

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**One Ashburton Place – Room 503
Boston, MA 02108
(617) 979-1900**

RICHARD ST. GERMAIN,
Appellant

CASE NO. G1-19-053

v.
CITY OF BROCKTON,
Respondent

Appearance for Appellant:

James W. Gilden, Esq.
173 North Main Street
Sharon, MA 02067

Appearance for Respondent:

Megan D. Bridges, Esq.
Assistant City Solicitor
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Brockton, MA 02301

Commissioner:

Paul M. Stein

DECISION

The Appellant, Richard St. Germain, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), from his bypass by the City of Brockton (Brockton) for appointment as a police officer in the Brockton Police Department (BPD).¹ The Commission held a pre-hearing conference on April 12, 2019 and heard cross-motions by the parties for summary decision on June 14, 2019, which were denied. A full hearing was held on September 18, November 20 and December 11, 2019, which was digitally recorded.² Witnesses were sequestered. Twenty-four Exhibits (*Exhs. 1 through 16 & 18 through 25*) were received in evidence³ and administrative notice was taken of documents pertaining to the Appellant's sealed criminal and juvenile records. Each party filed a Proposed Decision. For the reasons stated below, Mr. St. Germain's appeal is allowed.

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.

² CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the 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.

³ Brockton's proposed Exhibit 17 (related to certain parts of Mr. St. Germain's juvenile records) was withdrawn.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- BPD Police Officer Alfred Gazerro.

Called by the Appellant:

- Richard St. Germain Appellant
- Ms. C, former domestic partner
- Ms. V, current domestic partner

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

The Appellant's Background

1. The Appellant, Richard St. Germain, is an African-American male in his early thirties. He currently shares joint legal and physical custody of three children resulting from a long-term prior relationship with Ms. C and also supports a fourth child that Ms. C. had through another relationship, remaining active in their lives, attending school events, coaching sports and volunteering at school. (*Exhs. 8 & 20; Testimony of Appellant & Ms. C*)

2. Mr. St. Germain was born in Boston, removed from his parents at an early age, and grew up in foster care, group homes and residential programs. He obtained a high school diploma through the Boston Community Leadership Academy (2003), received a scholarship to attend a transitional college program at Brandeis University (2003-2004), and completed a one-year technical training program at Cambridge College (2007) sponsored by Year Up, Inc. He attended Bunker Hill Community College off and on from 2004 through 2014, but did not obtain a degree. (*Exhs. 8, 10, 11 & 25; Testimony of Appellant*)

3. Mr. St. Germain became employed in January 2016 with the Suffolk County Sheriff's Office and currently holds the position of Deputy Sheriff, which grants him full police powers. He serves on the rapid response unit, operates cruisers (sometimes at high speed over Boston streets to convey prisoners to hospitals), performs police details, and performs other duties

incident to the care and custody of prisoners. He participates in the Suffolk Sheriff's community outreach program, coaching inner-city youth. (*Exhs. 8, 10, 11 & 25; Testimony of Appellant*)

4. Mr. St. Germain's employment history from 2006 to 2016 includes:

- 2006-2008: Fidelity Investments. Intern, Jr. Systems Engineer, Regional Support Technician. Laid off in reduction in force due to recession.
- 2008-2010: Unemployed
- 2010-2011: Toys R Us. Bicycle Dep't Manager. Assembled and repaired bicycles and provided customer service. Resigned to take job with Middlesex Sheriff's Office.
- 2011-2013: Middlesex Sheriff's Office, Correction Officer. Terminated (conditional offer withdrawn) during probationary period when 2013 criminal charges were filed against him, as described further below.
- 2013-2014: Unemployed
- 2014-2016: Beth Israel Deaconess Hospital, Public Safety Officer. Per diem position. After becoming a full-time Deputy Sheriff, he stopped working the minimum number of hours and was terminated for "job abandonment".
- 2014-2016: Apollo International. Security Officer, Supervisor, Account Manager. Resigned after taking position with Suffolk County Sheriff's Office.

(*Exhs. 8, 10, 11 & 25; Testimony of Appellant*)

5. Mr. St. Germain's driver's history includes the following citations:

09/03/2005	Surchargeable Accident
11/18/2005	Speeding (NA); Number Plate Violation (NR)
05/22/2007	Speeding (NR); Registration Not In Possession (NA)
08/01/2007	Speeding (R)
09/13/2007	Failure to Obey Sign (R)
01/05/2008	Speeding (R); Failure to Wear Seat Belt (R)
09/17/2008	Passing Violation (NP); Failure to Wear Seat Belt (R)
12/16/2008	Miscellaneous Equipment Violation (R)
01/30/2009	Speeding (R); Registration Not In Possession (NR)
08/07/2009	No Inspection Sticker (R)
10/08/2009	No Inspection Sticker (NR); Number Plate Violation (NR)
06/11/2011	Surchargeable Accident
02/02/2012	Failure to Stop (NR)
04/25/2014	Speeding (NR)
02/23/2018	Speeding (INC) [later NR] ⁴

(*Exhs. 8 & 23; Testimony of Appellant*)

⁴ This citation was adjudicated Not Responsible after the BPD pulled the RMV Driver's History. (*Exh.23; Testimony of Appellant*)

6. Mr. St. Germain currently holds two Licenses to Carry Firearms (LTCs): (1) an Unrestricted Class A Large Capacity License to Carry issued by the Medford Police Department and most recently renewed by the Woburn Police Department in August 2017 (to expire August 2023) and (2) a Utah Concealed Carry License, most recently renewed in 2016 (to expire in 2021). Mr. St. Germain has been in good standing with both LTCs, save for a one year period in 2013, when those licenses were suspended following the criminal charges against him discussed further below. He owns several firearms. (*Exhs. 8, 18 & 22; Testimony of Appellant*)

7. Mr. St. Germain's Criminal History includes:

- Two (2) adult records (sealed in 2014) concerning disputes in May 2007 and May 2013 with Ms. C, then Mr. St. Germain's domestic partner, the details of which are described further below. (*Exhs.8 & 23;Testimony of Appellant & Ms. C; Administrative Notice*[\[https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Af8e8f509-2db3-4de0-bc20-7bfc98a84cc7\]](https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Af8e8f509-2db3-4de0-bc20-7bfc98a84cc7))
- Four (4) juvenile cases (sealed in 2019) alleging assault & battery involving residents and staff at the juvenile facilities and group homes where he lived when he was 14 and 15 years of age, which were filed or dismissed without adjudication. (*Exhs. 6, 8 & 23; Testimony of Appellant; Administrative Notice* [\[https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Af8e8f509-2db3-4de0-bc20-7bfc98a84cc7\]](https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Af8e8f509-2db3-4de0-bc20-7bfc98a84cc7))⁵

