

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

FRANK SOLEIMANI,
Appellant

G1-14-76

v.

MASSACHUSETTS ENVIRONMENTAL POLICE,
Respondent

Appearance for Appellant:

Gary G. Nolan, Esq.
Nolan Perroni Harrington, LLP
133 Merrimack Street
Lowell, MA 01852

Appearance for Respondent:

Frank E. Hartig, Esq.
Department of Conservation and Recreation
215 Causeway Street, Suite 900
Boston, MA 02114

Commissioner:

Paul M. Stein¹

DECISION

On March 25, 2014, the Appellant, Frank Soleimani, pursuant to G.L.c. 31, §2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Massachusetts Environmental Police (MEP) to bypass him for original appointment as an environmental police officer. A prehearing conference was held at the offices of the Commission on April 22, 2014 and a full hearing was held at the same location on June 30, 2014.² The hearing was digitally recorded and both parties were provided with a CD of the hearing.³ The parties submitted post-hearing briefs.

¹ The Commission acknowledges the assistance of Law Clerk Evan A. Johnson in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

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 substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

Findings of Fact:

Fifteen (15) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by the Respondent:

- Lieutenant Colonel Chris Baker, MEP
- Officer Anthony Tranghese, MEP

Called by the Appellant:

- Captain Michael McCabe, Westfield Police Department
- Frank Soleimani, Appellant

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

1. The Appellant, Frank Soleimani, is U.S. citizen who emigrated from Iran as a young boy. He resides in Southwick, MA with his wife and two children. He earned an associate's degree in biology from Holyoke Community College in 2005 and received a B.S. degree with a dual major in environmental biology and criminal justice from Westfield State University in 2013. During the summer of 2007 he was accepted as a summer intern with the Massachusetts Environmental Police. (*Exhs 3 & 7; Testimony of Appellant*)
2. As of November, the Appellant has held the civil service position of permanent police officer with the Westfield Police Department (WPD). He began working part-time as a reserve officer for the WPD in 2009. He also was employed for two years as a full time police officer for U.S. Department of Veterans Affairs. (*Exhs. 3 & 7; Testimony of Appellant*)
3. Officer Soleimani is considered "very squared away" and "professional" by his superiors at the WPD. He is one of the WPD's best performing officers in terms of traffic enforcement.

He has made 10 OUI arrests and “takes his traffic enforcement duties very seriously.” He has never “fixed” a traffic citation or ever stated that he condoned that practice, although he has been asked many times to do so. Once he writes a citation, he tells the offender that the only option is to “Check Box 2” and appeal to a magistrate who is the only official with the discretion to dismiss the citation under the law. He said he “wouldn’t lose any sleep” if a magistrate dismissed a ticket he had issued. (*Testimony of Appellant & Capt. McCabe*)

4. Officer Soleimani is also a decorated Iraqi War veteran, having served in the Army National Guard in several capacities, including multiple combat and counter-intelligence assignments that required him to have a “Top Secret” security clearance. He achieved the rank of Specialist, E-4, and was honorably discharged in December 2011. He speaks five languages. (*Exh. 7; Testimony of Mr. Soleimani*)
5. Officer Soleimani has no disciplinary history or adult criminal record. His only brush with the law came when he was in high school and, as a prank, took a musical instrument (a trumpet) that belonged to another student in retaliation for the student’s brother having “keyed” Mr. Soleimani’s car. Mr. Soleimani was forthcoming in admitting his misconduct, which resulted in a three-day suspension from school and a charge of larceny over \$250 that was continued without a finding and dismissed in June 2001. (*Exh. 3; Testimony of Appellant & Capt. McCabe*)

The 2011 OUI Incident

6. On September 4, 2011, Officer Soleimani’s fiancée’s (now wife’s) father (Mr. L) was pulled over in Southampton and arrested for OUI. Mr. L is a diabetic and has one artificial leg. Also present in the car was Mr. L’s elderly wife. (*Testimony of Appellant, & Capt. McCabe*)

