

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

WALTER ST. DENNIS III,
Appellant

v.

G1-16-069

CITY OF WORCESTER,
Respondent

Appearance for Appellant:

Mitchell J. Notis, Esq.
Law Offices
32 Kent Street
Brookline, MA 02445

Appearance for Respondent:

William R. Bagley, Jr., Esq.
City of Worcester
455 Main Street
Worcester, MA 01608

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to G.L. c. 31, § 2(b), Walter St. Dennis III (Mr. St. Dennis) contests the decision of the City of Worcester (City) to bypass him for original appointment to the position of police officer in the City's Police Department (WPD). Mr. St. Dennis filed an appeal with the Civil Service Commission (Commission) on April 7, 2016. A pre-hearing was held on April 19, 2016 at the offices of the Commission and a full hearing was held on July 6, 2016 at Worcester City Hall.¹ All witnesses, with the exception of Mr. St. Dennis, were sequestered. The full hearing

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

was digitally recorded and both parties received a CD of the proceeding.² The parties submitted post-hearing briefs in the form of proposed decisions on August 22, 2016 (Mr. St. Dennis) and August 23, 2016 (City).

FINDINGS OF FACT:

Fourteen (14) exhibits were entered into evidence. Based on the documents submitted and the testimony of the following witnesses:

For the City:

- Nina Galica, Employment Coordinator, City of Worcester;
- Elise Miranda, Police Officer, City of Worcester;
- Sean Fleming, Deputy Police Chief, City of Worcester;

For Mr. St. Dennis:

- Walter St. Dennis III, Appellant;

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

1. Mr. St. Dennis is thirty-four (34) years old. He is divorced; has two (2) biological children and currently lives with his fiancé and her child in Worcester. The divorce proceedings stretched over many years and the divorce was not finalized until December 2015.

(Testimony of Mr. St. Dennis)

2. Mr. St. Dennis graduated from Gateway Regional High School in 2000. (Testimony of Mr. St. Dennis)

² 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. If such an appeal is filed, this CD should be used to transcribe the hearing.

3. Mr. St. Dennis enlisted in the Massachusetts Army National Guard in 1998. Between 2001 and 2012, he served tours of duty in Bosnia, Iraq and Afghanistan. (Testimony of Mr. St. Dennis)
4. Mr. St. Dennis is currently employed in a security position for a private company that provides security for federal buildings. (Testimony of Mr. St. Dennis)
5. On June 15, 2013, Mr. St. Dennis took the civil service examination for police officer and received a score of 94. (Stipulated Fact)
6. On May 28, 2015, the state's Human Resources Division (HRD) sent Certification No. 02903 to the City from which it could appoint twenty-three (23) candidates. Per request of the City, HRD sent the City additional names on July 17, 2015 and August 14, 2015 and increased the total candidates that could be selected to thirty-five (35). (Exhibit 5)³
7. Based on his score, residency preference and his disabled veteran status, Mr. St. Dennis was ultimately ranked seventh (7th) among those willing to accept appointment. (Stipulated Facts)
8. After Mr. St. Dennis submitted his Personal Information Questionnaire and related materials, the WPD's background investigation unit began an investigation. (Testimony of Officer Miranda)
9. Officer Elise Miranda has worked for the WPD for thirteen (13) years. This was Officer Miranda's first time working as part of the background investigation unit. Officer Miranda was assigned as the primary background investigator regarding Mr. St. Dennis and twenty-four (24) other candidates. (Testimony of Officer Miranda)

³ As a consent decree community, Worcester is required to: 1) ensure that the name of at least one (1) minority for every three (3) non-minorities is included on the Certification; and 2) provide reasons for bypass to HRD, unlike most other cities and towns, where HRD has delegated most functions, including approval of reasons to the appointing authority.

10. The City was under a “time deadline” as the eligible list from which the Certification was created was going to expire at the end of October 2015. (Testimony of Ms. Galica)
11. When conducting a background investigation, the WPD reviews employment and education records, tax records, credit histories, military records, voter registration records, utility account records, unemployment benefit records, Social Security records, public assistance records, driving records and criminal history records, etc. (Testimony of Officer Miranda and Exhibits 6-13)
12. As part of her background investigation, Officer Miranda spoke with Mr. St. Dennis’s neighbors, current and former employers and personal references provided by Mr. St. Dennis. All of the responses were either positive or the individuals (i.e. – neighbors) didn’t know Mr. St. Dennis well enough to provide information. (Testimony of Officer Miranda)
13. According to Mr. St. Dennis’s responses to his Personal Information Questionnaire, the address for his then-wife and daughter were impounded. (Testimony of Officer Miranda & Exhibit 7)
14. Additional material provided by Mr. St. Dennis showed that he had been the subject of a restraining order from February 4, 2011 to May 18, 2011, that gave custody of the couple’s daughter to his wife and required him to refrain from abuse, stay away from them and to surrender all firearms. (Testimony of Officer Miranda and Exhibits 10 & 11)
15. In support of her request for the restraining order, Mr. St. Dennis’s then-wife provided an affidavit in which she reported that Mr. St. Dennis arrived at their apartment (in February 2011) after agreeing to stay away while they were in marriage counseling and demanded that she take their eighteen-month old daughter and leave, telling her that he would destroy anything that she left behind. (Exhibit 11)