Mr. St. Germain's Law Enforcement Applications

8. On March 25, 2017, Mr. St. Germain took and passed the civil service examination for Municipal Police Officer (and Massachusetts State Police [MSP] Trooper) administered by the

⁵ At the Commission hearing, Brockton withdrew the proposed exhibit containing police reports concerning juvenile charges against Mr. St. Germain and did not press his juvenile record as a basis to justify his bypass, making only passing reference during the Commission hearing to his juvenile behavior. (*Proposed Exhibit 17 [withdrawn]; Colloquy with Counsel [Hearing Day I and Hearing Day III]; Testimony of Gazerro*)

Massachusetts Human Resources Division (HRD) and his name was placed on the eligible list established in November 2017. (*Stipulated Facts; Exhs. 1 & 2*)

9. In April 2017, from a prior eligible list, Mr. St. Germain applied for appointment as a MSP Trooper. He completed the application process, including a background investigation and psychological examination, but he was not selected for appointment. He reapplied in 2018 and, again, was not selected. (*Exhs. 2, 8, 11, 12 & 16*)

10. In 2018, Mr. St. Germain applied for appointment as a MBTA Transit Police Officer and, after an initial background investigation; he was bypassed in April 2019. (*Exh. 8 & 16*)⁶

11. On September 27, 2018, HRD issued Certification #05819 to Brockton for the appointment of additional permanent, full-time BPD Police Officers. Mr. St. Germain's name appeared in a tie group with one other candidate in the 23rd position on the certification. He signed the certification as willing to accept employment and was provided a copy of the BPD's "Recruit Officer Candidate Application Packet" which he was required to complete and return to the BPD. (*Stipulated Facts; Exh. 1; Testimony of Appellant & Gazerro*)

12. On November 3, 2018, Mr. St. Germain appeared, along with other candidates, intending to submit his completed "Recruit Officer Candidate Application Packet" along with certain documentation in support of his application for appointment to the BPD and review the application with the BPD background investigator, Officer Gazerro. (*Exhs. 7 through 10 & 24; Testimony of Appellant & Gazerro*)

13. Prior to November 3, 2018, Officer Gazerro had begun to research Mr. St. Germain's background, accessing and obtaining Criminal Offender Record Information (CORI) through the Massachusetts Criminal Justice Information Services (CJIS). This information included a listing of Mr. St. Germain's complete driving history, as well as his criminal history, the latter which

⁶ Mr. St. Germain's bypass by the MBTA is the subject of a related appeal which the Commission also decides today. St. Germain v. Massachusetts Bay Transp. Auth., CSC No. G1-19-128.

identified all adult arraignments, including the two sealed records, and all juvenile appearances. (*Exh. 23; Testimony of Gazerro*)

14. Officer Gazerro obtained copies of the police reports regarding Mr. St. Germain on file with the Medford Police Department, which had responded to the 2007 and 2013 incidents involved in the two sealed criminal matters. (*Exh. 18*)

15. Officer Gazerro secured a report from COPLINK, a private third-party company that provides law enforcement agencies with detailed information about subjects, including CORI, extracts from police incident reports and other data. He also procured reports from the Insurance Services Office (ISO) which identified all insurance claims for which Mr. St. Germain's name was associated, as well as two reports from Thompson Reuters, which searched for information about Mr. St. Germain's residences, utility services, phone numbers, motor vehicles and possible relatives and neighbors. (*Exhs. 4 through 6; Testimony of Gazerro*)

16. Officer Gazerro also obtained a copy of Mr. St. Germain's 2018 application to the MBTA Transit Police and spoke to an MSP Trooper who permitted Officer Gazerro to review Mr. St. Germain's application papers on file with the MSP (and take notes but no copies). Officer Gazerro is not certain when he received this information but his initial contact with the MSP occurred on or about November 13, 2018. His review of the MSP application file occurred after Brockton had sent out its bypass letter to Mr. St. Germain and was motivated by the anticipation of an appeal. (*Exhs 11. 12 & 16; Testimony of Gazerro*)

17. Mr. St. Germain appeared at the BPD on November 3, 2018. Prior to processing him with the other candidates, Officer Gazerro called him aside. Officer Gazerro told Mr. St. Germain that "it appears he would be bypassed and that he had the option to withdraw and avoid the bypass." He said that "the reason we were going to look into bypassing him is because of his prior criminal record." He was told "it was his decision" but "by withdrawing he would remain

available on the State Civil Service list” and if the BPD bypassed him other departments “will use our bypass as a reason not to hire him.” (*Exh. 7; Testimony of Gazerro*)

18. After listening to Officer Gazerro, Mr. St. Germain declined to withdraw. He was taken in to join the other candidates for the next step in the process, which was an interview with Officer Gazerro to review their application packets. (*Exh. 7; Testimony of Appellant & Gazerro*)

19. When his turn came to be interviewed, Mr. St. Germain met with Officer Gazerro privately for approximately an hour or two. He presented his application and all additional required documentation which they reviewed in detail. The interview was not recorded, but Officer Gazerro took notes which he later transcribed.⁷ (*Exh. 11; Testimony of Appellant & Gazerro*)

20. Officer Gazerro did not contact Mr. St. Germain’s employers, references, neighbors or landlords. He did not follow-up with Mr. St. Germain about any of the information he received during his November 13, 2018 conversation with the MSP Trooper. At the Commission hearing, Officer Gazerro explained that, after what he had learned about Mr. St. Germain’s residency, criminal and driving records he “already had enough” to recommend a bypass. (*Testimony of Gazerro*)

21. On November 15, 2018, Officer Gazerro submitted a report to his superior officer, Capt. LaFrance, containing his conclusion that “I would recommend the bypassing of Richard St. Germain.” His report states:

“Mr. St. Germain lied in his applications, brings with him a criminal record that shows a propensity toward violence to resolve issues, domestic violence arrest in 2013 that included A&B and Intimidation, a lack of character and maturity by denying and

⁷ The interview notes contain abbreviated summaries of subjects that Officer Gazerro covered during the interview, interspersed with information from other materials he had collected, as well as notes of his November 13, 2018 conversation with the MSP, clearly prepared after the interview. Neither the notes nor Officer Gazerro’s testimony provide a sufficiently reliable basis to know which information represents the interview conversation and which represents Officer Gazerro’s thoughts about the information he had collected from other sources, either before or after the interview. (*Exh. 11; Testimony of Gazerro*)

deflecting responsibility for the issues that have arisen in his life, an unequivocal poor past employment history, excessive motor vehicle violations to include suspension of his driving license and not in compliance with residency.”