7. Officer Soleimani learned (how is not clear) of the arrest and, given Mr. L's medical condition, was concerned for the well-being of his future father-in-law and family and their treatment in custody. He placed two calls to the Southampton Police Department but neither of them were returned. He then proceeded to the Southampton Police Station, accompanied by his fiancée, where he spoke to the dispatcher on duty and asked to speak to the arresting officer. The dispatcher called Detective N, who spoke to Officer Soleimani who said the arresting officer, whom he would not identify by name, was busy booking the prisoner. Officer Soleimani was very agitated by what he considered the stonewalling and unprofessional behavior by the dispatcher and the police officers involved in refusing to return his phone calls or give him any information about his fiancée's father. It is not disputed that Mr. Soleimani raised his voice, but even the officer with whom who he talked said Officer Soleimani was not "yelling". (*Exh. 3, Attch.17; Testimony of Appellant & Capt. McCabe*)
8. Eventually, the arresting officer appeared and they also had a brief heated exchange. Mr. Soleimani and his fiancée left without having seen her father or getting the arresting officer's full name, returning later to bail him out. (*Exh. 3; Attch. 17; Testimony of Appellant*)
9. As Officer Soleimani was leaving the Southampton Police Station, he took note (having a good memory for numbers) that, among the cars he saw parked in the lot, there were two vehicles whose cars he placed with the two people he had spoken to (the dispatcher and the arresting officer), which he recognized from seeing them driving around Westfield while he worked road details. He knew the drivers by sight, but not by name, and recognized the dispatcher and the arresting officer as the owners of those vehicles. He made a mental note of their license places. (*Testimony of Mr. Soleimani*)

10. When he reported to work the next day, Officer Soleimani accessed the WPD's computer data system to identify the names of the two Southborough Police Department personnel with who he had the confrontation and who refused to identify themselves to him. He did not perform a "CORI" check or access any criminal records, but only queried motor vehicle registration information. (*Testimony of Appellant & Capt. McCabe*)
11. Capt. McCabe, then the senior captain, is a twenty-nine year veteran of the WPD. He has handled internal affairs within the department since 2008 and previously was the commanding officer of the Detective Bureau. He was the officer who had arrested Mr. Soleimani in 2001 for his trumpet larceny offense. (*Testimony of Capt. McCabe*)
12. Capt. McCabe knew the Southborough police dispatcher, personally, who is the daughter of a WPD officer. Capt. McCabe learned from Officer Soleimani what he had done and counseled him that use of the mobile data terminal in this fashion was considered personal use and was prohibited. Capt. McCabe issued no formal discipline because Officer Soleimani was new to the department, still in his training and probationary period, and Capt. McCabe believed that he probably had not made clear before that it was improper to access the data base to get the names of an arresting officer just because he would not identify themselves to him. (*Testimony of Capt. McCabe*)
13. Capt. McCabe suggested that Officer Soleimani apologize to the dispatcher, which he did. Capt. McCabe followed up with the dispatcher. The dispatcher thought Officer Soleimani's apology (he brought her a candy bar) did not seem genuine but she was "OK" and "done with it." Capt. McCabe considered the matter closed. (*Testimony of Capt. McCabe*)
14. No incident reports or any contemporaneous records of the arrest of Mr. L. or any of the other events surrounding the incident were produced. (*Undisputed Facts*)

The 2012 Speeding Incidents

15. On April 21, 2012, eight months after Mr.L.'s arrest, while on routine radar patrol, Officer Soleimani stopped a private passenger motor vehicle for speeding at night, travelling 67 MPH in a 40 MPH zone. The operator, it turned out, was a Southampton police officer. Officer Soleimani issued him a written warning, which the officer crumpled up and threw it back in Officer Soleimani's face. *(Testimony of Appellant & Capt. McCabe)*
16. In July of 2012, at least eleven (11) months after Mr. L's arrest, Mr. Soleimani stopped another private passenger motor vehicle for speeding. The car was traveling 54 MPH in a 40 MPH zone. The operator in the speeding car was a Southampton reserve police officer who was respectful and apologetic. Officer Soleimani also issued him a written warning. *(Testimony of Appellant & Capt. McCabe)*
17. Mr. Soleimani did not know that either operator of these two vehicles were Southampton police officers when he pulled them over. Neither officer was involved in the September 2011 encounter involving the arrest of Mr. L. *(Testimony of Appellant and Capt. McCabe)*
18. Shortly after the second of these traffic stops, Capt. McCabe heard a "rumor" that Officer Soleimani was "targeting" Southampton Police officers "for ticketing." This was news to Capt. McCabe, as WPD had received no such complaint. *(Testimony of Capt. McCabe)*
19. Capt. McCabe inquired of Officer Soleimani and, upon learning the facts, Capt. McCabe's response was "You only gave them a warning?" It was clear to Capt. McCabe that, if anything, Officer Soleimani was "giving the Southampton [officers] the benefit of the doubt" and there was nothing to the rumor that he was targeting that town's police force or retaliating for the Southborough police officer's arrest of his wife's father in 2011 or any other reason. *(Testimony of Capt. McCabe)*