16. Mr. St. Dennis's wife further provided that, while she was packing, Mr. St. Dennis demanded that she remove "that thing" i.e., their daughter, from his sight, and shoved her away from him on three occasions when she got too close to him. In addition, the affidavit states that Mr. St. Dennis taunted her and called her and their daughter names. (Exhibit 11)
17. The restraining order initially entered ex parte on February 4, 2011, with an expiration date of February 16, 2011. Since, as of February 16th, Mr. St. Dennis had not been served, the restraining order was only extended until February 28, 2011, at which time, Mr. St. Dennis appeared with counsel. (Exhibit 11 and Testimony of Mr. St. Dennis)
18. After the February 28, 2011 hearing, the restraining order was extended for one (1) year. Mr. St. Dennis's then-wife subsequently agreed to have the restraining order vacated on May 18, 2011 as it would prevent Mr. St. Dennis from being deployed (and carrying a firearm) overseas. (Testimony of Mr. St. Dennis)
19. As part of her background investigation, Officer Miranda met with Mr. St. Dennis's then-wife in July 2015. Mr. St. Dennis's then-wife stated that she continued to have concerns about Mr. St. Dennis; that she believed he suffered from severe post-traumatic stress disorder (PTSD); that he refused to seek treatment for it; and that she was concerned that, if he became a police officer, he would be able to access her current address. (Testimony of Officer Miranda)
20. Mr. St. Dennis's then-wife also told Officer Miranda that Mr. St. Dennis verbally, psychologically and emotionally abused her; that he told her that "all women were whores"; that he had issues with Middle Eastern males; that he often made racial comments about Middle Eastern males; and that Mr. St. Dennis had been sent home from sniper school for detailing a dream about killing people in his journal. (Exhibit 2)

21. As part of her background investigation, Officer Miranda also spoke with Mr. St. Dennis's father by telephone. Mr. St. Dennis's father had been granted temporary guardianship of the couple's daughter at a time when they (Mr. St. Dennis and his then-wife) had both been deployed. During their conversation, the father stated that, although he would like to say that his son would make a good police officer, he believes that, possibly as a result of PTSD, his son would not be able to toggle between being a police officer and dealing with regular civilians that were not criminals. He also stated that he was a little afraid of his son.

(Testimony of Officer Miranda)

22. Mr. St. Dennis's father also told Officer Miranda that he was the one who went to pick up Mr. St. Dennis's then-wife and daughter "on the February night in 2011". He stated that he arrived to find them outside in a snowstorm with his son (Mr. St. Dennis) throwing things out the window and down the stairs of their apartment. He stated that he had never seen his son so out of control before. (Exhibit 2)

23. Officer Miranda also reviewed Mr. St. Dennis's credit history and learned that he had a poor credit rating; had defaulted on \$25,875 worth of student loans, as well as a credit card, resulting in \$26,570 in delinquent debt at the time he was being considered for appointment.

(Testimony of Officer Miranda; Exhibit 9)

24. As part of her background investigation, Officer Miranda never spoke with Mr. St. Dennis and/or gave him an opportunity to address the issues raised by his then-wife, his father, as well as the documents she reviewed, including the restraining order and credit history.

(Testimony of Officer Miranda)

25. After completing her background investigation, Officer Miranda reported her findings to her supervisor, a Worcester Police Sergeant. Her supervisor subsequently told her that Mr. St.

