the alibi.

The Appellant's present wife, the named victim of the assault and battery, went to great lengths to belatedly attempt to create an alibi and factual defense for the Appellant to the assault and battery charge and indirectly for some of his driving offenses. However, the other contemporaneous evidence and circumstances taken with her own testimony and statements thoroughly rebuts and undermines her attempts. Her statements and testimony lack credibility.

The Commission has previously held that an applicant's arrest record, even where there is no conviction, is entitled to some weight by the appointing authority in making its decision. Frangie v. Boston Police Dep't, 7 MCSR 252 (1994), Brooks v. Boston Police Dep't, 12 MCSR 19 (1999), Soares v. Brockton Police Dep't, 14 MCSR 168 (2001). In this matter, the DOC took the Appellant's arrest record for a serious charge and related circumstances into consideration as indicative of the Appellant's tendency towards acts of violence.

The DOC, as has been shown here and in the recognized public's interest, must hire applicants who demonstrate good judgment, controlled behavior; and respect for others



and the law. The DOC could reasonably conclude that the Appellant's behavior, which resulted in criminal charges against him, demonstrated a risk that the Appellant may respond with the same poor judgment as a correction officer. There was no evidence presented to show any political favoritism or bias or other improper consideration.

For all of the above reasons, the Appellant's appeal under Docket No. G1-11-189 is hereby *dismissed*.

Civil Service Commission



Daniel M. Henderson,  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Marquis, Stein, and Henderson, [McDowell absent], Commissioners), on September 22, 2011.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 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 a Civil Service Commission's final decision.

Under the provisions of MGL c. 31 S. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Christopher Solbo (Appellant, Pro Se)  
Jeffrey Bolger (for Appointing Authority)  
John Marra, Esq. (HRD)