20. Capt. McCabe explained these circumstances to Southborough Police Chief Silvernail. The two had known each other since 1986. Chief Silvernail said he “got it”. No further action was taken by either police department regarding what both Chief Silvernail and Capt. McCabe concluded was an unsubstantiated “rumor” of retaliatory ticketing. (*Testimony of Capt. McCabe*)

Appellant’s Application to the MEP

21. The MEP is an agency of the Massachusetts Office of Energy and Environmental Affairs subject to civil service laws. (*Testimony of Lt ,Col. Baker*)

22. In November 2011, Officer Soleimani took and passed the civil service exam for Massachusetts Environmental Police Officers (EPO). He has long aspired to become an EPO. (*Stipulated Facts; Testimony of Appellant*)

23. On or around July 16, 2013, the MEP submitted a requisition to the state’s Human Resource Division (HRD) for the purpose of filling eight (8) vacancies. In response to this request HRD sent Certification number 00722 on July 16, 2013.. (*Stipulated Facts; Exh. 8*)

24. Mr. Soleimani was one (1) of seven (7) candidates to complete an application packet for the position. In his application packet, Mr. Soleimani disclosed his 2001 CWOFF for larceny over \$250. MEP did not find this record disqualifying and Officer Soleimani was cleared to move further in the selection process. (*Exh. 7; Testimony of Lt. Col Baker*)

25. On October 15, 2013, Officer Soleimani was interviewed by a three-member panel of MEP officers who scored him “acceptable” or higher, which allowed him to move ahead in the process. (*Exh. 6; Testimony of Lt .Col. Baker*)

26. After the interview process, background investigations were conducted on the applicants. Anthony Tranghese, an EPO officer with the MEP, conducted the background investigation

of Officer. Soleimani. This background investigation process included telephone and in-person interviews of persons who have had contact with Mr. Soleimani, including employers, co-workers, neighbors and others. (*Exh. 9; Testimony of Lt. Col. Baker & Tranghese*)

27. On October 25, 2013, Officer Tranghese and Officer Soleimani had an initial introductory conversation over the telephone. They spoke for two (2) hours and twelve (12) minutes about the position. Officer Tranghese had only a limited recollection of this “very long” conversation. (*Exh. 15; Testimony of Tranghese*)

28. Officer Soleimani’s recollection of this initial telephone conversation was clear. He remembered that Officer Tranghese made a comment that Officer Soleimani would be “crazy” to leave the WPD for a job at the MEP and tried to discourage him from pursuing the application. He mentioned that it didn’t pay as much, management didn’t back up its officers, would discipline you for accepting a free cup of coffee, didn’t pay for court time, only got the “crappy” details the locals and the State Police didn’t want, and there was no “Quinn Bill”. He also continued to describe the downside of being an EPO. Officer Soleimani was not dissuaded. He said being an EPO was his “dream job” and Officer Tranghese scheduled a home visit for October 27, 2013 (*Testimony of Appellant*)

29. During the home interview, Officer Tranghese spoke with Officer Soleimani and his wife. Officer Tranghese’s Background Investigative report contains no specific details of the subjects discussed, other than explaining the process. Officer Tranghese noted that Officer Soleimani was “very professional and polite” and that the residence was “neat and orderly”. He “displayed a positive attitude and demeanor” and was “enthusiastic and knowledgeable.” The spousal interview confirmed that Mrs. Soleimani was thoroughly accustomed to her husband’s work as a police officer and she confirmed that they knew it might mean a “pay

cut” but she wanted him to “follow his dreams” and “he always wanted to be an EPO.” (*Exh. 9; Testimony of Appellant & Tranghese*)