“Many of these issues bring into question the suitability of his being issued or reissued an LTC which is a requirement to be hired. He does have an LTC issued by Woburn PD but . . . [a]fter conversation with our licensing officer, this candidate would typically be denied an LTC in the City of Brockton as unsuitable. The candidate had an LTC issued by the State of Utah that has since been revoked.”

“[H]e lied about ever being listed as a runaway or missing person and . . . had prior knowledge that he had in fact been reported as a runaway to the Boston Police”

“His criminal record (juvenile and adult) includes multiple A&B’s and a Domestic A&B as recently as 2013. The victim is the mother of his children . . . [W]hen asked if there was a court order for support [Mr. St. Germain] stated there was not and that he and the children’s mother came to an amicable agreement that did not require court intervention which contradicts the children’s mothers statement.”

“The candidate is claiming residence but utility and credit card records indicate he was not a city resident during the times required to claim residency.”

“[T]he candidate lied, intentionally omitted or failed to follow instructions regarding the answer to the question . . . where it asked to list those currently living with you. [He] marked this question; “N/A”; however his current girlfriend and brother currently live with him.”

“. . . [H]e has either quit or been fired from most of his previous jobs which indicates an unequivocal poor past work history.”

“There is an extended period of time from 2011 to 2013 that the candidate omitted /failed to report . . . whether he was even employed or not.”

(Exh. 13)

22. By letter dated January 23, 2019, BPD Chief Crowley informed Mr. St. Germain that he had been bypassed for the reasons stated in Officer Gazerro’s November 15, 2018 report. *(Exh.*

13)

23. Brockton eventually hired seventeen (17) candidates from Certification #05819, of which eight (8) were ranked below Mr. St. Germain, all of whom were Brockton residents. *(Stipulated*

Facts; Exhs. 1 & 13; Testimony of Gazerro)

24. This appeal duly ensued. *(Claim of Appeal)*

Residency

25. On the residency issue, Brockton relies entirely on entries in third-party reports, mainly, the Thomson Reuters report, that show a “Utility Service Connect Date” for “CONVENIENCE” Utility Service(s) of 2/24/2017 at the Woburn address that he listed as the next place he lived after Brockton. Officer Gazerro was not personally familiar with the source of that entry, how it was collected, or how it could be interpreted or reconciled with different dates listed elsewhere in the report as the period(s) of his residence at the Woburn address. (*Exhs. 4 & 8; Testimony of Gazerro*)

26. At the Commission hearing, Mr. St. Germain provided copies of the leases for both the Brockton and Woburn apartments. (*Exhs. 14 & 15*)

27. Officer Gazerro did not visit or contact the manager of the apartment in Brockton or any other residences listed in Mr. St. Germain’s application. (*Exh. 8; Testimony of Gazerro*)

28. The Brockton lease, in the name of Mr. St. Germain and his current domestic partner, Ms. V, was a renewal of the tenancy at that address where he had lived since 2014, and ran from January 1, 2016 through March 26, 2017. The unusual term of 14 months and 26 days was specifically selected in advance because Mr. St. Germain knew he would be taking the municipal police exam in March 2017 with the intent of applying to become a Brockton Police Officer, and made it his intention to maintain his residency in Brockton through the date of the exam so that he would be entitled to claim Brockton residency at the time of the exam. (*Exhs. 3 through 5, 8 & 14; Testimony of Appellant and Ms. V*)

29. The Woburn lease, in the name of Mr. St. Germain and Mr. B (his brother, who was going to move in with Mr. St. Germain), was executed on or about February 3, 2017, to commence March 16, 2017 and run through March 14, 2018. Mr. St. Germain continued to live in Brockton with Ms. V until after he took the civil service examination, when he and Ms. V

moved his belongings from Brockton to Woburn. The “Move-Out Statement” from the Brockton landlord confirms that notice had been given to the landlord on January 21, 2017 that Mr. St. Germain would be moving on March 26, 2017 and that his rent for March 2017 was prorated through that date. He moved his furniture, including his bed, and spent the night in Woburn for the first time on March 26-27, 2018. (*Exh. 14; Testimony of Appellant and Ms. V*)

Criminal Record

30. On May 15, 2007, at approximately 10PM, the Medford Police responded to a report of a domestic disturbance. Upon arriving on scene, Ms. C (then pregnant with their first of three children) met the officers outside the residence and stated that her boyfriend (Mr. St. Germain) was inside. The officers went to speak with him. The report does not indicate what interaction occurred with Mr. St. Germain. The report states that Ms. C had his belongings packed up and, when he came home, she told him to move out but he began to unpack his stuff and started putting it back into a dresser drawer. Ms. C reached to take his belongings out of the drawer. Mr. St. Germain grabbed her arm as he closed the drawer, causing her to catch her fingers in the drawer. She said that he also hit her with a stuffed animal. She was advised of her rights to seek a restraining order but declined. Based on her report, Mr. St. Germain was arrested and booked on a charge of domestic assault & battery. The charges were dismissed in December 2007 and the criminal record sealed. (*Exhs. 8, 18 & 23*)

31. Mr. St. Germain does not deny that the incident occurred and resulted in his arrest. He agrees that the account contained in the police report is largely accurate but not complete. He vigorously denied that he threatened or assaulted Ms. C or engaged in any other form of criminal misconduct. (*Exh.3; Testimony of Appellant (Exh.8; Testimony of Appellant)*)

32. At the Commission hearing, Ms. C largely stood by what she had told the police, but she did agree that, although Mr. St. Germain was “upset” with her, he was not out of control, and

added that she did not believe Mr. St. Germain intentionally tried to slam the drawer on her finger and that she was never in fear that he would harm her in any way. (*Testimony of Ms. C*)

33. Brockton also obtained a Medford Police “CAD Incident Report” concerning a 6/30/2010 response to a “Domestic” incident, but there is no substantive information in the documents provided to Brockton about the call, except the time the two Medford Police Officers were dispatched (10:28 AM) and the time the call was cleared (10:35 AM). (*Exh. 18*)