Dennis would be “short-formed”, meaning that she should prepare a report that only listed the negative findings about Mr. St. Dennis. Officer Miranda prepared the report and did not include any information regarding Mr. St. Dennis’s education, military background, employment history and/or information obtained from references and neighbors. (Testimony of Officer Miranda)

26. At some point, the City’s Police Chief, Deputy Police Chief and the sergeant who supervises Officer Miranda discussed Mr. St. Dennis’s application for employment. (Testimony of Deputy Chief Fleming)⁴

27. Neither the Police Chief, Deputy Police Chief, or the City Manager (who is the Appointing Authority), ever interview any of the candidates for police officer and it is not standard practice for a sergeant to participate in any such interview. (Testimony of Deputy Chief Fleming)

28. Candidates may be interviewed by the investigating officer, but Deputy Chief Fleming is not certain exactly what questions are asked during the interview, if it takes place. (Testimony of Deputy Chief Fleming)⁵

⁴ A proposed finding in the City’s post-hearing brief stated that, as part of this meeting, the Sergeant provided an overview of the findings, *both positive and negative*, to the Chief. I listened (and re-listened) to the testimony of Officer Miranda and the Deputy Police Chief, including their responses to the questions I posed to them. As a result, I do not find that the Sergeant reviewed both the positive and negative aspects of Mr. St. Dennis’s application with the Police Chief for the following reasons. First, according to the Deputy Police Chief, the Police Chief reviewed the “short form” which was entered as Exhibit 2, which contains only negative information. Thus, *prior to the meeting with the Chief*, a decision had already been made to have Officer Miranda “short form” Mr. St. Dennis. Second, the Deputy Police Chief’s testimony regarding whether the Police Chief reviewed any other information was not convincing, stating that the Chief “thumbed through” the case file. Third, the Deputy Police Chief, as part of his testimony, acknowledged that he never reviewed Mr. St. Dennis’s entire file and could not recall any information related to Mr. St. Dennis’s employment, education or references. Although he said there was a reference to Mr. St. Dennis’s military history, I infer that this took place in the context of the information referenced by Mr. St. Dennis’s then-wife and father regarding their concerns related to possible PTSD.

⁵ Similar to the issue of the City’s “short-form” process, I re-listened to the testimony of Officer Miranda and the Deputy Police Chief regarding whether interviews actually take place. The responses to my questions regarding when such interviews take place and what questions are asked, left me unconvinced that interviews were part of the hiring process here.

29. By letter dated November 6, 2015, the City's Director of Human Resources provided HRD with reasons for bypassing Mr. St. Dennis including: the issuance of a restraining order and the underlying incident; other concerns raised by Mr. St. Dennis's then-wife; concerns raised by Mr. St. Dennis's father; and his poor credit history. (Exhibit 4)
30. By letter dated February 11, 2016, HRD notified Mr. St. Dennis that the bypass reasons submitted by the City were accepted. (Exhibit 5) This timely appeal followed. (Stipulated Fact)

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. 300, 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, § 1.

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 at 304. 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 Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

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. 814, 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. Beverly. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police officers appropriately are held, appointing authorities are given significant latitude in screening candidates. Beverly citing Cambridge at 305, and cases cited.

Analysis

The central dispute here is whether the City conducted an "impartial and reasonably thorough review" prior to bypassing Mr. St. Dennis for the position of police officer.

Mr. St. Dennis argues that the City's review was not reasonably thorough in part because they did not give him an opportunity to address or refute the information gathered during the background investigation, including the concerns raised by his then-wife and that it has not been established that the Police Chief reviewed all of the relevant materials regarding Mr. St. Dennis.

The City argues that, even without speaking to or interviewing Mr. St. Dennis, the review here was indeed reasonably thorough and that the undisputed facts, along with Mr. St. Dennis's own testimony, establish that there was reasonable justification for the bypass.

There is ample evidence that the selection process here was flawed, likely caused, in part, by the deadline created by the impending expiration of the eligible list. However, some of the flaws appear more systemic and unrelated to the admittedly rushed selection process here.

First, the City's Appointing Authority here is the City Manager. Yet, aside from a scant reference to this during the Employment Coordinator's testimony, there appears to be no evidence that the City Manager played any substantive role in this appointment process. I am left to infer that the City Manager defers to the recommendations of the City's Police Chief regarding the appointment of police officers.

Second, even assuming that is true, there are, as referenced in the findings, still serious questions regarding whether the Police Chief (who is not the Appointing Authority) was provided with all relevant information regarding police officer candidates, including those who are bypassed, such as Mr. St. Dennis. Far removed from the Appointing Authority level, there appears to be a decision made, early in the selection process, to "short form" certain candidates based on negative aspects of their background investigations. Based on the exhibits, the testimony and my reasonable inferences, it appears that this decision is made prior to a candidate's application being reviewed by the Police Chief. Applied here, that means that the Police Chief (who was not called as a witness) likely relied primarily, if not solely, on the negative information contained in the "short form" prepared by Officer Miranda. That is troubling, because the de facto decision-maker here (the Police Chief) did not fully evaluate all aspects of Mr. St. Dennis's background, including his years of military service, positive references and employment history. While years of precedent-setting decisions have established that the Appointing Authority should be given substantial deference regarding what weight to

give negative factors, when compared against positive factors, there is an assumption, and expectation, that the decision-maker has reviewed both. Here, I do not believe that happened.