30. Officer Tranghese collected numerous reference questionnaires, all of which were substantially positive. Both references from the WPD gave him the highest ratings in all categories with no incidents of any trouble “on or off the job.” In addition, WPD Police Chief Camerota and Capt. McCabe submitted written letters of recommendation, as did the MEP Capt. Len Roberts (who mentored Officer Soleimani during his MEP internship) and Officer Soleimani’s National Guard battalion commanding officer, all of which highly recommended him for the job of an EPO (*Exhs. 3, 9 through 13*)
31. At some unidentified date, Officer Tranghese interviewed Capt. McCabe at the WPD. At this interview, Mr. Tranghese first learned about the “rumor” involving Mr. Soleimani’s alleged targeting the Southampton police officers in a retributive manner after Mr. L. had been arrested for OUI. Mr. McCabe relayed the version of events as they had been told to him by Mr. Soleimani. Additionally, Mr. McCabe noted that Mr. Soleimani had no recorded discipline at Westfield from this incident or any other behavior. (*Testimony of Capt. McCabe & Tranghese*)
32. After meeting Capt. McCabe, Officer Tranghese went to the Southampton Police Department to learn more about the events surrounding the “rumor” of retaliation. (*Testimony of Tranghese*)
33. Mr. Tranghese first met with Chief Silvernail, the police chief of the Southampton Police Department, who directed Mr. Tranghese to speak with the person who made the arrest (Officer M) and others who may have knowledge of the events involved. (*Testimony of Tranghese*)

34. Officer Tranghese interviewed the dispatcher, Detective N and a Sergeant I, but made no record of either of these interviews. He requested and later received unsworn statements from each of them. He also interviewed the arresting officer, Officer M, who declined to provide a statement, telling Officer Tranghese that the incident was “water under the bridge,” that “he would have done the same thing for a family member,” (*Exhibit 3, Attch. 16 through 18; Testimony of Appellant & Tranghese*)
35. On November 7, 2011, Officer. Tranghese visited Mr. Soleimani to discuss his 2001 CWO (the “trumpet caper”) and his behavior at the arrest of Mr. L. and subsequent allegations that he retaliated by ticketing Southampton police officers. Officer Soleimani and Officer Tranghese have very different recollections of this conversation. (*Exh. 3; Testimony of Appellant & Tranghese*)⁴
36. As to the 2001 CWO, Officer Soleimani acknowledged his actions and confessed that he was “young and dumb”. He explained to Officer Tranghese that his stops of the Southampton police officers were completely justified, that they had occurred long after the 2011 OUI arrest of Mr. L., one had nothing to do with the other and it was well-known that the alleged rumor was “ridiculous”. He admitted that, in 2011, he had been upset with the Southampton dispatcher and the police officer who arrested Mr. L. and could have better handled his concern about Mr. L’s medical state (he feared a risk of seizure), but still believed it was unprofessional that his calls were not returned and that, as a fellow police officer, he was denied a request to be allowed to see Mr. L. He also admitted that he did run the plates of the dispatcher and Officer M, believing it was an appropriate way to find out

⁴ For reasons I explain later, I find Officer Soleimani’s testimony about this November 7, 2013 conversation credible and Officer Tranghese’s account and his report of the conversation in his investigative report less credible.

their identity when they would not give their names, and acknowledged that Capt. McCabe later made it clear that he was wrong to do have done so. (*Testimony of Appellant*)

37. Officer Tranghese's background report and testimony presented a different story. He now claims that he found Officer Soleimani's behavior to show that he has an "insurmountable ethical issue". His conclusion assumed a number of misunderstandings and erroneous statements of facts, including the following:

- The time frame between the 2011 OUI arrest and the 2012 traffic stops was not two months, but seven and eleven months later
- He incorrectly reported the officers' excessive speeds
- He incorrectly reported that Southampton Police Chief complained about targeting of his officers stemming "from an incident where the appellant's Father-in-Law was arrested" or for any other reason at any other time
- He did not report that Officer Soleimani did not know the operators he stopped were police officers
- He did not know that the officers who were ticketed were not the same officers who were involved in the OUI arrest, as claimed in the bypass letter
- He did not know that the tickets issued were warnings, not "money tickets"
- He did not know Officer Soleimani's record as a very productive traffic enforcement officer

(*Exh. 3; Testimony of Appellant, Capt. McCabe & Tranghese*)

38. Mr. Tranghese concluded his background investigation on November 17, 2013 and marked Mr. McCabe as "recommended with certain reservations." Mr. Tranghese marked Mr.