34. On May 6, 2013, at approximately 10:30 PM, the Medford Police responded to a 911 call received from a friend of Ms. C. According to the police report, at approximately 10:15 PM, Mr. St. Germain had dropped off their three children and left, but returned about fifteen minutes later and started banging on the front door. Mr. St. Germain told Ms. C. that he had learned something that he said warranted giving his daughters a “time out”. Ms. C said the children were already asleep and he should come back in the morning. According to the police report, Ms. C said Mr. St. Germain tried to pry open a front window and, then, before she could call 911, Mr. St. Germain was inside. She thought he came through a rear window.. She said that an argument then ensued, during which Mr. St. Germain grabbed her, she spun around and he took Ms. C’s cell phone and left. She then contacted the Medford Police. (*Exh. 18; Testimony of Ms. C*)

35. Mr. St. Germain was tracked down by Randolph Police at the residence where he was staying and taken into custody by Medford Police officers. According to the police report, en route to the police station, Mr. St. Germain stated that he had been with his daughters the entire day. After he dropped them off, his current girlfriend told him she had seen something “troubling” about his daughters. He turned back to Ms. C’s home. He tried to contact Ms. C but she did not return his messages or texts or answer her cell phone. He knocked on the front door and Ms. C came to the door and told him to go away. He could see his daughters in the background and could see Ms. C yelling at them. He returned to his vehicle and retrieved the

house key to the back door (not a window) which he used to enter the home. He met Ms. C in the dining/kitchen area. They argued, but it never got physical, and Ms. C ran out the front door. He initially denied knowing about Ms. C's cell phone, but when asked again, he admitted that he "was right" and had "got rid of the cell phone by throwing it out the car window." (*Exh. 18*)

36. Based on the foregoing information received from both Ms. C and Mr. St. Germain, Medford Police placed him under arrest with the intent to charge him with domestic assault and battery, breaking and entering with intent to commit a felony, and intimidation of a witness. The Medford Police also notified the Department of Families and Children (DCF), filed a "51A" Report of Child Abuse), and confiscated his Massachusetts LTC and his Middlesex Sheriff's Department issued firearm. Medford Police later learned that Mr. St. Germain also held Utah LTC and notified that state's authorities of Mr. St. Germain's arrest. (*Exh. 18*)

37. Mr. St. Germain was charged with Assault & Battery, Witness Intimidation and Breaking and Entering with Intent to Commit a Felony. On August 8, 2013, after filing of a Nolle Prosequi, all charges were dismissed. The record was later sealed. (*Exh. 23*)

38. Mr. St. Germain agrees that the May 2013 incident occurred and that the charges resulted in his arrest, a one-year (negotiated) suspension of his LTCs and loss of his job at the Middlesex Sheriff's Office. He disputes parts of the police report and the DCF 51A and denies any criminal behavior or intent to commit any crime. He specifically denies that he ever "threatened" Ms. C or physically assaulted her. (*Exhs. 8 & 18; Testimony of Appellant*)⁸

39. As the police report indicated, Mr. St. Germain told Ms. C they needed to talk about some "troubling" behavior by their children but, for some reason, Ms. C was visibly angry with Mr. St. Germain and, refused to talk with him. At the Commission hearing, Ms. C confirmed that the reason she was angry with Mr. St. Germain and did not then want to talk to him was because

⁸ There was no evidence to indicate what action, if any, resulted from the "51A". (*Exh. 18*)

she had seen that he had been out with Ms. V and that the children had met “Daddy’s new friend” before she did. (*Testimony of Appellant & Ms. C*)

40. During her Commission testimony, Ms. C admitted that she depended on Mr. St. Germain to support their children and that her interest in Mr. St. Germain’s financial support was in her mind when the criminal cases against him were under consideration. She also admitted that both she and Mr. St. Germain could get “emotional” at times but he was not a “violent person”, he was never abusive to her and she was “never physically afraid” of him. (*Testimony of Ms. C*)

41. Ms. C did not make the comments about Mr. St. Germain that Officer Gazarro attributed to her, allegedly disparaging him about his suitability to become a police officer. In particular, she called her prior relationship with Mr. St. Germain, although it included “lots of arguments”, typical of any couple. Both she and Mr. St. Germain called their current “working relationship” good overall. She especially praised him for how well she saw him get along with their children and how “really, really good” he is handling difficult and stressful situations involving them and others. Mr. St. Germain and Ms. C had multiple discussions about his intention to become a police officer and how to plan for how to handle the relationship with their children while he was attending the academy. (*Testimony of Appellant & Ms. C*)

Driver History

42. In concluding that Mr. St. Germain’s driving record reflected “excessive motor vehicle violations including suspension of his driving license”, Officer Gazerro considered all of the entries on Mr. St. Germain’s Driver History going back to 2005, including those for which he was found “Not Responsible.” (*Exhs. 6, 8, 19 & 23; Testimony of Gazerro*)

43. Brockton also relies on what it describes as a 60-day suspension of Mr. St. Germain’s driving license in 2008 for failure to pay fines and costs, but Officer Gazarro was unable to

correlate that assertion to specific entries on the RMV driving record. Mr. St. Germain disclosed on his application that his driver's license was suspended once "due to 7 surchargeable events".

(Exhs. 6, 8, 13, 19 & 23; Testimony of Appellant & Gazerro)

License to Carry (LTC)

44. Officer Gazerro's conclusion that Mr. St. Germain was not suitable to be licensed to carry a firearm is based solely on a conversation with another BPD officer who did not testify before the Commission but who purportedly opined that Mr. St. Germain's criminal history would preclude him from recommending issuing him an LTC. *(Testimony of Gazerro)*

45. The undisputed evidence in this record indicates that Mr. St. Germain has held, and currently does hold, two personal LTCs, an unrestricted Class A license issued by the Woburn PD and another concealed carry license issued by the State of Utah. He also carries a duty firearm issued by the Suffolk Sheriff. *(Exhs. 22 & 25; Testimony of Appellant)*

46. Although both of Mr. St. Germain's personal LTC's were suspended for a period of one year after the 2013 domestic dispute incident, the statement in Officer Gazerro's November 15, 2018 letter that the Utah license was "since revoked" is contradicted by the evidence in the record. *(Exhs. 6, 8, 18 & 23; Testimony of Appellant & Gazerro)*

Employment History

47. Officer Gazerro's November 15, 2018 letter states that Mr. St. Germain has "quit or been fired" from most of his jobs and "omitted/failed to disclose . . . whether he was even employed or not" from 2011 to 2013. His Commission testimony did not corroborate this statement. *(Exh. 13; Testimony of Gazerro)*⁹

⁹ Officer Gazerro agreed that, as a result of his review of Mr. St. Germain's MSP application after the bypass decision had been issued, he learned that Mr. St. Germain had nine employment references from Middlesex and Suffolk Sheriff Departments' officers (including the Suffolk Sheriff Deputy Superintendent, all of which were positive. *(Exh. 1; Testimony of Gazerro)*