Third, the City not only chose not to formally *interview* Mr. St. Dennis, they never even *spoke* with him as part of the background investigation. That is particularly troubling when, as is the case here, some of the reasons for bypass rely on uncorroborated statements, including those made by Mr. St. Dennis's father. For example, Mr. St. Dennis's father told Officer Miranda that he (the father) arrived at Mr. St. Dennis's residence in February 2011 at *night* to pick up the couple's daughter and saw Mr. St. Dennis engaging in disturbing behavior, including throwing his then-wife's belongings out the window. Officer Miranda understood the father to be talking about the incident that resulted in the restraining order and the father's account of the incident made its way into the actual bypass letter, almost verbatim. The 209A affidavit, however, only references Mr. St. Dennis's *mother* arriving to pick up their daughter. Further, during his testimony before the Commission, Mr. St. Dennis stated that the incident that resulted in the 209A occurred during the *morning* and that his father never came to the residence that morning. Although there may be a reasonable explanation for this inconsistency, the City's decision to use this unsupported statement as a reason for bypass, without ever even speaking to Mr. St. Dennis, was an error.

Setting aside, to the extent possible, the flawed nature of the selection process, the City did rely on certain reasons that are either undisputed or not credibly denied by Mr. St. Dennis.

First, it is undisputed that, in 2011, within four (4) years of the selection process, a District Court Judge, after conducting a hearing where Mr. St. Dennis was present and represented by counsel, chose to extend a restraining order for one (1) year and, in doing so, impounded the address of Mr. St. Dennis's then-wife and child. Mr. St. Dennis does not dispute that the reason

that the restraining order was vacated months later is that his then-wife agreed to have the order vacated so that Mr. St. Dennis could be deployed overseas, where he would be required to carry a firearm. It appears that the address impoundment remained.⁶

Second, in regard to the underlying incident, the City relied on the sworn affidavit of Mr. St. Dennis's then-wife (contained in the 209A application) and a follow-up conversation with her by Officer Miranda. After reviewing that information, as well as Mr. St. Dennis's testimony before the Commission, I have no doubt that Mr. St. Dennis's then-wife and his daughter were in real fear. Based on Mr. St. Dennis's own testimony, he "broke down" on the morning in question after a counselor called and canceled an appointment for that morning because of a snow storm. Mr. St. Dennis testified that he ordered his then-wife and eighteen (18)-month old child to pack their things and leave the residence. Even Mr. St. Dennis acknowledges that, at a minimum, he repeatedly "picked up" his crying child, who was trying to hold on to him, and placed her back near her mother.

Third, Mr. St. Dennis does not dispute that he has made derogatory statements about Middle Eastern men and I infer, based on Mr. St. Dennis's equivocal testimony, that he has indeed told his then-wife that "all women are whores". He candidly acknowledged during his testimony that he could understand how this could be problematic for the City when considering that police officers are required to protect and serve a diverse community.

Fourth, although he provided some context for it during his testimony, he does not dispute that he has a poor credit history, including over \$26,000 in delinquent debt related to multiple student loans and a credit card.

⁶ During his testimony before the Commission, Mr. St. Dennis stated that, since the divorce was finalized in December 2015, his now ex-wife has visited his residence and that his biological daughter has stayed overnight at his residence. Even accepting this as true, this was not the case at the time the City was considering his appointment as a police officer, which is the timeframe we are limited to evaluating here.

Finally, and importantly, there was no evidence that the City's decision here was motivated by anything other than merit or that its actions were designed to conceal improper reasons. In such cases, it may be appropriate for the Commission, notwithstanding a flawed selection process, to uphold the bypass when some or all of the reasons are found by the Commission to justify the candidate's non-selection. (See Sherman v. Town of Randolph and Civ. Serv. Comm'n, 472 Mass. 802 (2015)).

Given the serious nature of the multiple reasons that have been substantiated after a de novo hearing before the Commission, and that the incidents occurred fairly recently, this is one of those rare cases where, notwithstanding a flawed selection process, the City's decision should be affirmed.

Had there been a factual dispute regarding more of the incidents, and had they occurred many years ago (i.e. – during Mr. St. Dennis's youth), the result here likely would have been different. The City should not, however, view this decision as a stamp of approval of its flawed selection process which, forthwith, should undergo an internal review and revamp to ensure, on a going forward basis, that all candidates receive the fair, impartial and thorough review that is consistent with a merit-based selection process.

Conclusion

Mr. St. Dennis's appeal, under Docket No. G1-16-069, is hereby ***denied***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 1, 2016.

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:

Mitchell Norris, Esq. (for Appellant)

William Bagley, Jr., Esq. (for Respondent)