Soleimani's file with these "red flags" indicating negative aspects:

- The 2001 CWOFF and three-day suspension from school
- Verbal reprimand for using mobile data base to run license plates associated with the Southampton Incident
- Applicant's involvement in 2011 incident in conjunction with [Mr. L.'s] arrest for OUI
- Verbal reprimand for shouting incident while employed at Veteran's Affairs Police Department

. (*Exh. 3; Testimony of Tranghese*)

39. Lt. Col. Baker, entirely in reliance on Officer Tranghese's background investigation report, recommended to his superior, MEP Col. Gross, the MEP Appointing Authority, that Officer

Soleimani be bypassed and prepared a letter to notify Officer Soleimani of that decision, which Col. Gross signed and submitted to HRD for approval. The facts justifying the bypass were stated as follows:

“In the background investigation, candidate was found to have used official position as a police officer to target another town’s police officers, in a retributive manner, for their actions after they arrested candidate’s wife’s uncle on an OUI charge in 2011. Candidate was spoken to by his department for these actions after his supervisor received a complaint from the neighboring town’s police chief. Further, the candidate feels that ‘fixing tickets’ is an acceptable practice.”

(Exh. 2; Testimony of Lt. Col. Baker)

40. By letter dated March 17, 2014, HRD notified Officer Soleimani that MEP’s reasons for bypassing him had been approved. This appeal duly ensued *(Exh. 2; Claim of Appeal)*

Legal Standard

The authority to bypass a candidate for permanent appointment or promotion to a civil service position derives from G.L. c. 31, § 27, which provides:

If an appointing authority makes an original or promotion appointment from certification of any qualified person other than the qualified person whose name appears highest [on the certification], and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file...a written statement of his reasons for appointing the person whose name was not highest.

An appointing authority’s discretion to pick among qualified candidates for civil service appointments who have met the requirements for the position by taking and passing a civil service competitive examination is not absolute and is subject to review by the Commission. The appointing authority’s reasons for “bypassing” a candidate higher on the list in favor of hiring a lower ranked candidate must be “reasonably justified”, based on a “thorough review” and supported by a preponderance of the evidence, when weighed by an unprejudiced mind, guided by common sense, and correct rules of law. See, e.g., Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006) and cases cited; Beverly v. Civil Service Comm’n 78 Mass.App.Ct. 182

(2010); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), *citing* Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

In reviewing a bypass decision, “[t]he commission’s primary concern is to ensure that the appointing authority’s action comports with ‘basic merit principles,’ as defined in G.L.c.31,§1.” Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688 (2012) *citing* Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban , 434 Mass. 256, 259 (2001). In conducting this inquiry, the Commission “finds the facts afresh”, and is not limited to the evidence that was before the appointing authority. *E.g.*, Beverly v. Civil Service Comm’n 78 Mass.App.Ct. 182 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991) (“discretionary acts of public officials . . . must yield to the statutory command that [they] produce ‘sound and sufficient’ reasons” consistent with basic merit principles and protected from arbitrary and capricious actions); Tuohey v. Massachusetts Bay Transp. Auth., 19 MCSR 53 (2006) (appointing authority must proffer “objectively legitimate reasons” for the bypass); Borelli v. MBTA, 1 MCSR 6 (1988) (bypass improper if “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons”). *See also* City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997); MacHenry v. Civil Service Comm’n, 40 Mass.App.Ct. 632, 635 (1995), *rev.den.*, 423 Mass. 1106 (1996)

The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. *See, e.g.*, Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65 (2001) In the event of a failure of proof, the Commission has the power to

reverse the bypass decision. Id. It is the function of the hearing officer to determine the credibility of evidence presented through witnesses who appear before the Commission. See Covell v. Department of Social Svcs., 439 Mass. 766, 787 (2003); Doherty v. Retirement Bd., 425 Mass. 130, 141 (1997); Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n., 401 Mass. 526, 529 (1988).

Analysis

The MEP failed to meet its burden to prove reasonable justification to bypass Mr. Soleimani. The stated reasons provided in MEP's bypass letter were (1) that he "was found to have used [his] official position as a police officer to target another town's police officers, in a retributive manner, for their actions after they arrested candidate's wife's uncle on an OUI charge in 2011" and (2) that "the candidate feels that 'fixing tickets' is an acceptable practice."