48. As to the reasons for leaving his prior jobs, Mr. St. Germain admitted that he was discharged involuntarily from the Middlesex County Sheriff's Office while serving as a probationary employee. He was not "fired" from any other jobs. He was "laid off" by Fidelity due to the 2008 recession, left Apollo Investments and stopped his per diem job at Beth Israel Deaconess Hospital to take his current job with the Suffolk County Sheriff, and, similarly, left Toys R US to take the job with the Middlesex County Sheriff. (*Exh. 8; Testimony of Appellant*)

49. As far as his employment between 2011 and 2013 is concerned, Mr. St. Germain did disclose on his application that he was employed with Toys R Us from 10/2010 to 02/2011 and was employed with the Middlesex Sheriff from 2/2011 to 6/2013. He also listed his period of unemployment between his lay-off from Fidelity in 2008 and his employment at Toys R Us, although he stated the time frame as "11/2008 to 10/2018", an obvious typo of the last digit. (*Exh. 8*)

False Statements

50. Officer Gazerro's November 15, 2018 letter recommending that Mr. St. Germain be bypassed also concluded that Mr. St. Germain had been untruthful during the application process: (1) he lied on his application about not ever being listed as a runaway or missing person; (2) his statement about the absence of court-ordered arrangements between Ms. C and himself for support of their children "contradicts" Ms. C's statements; and (3) he "lied, intentionally omitted or failed to follow instructions" on the application when asked to "list those currently living with you." (*Exh. 13: Testimony of Gazerro*)

51. The evidence established the following facts regarding these conclusions.

- Mr. St. Germain answered NO to a question in the Criminal Record portion of the BPD application: "Have you ever been reported to a law enforcement agency as a missing person or runaway?" In fact, when he was a group home resident, on several

occasions in 2002 and 2003, the group home staff called in a “missing person” report to the police when he had not returned home by the 4:00 pm curfew, which was the required protocol. Mr. St. Germain later returned home and the incident was filed without further action. Mr. St. Germain was not aware of these reports until they were brought to his attention, first during his initial MSP application and then during his interview with Officer Gazerro. He left the home to go to work and did not consider that his tardy return was equivalent to being a “missing person”. His omission was not intentional. (*Exhs. 6, 8 & 11: Testimony of Appellant & Gazerro*)

- In January 2014, pursuant to an agreement for judgment filed with the Essex Probate Court, Mr. St. Germain and Ms. C agreed to terminate his child support obligation and entered into a joint support agreement by which they shared joint legal and physical custody under mutually acceptable terms. The agreement was modified to adjust the parenting schedule in 2016. Both parties were represented by counsel. These arrangements have been implemented without acrimony and there has been no court intervention since these agreements went into effect. (*Exhs.6, 20 & 23; Testimony of Mr. St. Germain & Ms. C*)
- In the block provided in the BPD application for “CURRENT SPOUSE/SIGNIFICANT OTHER”, Mr. St. Germain listed Ms. V, and provided the required personal details, including her current residence in Woburn (same as Mr. St. Germain). In the block provided for “RELATIVES”, Mr. St. Germain listed, among others, his brother who also lived with him, again providing the required personal details and residential address in Woburn (same as Mr. St. Germain). In the block that follows these two sections of the application, which asks for the “NAME(S) OF ALL OTHERS RESIDING WITH YOU”, Mr. St. Germain wrote “N/A”. (*Exh. 8*)

APPLICABLE CIVIL SERVICE LAW

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

Basic merit principles in hiring and promotion calls for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L.c. 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. In order to deviate from that formula, an appointing authority must provide specific, written reasons – positive or negative, or both, consistent with basic merit principles, to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L.c.31,§27; PAR.08(4)

A person may appeal a bypass decision under G.L.c.31,§2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority had shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 474-78 (2019); Police Dep’t of

Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law’ ”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211,214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”)

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*,” then the occasion is appropriate for intervention by the commission.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (*emphasis added*) However, the governing statute, G.L.c.31,§2(b), gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

ANALYSIS

The preponderance of the evidence does not establish reasonable justification to bypass Mr. St. Germain for appointment to the position of a Brockton police officer based on the reasons it proffered to disqualify him. He did reside in Brockton for the one year period prior to taking the civil service examination and was entitled to claim residency preference in Brockton. Although Brockton was entitled to access and consider Mr. St. Germain’s employment, criminal and driver

history, the conclusions it made about them were not based on a reasonably thorough review and are not supported by the preponderance of the evidence. Similarly, Brockton's conclusions that Mr. St. Germain lied on his application are not supported by the preponderance of the evidence.

Residency

There was no dispute that Mr. St. Germain began residing in Brockton in 2014 and continued his residency there until he moved to Woburn in 2017. The only factual dispute is the specific date on which Mr. St. Germain changed his legal residence by leaving Brockton and establishing residence in Woburn. The preponderance of the evidence established that he did so on March 26, 2017, and, therefore, maintained his residency in Brockton for more than one year before taking the civil service examination. He moved his belongings to Woburn and spent the night there for the first time on March 26, 2017. His Brockton lease and the 'Move-Out' documentation from his landlord confirms these facts. Mr. St. Germain (and Ms. V) provided very specific and credible recollection of when he moved his furniture, including his bed, and began sleeping in Woburn. The only evidence proffered by Brockton to the contrary was third-hand circumstantial evidence in the Thompson Reuters reports about utility turn-ons and turn-offs. Officer Gazerro did not know how that information was collected or by whom or exactly what it meant, and I give it very little weight.

Brockton contends that Mr. St. Germain did not provide the evidence that confirmed his Brockton residency during the application process. He was not put on notice that his residency was an issue until it was raised in the November 3, 2018 interview with Officer Gazerro, which had occurred right after he had been pulled aside and told that he was going to be bypassed based on his criminal record. He did tell Officer Gazerro that he had apartment leases to prove his residency, but Officer Gazerro did not contact the apartment management or otherwise pursue the residency issue before conferring with "command staff" and writing the November 15, 2018

recommendation to bypass Mr. St. Germain. It would certainly have been of value had Mr. St. Germain provided Brockton the evidence that was introduced at the Commission hearing that established his residency claim. However, I find it unlikely that, even if he had submitted the information, it would have changed the recommendation that Officer Gazerro already had made to bypass Mr. St. Germain based on the allegedly contrary “utility and credit” information, an opinion that he continued to assert at the Commission hearing.

Driving Record

Brockton claims that Mr. St. Germain has a record of “excessive motor vehicle violations” that justifies his bypass. I do not agree.

Mr. St. Germain acknowledges that his driver’s history is not unblemished. He disclosed that his license was suspended in 2009 after accumulating seven surchargeable events, including one at-fault accident (2005), a “sign” violation not otherwise identified (2007), three speeding citations (2007 & 2008) and two seat-belt violations (2008). In the past ten years since then, he was cited for failing to have his registration in his possession (Not Responsible, 2009); failing to have a current inspection sticker (Responsible, 2009), a number plate violation (Not Responsible, 2009); one at-fault accident (2011), a failure to yield (Not Responsible, 2012), and three speeding citations (Responsible, 2009; Not Responsible, 2014 & 2018).

As recently summarized in Dorn v. Boston Police Department, 31 MCSR 375 (2018), the Commission, in regard to bypass appeals based on driving histories, generally limits the review to the Appellant's driving history within the past ten (10) years, but gives greater weight to the most recent five (5) years. Further, the Commission gives more weight to those infractions related to at-fault accidents and other moving violations where the Appellant has been found responsible. Less weight is given to those entries which may be attributable to socioeconomic factors such as expired registrations, no inspection sticker, etc. which may have no bearing on

whether the Appellant can effectively serve in a public safety position. The Commission also attempts to put an Appellant's driving history in the proper context, considering such issues as whether he/she is required to drive more for personal or business reasons. Finally, when relevant, the Commission reviews the driving histories of other candidates to ensure fair and impartial treatment. See also, Bruins v. City of New Bedford, CSC No. G1-19-206, 33 MCSR --- (2020)

In sum, for seven years immediately preceding his application to become a Brockton Police Officer, Mr. St. Germain maintained a clean driving record. Following his suspension ten years earlier, he has had one at-fault accident, one speeding ticket and an inspection sticker infraction. Thus, the preponderance of the evidence, indeed, the undisputed evidence of Mr. St. Germain's most relevant recent driving record, is not fairly characterized as comprising "excessive motor vehicle violations" that justify a bypass for appointment.

Criminal History

Mr. St. Germain argues that Brockton is precluded from obtaining and considering any information about either of his adult criminal cases, as those records have been sealed pursuant to G.L.c.276,§100A. The Commission recently considered this issue in Golden v. Department of Correction, CSC No. G1-19-198, 33 MCSR --- (2020) and Kodhimaj v. Department of Correction, 32 MCSR 377 (2019). The Commission concluded that a "criminal justice agency" as defined in G.L.c.276,§100D (which includes the BPD), is expressly authorized to access independently, or through third parties, all forms of criminal history information about a candidate for employment as a law enforcement officer as part of the required "reasonably thorough review of a candidate's background", and that expressly includes sealed judicial

records or other information (including police incident reports) concerning such sealed cases.

Id.¹⁰

The Commission also concluded that criminal justice agencies were not exempt from the requirements of Massachusetts Discrimination Law, G.L.c.151B, §4(9) & §4(9½), which precludes any employer (including public law enforcement agencies) from asking a candidate to disclose certain prior criminal history, including cases that did not involve a conviction, misdemeanor convictions that occurred more than three years ago, and “a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276.”

Id.¹¹ Moreover, all employers must comply with G.L. c. 6, § 171A, which states, in part:

“In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant’s criminal offender record information shall provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source prior to questioning the applicant about his criminal history. If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source. . . .”

“Failure to provide such criminal history information to an applicant pursuant to this section may subject the offending person to investigation, hearing and sanctions by the board. Nothing in this section shall be construed to prohibit . . . an adverse decision on the basis of an individual’s criminal history or to provide or permit a claim of an unlawful practice under Chapter 151B or an independent cause of action . . . for a claim arising out of an adverse decision based on criminal history except as otherwise provided under Chapter 151B.”

Thus, insofar as Brockton’s application process inquired of Mr. St. Germain about information concerning his criminal history, including but not limited to sealed records and

¹⁰ An order to seal a criminal record is distinguished from an order to “expunge” the record, now applicable to most juvenile records and certain other matters (e.g., cases of mistaken identity and offenses that are no longer criminal) which mandates “the permanent erasure or destruction” of judicial and all other related records as well, including police logs, “so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency. If the record contains information on a person other than the petitioner, it may be maintained with all identifying information of the petitioner permanently obliterated or erased.” See G.L.c.276, §100E et. seq., added by St.2018 c 69, §195, eff. Oct. 13, 2018.

¹¹ Massachusetts Civil Service Law also limits the information that may be required from a candidate when applying to take a civil service examination. See G.L.c.31,§20.

juvenile history, which Chapter 151B prohibits it from asking him about, he correctly asserts that those disclosures cannot be used against him and, in particular, any errors or omissions in his disclosures cannot form the basis to disqualify him on the grounds of untruthfulness. *Id.* See also G.L.c.151B, §9, ¶2 (“No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.”)

Moreover, by answering improper questions solicited by Brockton about his criminal history that are prohibited by G.L.c.151B, Mr. St. Germain does not waive his rights to object to consideration of the truthfulness of his responses. See Kodhimaj v. Department of Correction, 32 MCSR 377 (2019) citing Kraft V. Police Comm’r of Boston, 410 Mass. 155 (1991) See also, G.L.c.151B, §4(5) (prohibiting “interference” with the exercise of c.151B rights); Lysek v. Seiler Corp., 415 Mass. 625 (1993) (“Any result other than the one reached in *Kraft* at best would have ignored the employer's unlawful inquiries, and at worst would have rewarded the employer for them. In either event, employers in the future would have been encouraged to violate the law”)

In sum, in the present case, none of Mr. St. Germain’s criminal history fell within the categories that Brockton could lawfully ask him about in his application, and charging him with untruthfulness in his responses cannot be used as a reason to bypass him. Similarly, although Brockton was lawfully entitled to access his criminal history, including the adult sealed records, although no convictions were entered, Brockton was required to provide Mr. St. Germain with copies of all information it had obtained (and allow him to directly and fully respond to it). Officer Gazerro’s interview notes and Commission testimony did not establish that this was done. For these two reasons, alone, Brockton’s bypass of Mr. St. Germain on the basis of his criminal record did not comply with Massachusetts law and was not reasonably justified.