The first reason given for Mr. Soleimani's bypass is not supported by a preponderance of the evidence. The word "found" in the first bypass reason can only refer to a "finding" by Mr. Tranghese, since there was never any official finding of retribution of any kind. Similarly, after Capt. McCabe had credibly established that there was absolutely no connection between the 2011 OUI incident and the 2012 traffic stops, MEP changed its theory and claimed that the finding that Officer Soleimani's retaliatory behavior to "target another town's police officers" referred to his 2011 running license plates, not for his 2012 stopping officers for speeding as the bypass letter stated. As to the alleged willingness to "fix tickets", the support for such a conclusion comes from an alleged statement to that effect allegedly made by Officer Soleimani to Officer Tranghese and some selected, totem-pole hearsay, unsworn statements procured at Officer Tranghese's request that were prepared more than two years after the alleged underlying incident had occurred, that were not made in the course of duty, neither of which I find credible.

More specifically, MEP did not know how many Southampton officers were stopped by Officer Soleimani, whether those officers were the same officers who were involved in Mr. L's arrest, the speeds that those officers were traveling, or whether those officers received a money ticket or a warning. Furthermore, Officer Tranghese's report inaccurately stated that two (2) months had elapsed between Mr. L's arrest and the traffic stops. Lt. Col. Baker acknowledged that the true facts made it is less likely that Officer Soleimani was acting retributively. For this reason, the background investigation conducted by Officer Tranghese was incomplete and the appointing authority did not establish by a preponderance of the evidence that Mr. Soleimani acted retributively in ticketing the two Southampton officers in 2012.. See Sostre v. Boston Police Department, 26 MCSR 456, 466 (2013) (incomplete background investigation where there were errors or omissions in the investigator's background summary); see also Gallagher v. City of Leominster, 22 MCSR 118 (2009) (background investigation inadequate when relying on unsubstantiated opinions). The fact that no complaint was made against Officer Soleimani and that he was not reprimanded in any way for this *rumor* further illustrates the weakness of MEP's first bypass reason.

The second reason for bypass was that Officer Soleimani stated that he "had no problem" fixing a ticket. This claim rests entirely on matters of credibility. I find several reasons to credit Officer Soleimani on this point. First, his testimony before me carried the ring of truth, both in his demeanor and clear percipient recollection of events. He held firmly to his testimony, which, even under cross-examination, was respectful. He refused to characterize others as "lying", preferring to choose the word "misunderstanding", which reinforced my conclusion that he was truly interested in being responsive to questions and sticking to the facts and not digressing into self-serving characterizations. I also give weight to the substantial, credible evidence from

Capt. McCabe that corroborates Officer Soleimani's actual performance as a police officer to be entirely inconsistent with anyone who would ever agree to try to "fix a ticket". I also give weight to the fact that Officer Tranghese's background report contained numerous factual errors, he reported only some of the information he gathered, omitted that Chief Silvernail and Officer M, both provided information that was exculpatory to Officer Soleimani. Further, in addition to the many factual errors in Officer Tranghese's report that lead me to give his report diminished weight generally, the alleged specific statement that Officer Soleimani purportedly voluntarily offered up that he has no problem fixing tickets, especially, is not credible when Officer Tranghese had just told him that MEP did not approve of officers who accept free coffee and there was credible, percipient evidence that Officer Soleimani has never fixed a ticket and is not perceived as someone who would be likely to do so.

Finally, I give no weight to the selective, unsworn hearsay statement procured by Officer Tranghese, or his own characterization he placed on them, that purportedly suggested that Officer Soleimani was seeking to "fix" his father-in-law's OUI arrest. The statements are not contemporaneous incident reports prepared by a percipient police officer in the course of duty. Officer Soleimani's own credible testimony was that he did no such thing and, in fact, was a strict enforcer of the traffic laws, including OUI. There was no percipient evidence that discredited such a conclusion.

The closest any other witness comes to having percipient evidence in the matter is Capt. McCabe who, after speaking with the dispatcher within days of the incident, concluded that the dispatcher was "OK" with what happened, further action was not called for and the matter was closed. There is no contemporaneous documentation of the OUI arrest or the alleged heated exchange at the Southampton police station. The unsworn statements provided to Officer

Tranghese in November 2013 – more than two years after the OUI arrest – and contain multi-level hearsay, for which no witness has been provided, some of which is contradicted by the testimony of the witnesses. The persons who wrote these unsworn, ambiguous and disputed statements never actually testified and I have not been satisfied that their recollections of the events two years earlier are sufficiently reliable, credible and consistent with the preponderance of other percipient evidence, which, on de novo review, tends to contradict those statements. For these reasons, I conclude that the statements are not entitled to be given any weight.