Finally, these two fatal flaws aside, I also conclude that the information about Mr. St. Germain's criminal history would not provide a reasonable justification to bypass him on that basis. The fact that Mr. St. Germain's adult records were sealed does not preclude their consideration by Brockton, but the weight they deserve ought to take into account that, in order to be sealed, a judicial determination had to be made that the sealing was in the public interest, after weighing all relevant factors, including, among other things "evidence of rehabilitation . . . [and] the passage of time since the offense and since the dismissal or nolle prosequi. . . ." Commonwealth v. Pon, 469 Mass. 296, 316-19 (2014). See also Executive Order No. 495 "Regarding the Use and Dissemination of Criminal Offender Record Information by the Executive Department (Jan. 11, 2008):

"[T]he existence of a criminal record should not be an automatic and permanent disqualification for employment, and as the largest single employer in the Commonwealth, state government should lead by example in being thoughtful about its use of CORI in employment decisions . . .

It shall be the policy of the Executive Department with respect to employment decisions that . . . [t]he employer should consider the nature and circumstances of any past criminal conviction; the date of the offense; . . . the individual's conduct and experience or professional certifications obtained since the time of the offense or other evidence of rehabilitation; and the relevance of the conviction to the duties and qualifications of the position in question. Charges that did not result in a conviction will be considered only in circumstances in which the nature of the charge relates to sexual or domestic violence against adults or children . . . or otherwise indicates that the matter has relevance to the duties and responsibilities of the position in question."

(Emphasis added)

Giving consideration to applicable law and public policies set forth above, I conclude that the preponderance of the evidence fails to establish that Mr. St. Germain's prior criminal history provides a reasonable justification to disqualify him for appointment to the position of an BPD Police Officer. He has never been convicted of any crime or adjudicated a delinquent.. All charges against him were dismissed. I also take note that, while not excusing his juvenile behavior, that period was a particularly difficult time in Mr. St. Germain's life (having been

separated from his siblings and bullied by other older and bigger kids at the juvenile residences and group homes where he lived). The preponderance of the evidence at the Commission hearing, most of which Brockton failed to discover or was led to misconstrue during its less than thorough review, established that the adult 2007 and 2013 incidents involved legitimate verbal arguments that, without a more thorough review than appears in this record, cannot reasonably be characterized as a pattern of domestic abuse or violence. The credible testimony of Mr. St. Germain and Ms. C established that both incidents were isolated instances in a long-term relationship with Ms. C and their three children, that is, and has been, on good terms, without need even for a court order of support since 2014. I take note that Ms. C did not deny her potential bias due to her financial interest in Mr. St. Germain's employment future, but I credit her testimony for its candor and honesty.¹²

Mr. St. German's adult history shows many indicia of his maturity, none of which Brockton considered, as the background investigator "already had enough" reason to bypass him, and never took a serious look at his adult professional and person life beyond the paper record of his criminal history. For example, in addition to his stable family life, he has become a successful mentor to other young people. He holds two personal LTCs, both in good standing. He has a satisfactory employment record as a Suffolk Deputy Sheriff, which, among other things, includes responsibility to carry a department-issued firearm, operate cruisers and handle the many stressors of a job dealing with the care and custody of prisoners. He proudly and credibly presented the evidence of these current, positive traits, in testimony that showed a demeanor that was calm and reserved, even under tough cross-examination.

¹² The dispute reported in the sketchy Medford 2010 incident report was not considered worthy of pursuit by the police or Ms. C or Mr. St. Germain (the incident had slipped his mind until the MBTA bypass letter refreshed his recollection). The 2005 Boston incident was a case of mistaken identity. I give no weight to either incident.

In sum, because of the absence of a thorough review of Mr. St. Germain's background and after consideration of the preponderance of the evidence that failed to establish that Mr. St. Germain ever committed any domestic physical or verbal abuse of anyone in his entire life, I conclude that Brockton has not met its burden to establish the claim that Mr. St. Germain's has a criminal record that "shows a propensity toward violence to resolve issues, domestic violence . . . A&B and Intimidation [and] a lack of character and maturity".

Suitability to Carry A Firearm

Pursuant to G..L.c.41,§98, a BPD Police Officer is authorized to carry such firearms as may be determined by the BPD Police Chief. Brockton argues that, based on Mr. St. Germain's criminal history, he would be found unsuitable to carry a BPD department-issued firearm and, therefore, could not perform the essential functions of a BPD Police Officer. The record does not support this argument.

Mr. St. Germain is not classified as a "prohibited person" within the meaning of the Massachusetts Firearms Licensing Law, G.L.c.140,§140. Nor does he fit the description of a person who could be found "unsuitable" in the reasonable exercise of discretion of the licensing authority.¹³ No less than three law enforcement agencies (Woburn Police, Medford Police and the State of Utah) have deemed Mr. St. Germain suitable to hold a personal LTC and to possess, carry and conceal Large Capacity Firearms. The Suffolk Sheriff has authorized Mr. St. Germain to carry, and he does carry a department-issued firearm.

Brockton relies on a 1987 Opinion issued by Attorney General Bellotti, in response to a question posed by the Norfolk District Attorney, regarding the authority of a police chief to issue an LTC to a member of the department who resides in another community. The Opinion states:

¹³ Under G.L.c.140,§131,discretionary denial of an LTC on the grounds of "unsuitability" must be based on "reliable and credible information" that the applicant is a "risk to public safety." An applicant denied an LTC on this basis is entitled to a written explanation of the specific reasons for the determination, which is subject to judicial review.

“In effect, G.L.c.41,§98, exempts police officers from compliance with the licensing requirement of G.L.c.140,§131(d) [which then authorized a chief of police to issue licenses only to persons “residing or having a place of business” with his jurisdiction] . . . because G.L.c.41,§98 entitles them to carry “within the commonwealth” any weapons deemed appropriate by their chiefs of police.”

I do not read this Opinion to mean that a chief of police has absolute discretion to determine the type and to whom a duty firearm may be issued. I also note that G.L.c.140,§131(d) was amended in 2008 and now includes the words “or any law enforcement officer employed by the licensing authority” within the ambit of persons to whom a chief of police has not been authorized to issue an LTC under the standards prescribed by that statute. St. 2008, c.224.

In addition, Brockton’s assertion that Mr. St. Germain would not be found suitable to be issued a BPD firearm is premised entirely on hearsay information conveyed to Officer Gazerro after a conversation with a fellow officer. The record does not reflect the specific information, if any, Officer Gazerro conveyed about Mr. St. Germain’s criminal record or any other “reliable and credible information”, positive or negative, about his suitability, including, for example, his stable family life, current employment with the Suffolk Sheriff and LTC renewals, all of which post-dated the criminal incidents. I am not suggesting that the Commission can substitute its judgment about “suitability” to carry a firearm, but, the Commission must, in the application of basic merit principles of civil service law, ensure that bypass decisions are not arbitrary and capricious and are based on a fair and thorough review of all relevant facts bearing on an applicant’s present “ability, knowledge and skills”.. That was not the case with the superficial treatment of the LTC issue here.