Moreover, even if I were to credit those statements, at most, I find they tend to corroborate that Officer Soleimani was agitated and upset with the dispatcher and Officer M, and asked that he and his fiancée be allowed to see Mr. L., they are ambiguous about what Officer Soleimani actually said in terms of his alleged request for “professional courtesy”. The conclusion that he was seeking to negate the arrest is Officer Tranghese’s characterization of the two-year old recollections of the individuals involved, which never resulted in any not what the officers involved actually said or heard. Detective N reported only that Officer Soleimani said “I told you to have the officers on scene call me. I want to speak to the arresting officer” that, he, always “returns calls” and heard him say to his fiancée “I will handle this.” As noted, Officer Tranghese spoke to the arresting officer, Officer M, but Officer Tranghese failed even to report that he had such an interview, let alone reported that the officer had NOT corroborated the alleged “ticket fixing” behavior. Moreover, there was no evidence that Officer Tranghese (or anyone else at MEP) ever sought to obtain the official incident report of the 2011 arrest or otherwise determined what actually happened to Mr. L., or even knew whether a criminal complaint was ever actually issued against him or not.

In sum, on this record, I do not find that MEP has produced a preponderance of evidence that proves reasonable justification to have bypassed Officer Soleimani for the reasons stated in its bypass letter. Mr. Soleimani's appeal under Docket No. G1-14-76 is hereby *allowed*.

Relief to be Granted

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the name of the Appellant, Frank Soleimani, shall be placed at the top of future certifications for original appointment to the position of Massachusetts Environmental Police Officer until he is selected for appointment or bypassed. If and when Mr. Soleimani is selected for appointment and commences employment as an MEP police officer, his civil service records should be retroactively adjusted to show, for civil service seniority purposes, as his starting date, the earliest Employment Date of the other persons employed from Certification 00722.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By a 3-1 vote of the Civil Service Commission (Bowman, Chairman - NO; Ittleman, Commissioner – YES; McDowell, Commissioner - YES, and Stein, Commissioner - YES) on September 3, 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 to:

Gary G. Nolan (for Appellant)
Frank E. Hartig, Esq. (for Respondent)
John Marra, Esq. (HRD)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

FRANK SOLEIMANI,
Appellant

G1-14-76

v.
MASSACHUSETTS ENVIRONMENTAL POLICE,
Respondent

OPINION OF CHRISTOPHER BOWMAN

I respectfully dissent. I believe the record shows that the MEP conducted a reasonably thorough review that resulted in valid reasons for bypassing Mr. Soleimani for appointment as an Environmental Police Officer (EPO).

A veteran MEP employee with over thirty-one (31) years of experience was assigned to conduct a background investigation of Mr. Soleimani. As part of that background investigation, he went and spoke personally to a Captain at the Westfield Police Department, where Mr. Soleimani is employed as a police officer. For the first time, the background investigator was informed by the Police Captain about an incident involving Mr. Soleimani and the arrest of his now-father-in-law for OUI by the neighboring Southampton Police Department.

After receiving this information, the background investigator spoke to multiple Southampton Police Department employees who were percipient witnesses to the statements and actions of Mr. Soleimani regarding this OUI arrest.

Two (2) of these employees, in addition to conveying their account of what happened in 2011 verbally, also committed their statements to writing. According the written statement of one (1) of the Southampton Police Department employees who was a percipient witness:

“On the evening of September 4th, 2011, [police officer] was on a motor vehicle stop and had requested back up by [another police officer]. While they were on this motor

vehicle stop I received a phone call by someone who identified himself as Westfield Police Officer Frank Soleimani. Mr. Soleimani said ‘you guys have my father-in-law on a motor vehicle stop. He’s not drunk. He had a few beers with me at my house but he is fine. Have the officers on scene call me.’ At this time I had asked [police officer] to contact dispatch via phone in which he replied ‘not now dispatch’ due to him being busy with [suspect]. Mr. Soleimani had called again a few minutes later asking why the officers had not called him, and I told him they were tied up at which time he stated that he was going to come to the police station. I cannot remember the exact words in the second phone call. When [police officer] brought [suspect] who was under arrest to the station I advised him of my phone conversation with Mr. Soleimani.