Employment History

Brockton claims, without ever having contacted any of Mr. St. Germain’s employers, that he “has either quit or been fired from most of his previous jobs which indicates an unequivocal poor past work history.” I address briefly this unsubstantiated claim. Of the five jobs Mr. St. Germain

has held since 2006, he was “fired” only once, when the Middlesex Sheriff’s Office withdrew his conditional offer of employment during his probationary period (based on the 2013 criminal charges filed against him that were eventually dismissed). His layoff from Fidelity in a reduction in force due to the recession is not fairly characterized as being “fired”, nor is his termination from his per diem job with Beth Israel Hospital after he became a full time Suffolk Deputy Sheriff. He “quit” his other jobs only to accept better employment, leaving Toy’s R Us for the Middlesex Sheriff’s Office and, later, leaving Apollo International (where he had been promoted twice during his tenure) for the Suffolk Sheriff’s Office.

False Statements on Application

Brockton claims that Mr. St. Germain “lied” about four matters during his application process: (1) he denied that he had ever been listed as a runaway or missing person; (2) he lied about his support obligations with Ms. C; (3) he lied or failed to follow instructions about who lived with him; and (4) he omitted/failed to report his employment status from 2011 to 2013. None of these claims were proved by a preponderance of the evidence.

An appointing authority is entitled to bypass a candidate who has “purposefully” fudged the truth as part of the application process. See, e.g., Minoie v. Town of Braintree, 27 MCSR 216 (2014). However, providing incorrect or incomplete information on an employment application does not always equate to untruthfulness. “[L]abeling a candidate as untruthful can be an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on candidates seeking a career in public safety.” Kerr v. Boston Police Dep’t, 31 MCSR 35 (2018), citing Morley v. Boston Police Department, 29 MCSR 456 (2016) Moreover, a bypass letter is available for public inspection upon request, so the consequences to an

applicant of charging him or her with untruthfulness can extend beyond the application process initially involved. See G.L.c.31,§27,¶2.

The corollary to the serious consequences that flow from a finding that a law enforcement officer or applicant has violated the duty of truthfulness requires that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. See, e.g., Boyd v. City of New Bedford, 29 MCSR 471 (2016) (honest mistakes in answering ambiguous questions on NBPD Personal History Questionnaire); Morley v. Boston Police Dep't, CSC No. G1-16-096, 29 MCSR 456 (2016) (candidate unlawfully bypassed on misunderstanding appellant's responses about his "combat" experience); Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history)

Here, none of the errors and omissions cited by Brockton were the result of what it cited as an intent to deceive as opposed to honest mistakes or misunderstanding the question. Mr. St. Germain explained that he believed that he gave a truthful negative response to the question about being "listed" as a "runaway or missing person", Although there were times that he returned to his group home a few hours after curfew, there was no evidence that the staff did not know he had gone out or that his departure was unauthorized. He did not consider that his brief delayed return from an authorized absence was equivalent to "running away" from home or being a "missing person". Similarly, he was completely accurate to explain that there was no court support order, which had been vacated, and his obligations to Ms. C and their children were based on a mutually acceptable negotiated plan they worked out themselves. He also acted in good faith when he did not list Ms. V or his brother as an "other" person who lived with him because he had already disclosed that they lived with him in answer to preceding questions. Finally, Brockton simply overlooked that he did duly report his unemployment between jobs

from 2010 to 2013 on the supplementary page of the application, although he inadvertently wrote “2010 to 2018” as dates of unemployment, an obvious typo, but not an intentional deception.

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Richard St. Germain, is allowed.

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS that the Massachusetts Human Resources Division and/or the City of Brockton in its delegated capacity take the following action:

- Place the name of Richard St. Germain at the top of any current or future Certification for the position of BPD Police Officer until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. St. Germain is appointed as a BPD Police Officer, he shall receive a retroactive civil service seniority date which is the same date as the first candidate ranked below Mr. ST. Germain who was appointed from Certification No. 05819. This retroactive civil service seniority date is not intended to provide Mr. St. Germain with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By 3-2 vote of the Civil Service Commission (Bowman [NO], Chairman; Camuso {AYE}, Ittleman [NO], Stein {AYE} and Tivnan [AYE], Commissioners) on June 4, 2020.

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)(1), 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:

James W. Gilden, Esq. (for Appellant)

Megan D. Bridges, Esq. (for Respondent)

Patrick Butler, Esq. (HRD)

Regina Caggiano (HRD)

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293**

RICHARD ST. GERMAIN,
Appellant

CASE NO. G1-19-053

v.

CITY OF BROCKTON,
Respondent

OPINION OF CHRISTOPHER BOWMAN AND CYNTHIA ITTLEMAN

The City of Brockton has provided valid reasons to bypass the Appellant.

First, the Appellant, based on his own testimony, was involved in two (2) domestic violence-related incidents, including an incident in 2013 where he entered a home without permission, grabbed the mother of his children, spun her around and stole her cell phone. Aware that police had been called, the Appellant fled the scene and threw the cell phone out a car window, destroying the cell phone. This type of disturbing conduct, standing alone, is a valid reason for bypass.

Second, the Appellant provided conflicting information on his application, including answering “no” to whether he had ever been the subject of a temporary restraining order, when he indicated on his application to the MBTA Transit Police Department that he believed that he had been subject to two (2) orders against him, including one (1) related to the incident referenced above.

Third, the Appellant failed to provide the City with the necessary information to verify that he resided in Brockton continuously from March 25, 2016 to March 25, 2017, the applicable window for showing that he met the residency preference requirement in Brockton. Providing a lease at the Commission hearing, which, coincidentally, had an end date of March 26, 2017, does

not change the fact that he failed to prove his residence *at the time* that he was being considered for appointment by the City of Brockton.

Years of prior Commission decisions have established that any one of these reasons, let alone all of them taken together, justify an appointing authority's decision to bypass a candidate for appointment to a public safety position.

The appeal should be denied.

Civil Service Commission

Christopher Bowman
Christopher C. Bowman
Chairman
June 4, 2020

I concur with the above dissent. Further, I note that well-established law and policy in Massachusetts are designed to prevent and address domestic violence. This decision should not be interpreted to mean that domestic violence is acceptable. Domestic violence must be condemned in the strongest possible terms.

Cynthia Ittleman
Cynthia Ittleman
Commissioner
June 4, 2020