Not even ten minutes later Mr. Soleimani arrived at the police department and entered the lobby and was pretty irate. I cannot remember the exact conversation but he did say to me, ‘I told you to have the officers on scene call me. I want to speak to the arresting officer.’ At which point [police officer] went outside and spoke with him.” (Exhibit 3)

Another Southampton Police Department employee also spoke with the background investigator and submitted a written statement at that request. According to this written statement:

“Officer Soleimani arrived at the Department a short time later, anywhere between 15 to 20 minutes after the arrest. He was not on duty and was accompanied by a woman, later learned to be his fiancé. While speaking with him it was clear that he was emotional and agitated by the situation. Officer Solemaini informed me that it was his father-in-law that was under arrest. He asked if there was anything that could be done so his father-in-law was not charged with OUI. I related that I would not accommodate his request. His fiancé started to apologize for the father’s actions. Officer Solemaini cut her off mid-sentence using a hand gesture for her to stop talking and stated, ‘I will handle this.’ He followed with making a reference that his soon to be father-in-law had a problem with authority..

Officer Solemaini started to vent his frustration. His voice was raised and he was animated. Although his voice was raised he was not yelling at me, he was excited and was speaking in a louder than normal tone for most of the conversation. Officer Solemaini proceeded to explain that he had been a cop for five years and had never made an arrest for OUI and furthermore, that he often receives call for professional courtesy while on traffic stops and returns the calls and honors the requests. He continuously repeated this declaration, at least more than three time during our conversation. After several minutes of this I told him that I was going back into the police station. I asked if he wanted to speak with the arresting officer. He stated that he did.” (Exhibit 3)

It is undisputed that, after Mr. Soleimani left the Southampton Police Department that

night, Mr. Soleimani “took note” of the license plate numbers of the personal vehicles of the Southampton Police Department employees who he spoke to that night. The next day, while on duty as a Westfield police officer, Mr. Soleimani then queried the license plate numbers of those Southampton Police Department employees, an act described by the Westfield Police Captain as a violation of criminal justice standards.

In addition to speaking with the Southampton Police Department employees who were percipient witnesses to Mr. Soleimani’s words and actions on the night in question, the MEP background investigator spoke personally with Mr. Soleimani to hear *his* version of events. As noted above, Mr. Soleimani did not dispute that he conducted an improper query of the license plate numbers on the two (2) personal vehicles of the Southampton Police Department employees. In regard to whether he attempted to use his position as a Westfield police officer to prevent the arrest of his now-father-in-law, the MEP investigator’s notes stated the following:

“The applicant acknowledges the facts surrounding the incidents, stating, ‘I have no issue fixing tickets; I get called all the time from other police agencies.’ The applicant further commented that he was only asking for consideration for a family member, specifically commenting that ‘I did not break the law.’” (Exhibit 3)

Based on the verbal and written statements of two Southampton Police Department employees and Mr. Soleimani’s own statements to the MEP investigator, MEP concluded that that Mr. Soleimani tried to interfere with the arrest of his now-father-in-law and that he considered such actions to be acceptable. This, and the undisputed fact that Mr. Soleimani improperly accessed the RMV records of two (2) citizens for personal reasons, are valid reasons for bypassing Mr. Soleimani for the position of Environmental Police Officer.

Respectfully, I believe it was an error for the hearing officer to give no weight to the written statements of the Southampton Police Department employees and it was an error to deem the

review less than thorough due to reasons such as the MEP investigator not *recording* the interviews with the Southampton Police Department employees. In addition to taking their verbal statements, the MEP investigator had the Southampton Police Department employees commit their statements to writing. Such actions are consistent with the “reasonably thorough review” that is required of Appointing Authorities during the hiring process and it is a mistake to set the bar higher.

Importantly, the verbal and written statements of the Southampton Police Department employees *corroborate* the testimony of the MEP investigator and undercut the self-serving testimony of Mr. Soleimani. They should have been considered when assessing the credibility of Mr. Soleimani who also testified that *he* went to the Westfield Police Captain to *self-report* his improper conduct regarding the RMV inquiries. Based on the live testimony of the Westfield Police Department Captain, who the hearing officer deemed credible, that is also not true.

When applying the correct standard, the record here clearly establishes that the MEP had reasonable justification to bypass Mr. Soleimani. The review was thorough; at least one of the bypass reasons was valid; and the record does not support any conclusion that MEP’s decision was based on any political or personal bias. For these reasons, I believe it is an error for the Commission to intervene and overturn MEP’s decision to bypass Mr. Soleimani. The appeal should be denied.

/s/ Christopher C. Bowman
Chairman
September 3, 2015