

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**MATTHEW STARR,**  
*Appellant*

**CASE NO. G1-15-155**

v.

**TOWN OF MEDFIELD,**  
*Respondent*

Appearance for Appellant:

Joseph L. Sulman, Esq.  
Law Offices of Joseph L. Sulman, Esq.  
1001 Watertown Street, Third Floor  
West Newton, MA 02465

Appearance for Respondent:

Joshua R. Coleman, Esq.  
Collins, Loughran & Peloquin, P.C.  
320 Norwood Park South  
Norwood, MA 02062

Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Matthew Starr, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b), to contest his bypass by the Town of Medfield (Medfield) for appointment as a full-time Police Officer with the Medfield Police Department (MPD).<sup>1</sup> The Commission held a pre-hearing conference on August 25, 2015 and held a full hearing on October 7 and 15, 2015 which was stenographically and digitally recorded.<sup>2</sup> A Motion for Summary Disposition filed by Medfield, on the grounds of issue preclusion, was denied without prejudice at the first day of the full hearing. Thirty-one exhibits (1, 2, 2A, 2B, 3 through 29) were received in evidence; Medfield called three witnesses; the Appellant called one witness and testified on his own behalf. On December 30, 2015, each party submitted a Proposed Decision.

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<sup>1</sup> 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.

<sup>2</sup>The parties stipulated that the digital recording was the official record but that the stenographic record also could be cited. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated 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.

## **FINDINGS OF FACT**

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

*Called by the Appointing Authority:*

- MPD Police Chief Robert Meaney
- MPD Police Sergeant John Geary
- MPD Police Sergeant Larz Anderson

*Called by the Appellant:*

- Matthew Starr, Appellant
- MPD Police Sergeant Ray Burton

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:

### *Appellant's Background*

1. The Appellant, Matthew Starr, grew up in Medfield MA where he lived with his parents until 2013, when he married and moved with his spouse to his current residence in Waltham MA. He is now in his mid-thirties. (*Exhs.2, 2A, 2B, 25 & 29; Testimony of Appellant*)

2. Mr. Starr received a high school diploma in May 2000 from Xaverian Brothers H.S. in Westwood MA. In May 2004, he received a B.A. degree in history from Assumption College in Worcester MA. He received an Associate's Degree in Criminal Justice from Massachusetts Bay Community College in May 2014. (*Exhs.2, 2A, 2B, 25 & 29; Testimony of Appellant*)

3. Mr. Starr is a disabled veteran who served in the United States Army National Guard and Army Reserve from 2004 until 2015, including tours in Iraq/Kuwait (2007-2008) and Afghanistan (2010-2011). (*Exhs.2, 2A, 2B, 25 & 29; Testimony of Appellant*)

4. In 2008, Mr. Starr was appointed as an auxiliary police officer for the MPD. For the most part, MPD auxiliary police officers are used to work paid traffic details, parades and other special events under the supervision of an MPD Police Sergeant. They wear an MPD badge and uniform similar to regular MPD officers, and carry handcuffs and a personal sidearm, similar but

not identical, to the MPD's departmental-issued AGK 40-caliber semiautomatic handgun. (*Exhs. 2, 2A, 25; Testimony of Appellant, Chief Meaney & Sgt. Burton*)

5. Mr. Starr also worked other jobs in law enforcement, including: (a) Dispatcher, Framingham State University, Framingham MA (2008 – 2011); (b) Security Officer, Allied Barton-Unum, Worcester MA (2013); (c) Intern, Wellesley Police Department, Wellesley MA (2013-2014); (d) Kings Bowl, Boston MA (2014-2015); and (e) Security Officer/Site Supervisor, Madison Security Group, Lowell MA (2014-2015). (*Exhs. 2, 2A & 25; Testimony of Appellant*)

6. In 2012, Mr. Starr was bypassed for employment as a Correction Officer by the Massachusetts Department of Correction (DOC). He appealed to the Commission which upheld the bypass. (*Exhs. 2, 4, 29; Administrative Notice [Starr v. Department of Correction, CSC Docket No. G1-12-219, Commission Decision reported at 26 MCSR 185 (2013)(Starr I)]*)

7. In January 2015, Mr. Starr received a conditional offer of employment from the Massachusetts Trial Court for appointment to the position of Court Officer I, but he was terminated during his probationary period due to his failure to pass the academy's physical fitness test. (*Exhs. 1, 3, 4 & 25; Testimony of Sgt. Geary*)

#### *The Framingham State Incident*

8. Mr. Starr worked as a dispatcher for the campus police department at Framingham State University (FSU) from 2008 until 2010 and, following his return from deployment to Afghanistan, he was re-employed for an additional two months in October and November 2011. His duties included answering business calls and responding to emergency (911) calls for police and fire services, maintaining records of all calls, monitoring surveillance cameras, tagging evidence and found property, and assisting with registration checks, identification cards, parking passes and warrant checks. (*Exh. 2A; Testimony of Appellant*)

9. In November 2011, Mr. Starr was involved in several incidents while working at FSU that resulted in his resignation on or about November 19, 2011. These incidents formed the basis for his bypass by the DOC for appointment as a Correction Officer and the Commission's dismissal of his appeal from that bypass. (*Exhs. 2, 2A, 4, 14 through 18 & 29; Testimony of Appellant, Sgt. Geary, Sgt. Burton & Chief Meaney; Administrative Notice [Starr I]*)

10. The incident began on November 9, 2011, when Mr. Starr failed to respond promptly to his supervisor's request for a routine "status check", which entailed contacting each of the police personnel on duty and confirming their current whereabouts and well-being. This resulted in a verbal dispute between Mr. Starr and the supervisor, during which they exchanged sarcastic remarks. (*Exhs. 2, 29; Testimony of Appellant & Sgt. Geary; Administrative Notice [Starr I]*)

11. About an hour later, as Mr. Starr's shift was about to end, the supervisor returned to the campus police station and Mr. Starr again expressed displeasure at the supervisor's criticism about the status check. At this point, the supervisor noticed a bulge under Mr. Starr's sweater with what he thought might be a gun holster protruding from the bottom of the sweater and asked Mr. Starr if he was carrying a firearm. Mr. Starr removed the Smith & Wesson M & P 9-caliber semi-automatic weapon from its holster, which was loaded with 10 rounds of ammunition,<sup>3</sup> and surrendered these items. The Framingham Police Department dispatched officers to the scene and Mr. Starr agreed to be transported by ambulance to a local hospital for a psychological evaluation. (*Exhs. 2, 4, 14 & 16; Testimony of Appellant, Sgt. Geary & Sgt. Burton*)

12. Mr. Starr explained that he brought the weapon to FSU because he planned to go to a firing range (in North Attleboro) after his shift. He said he had done so on a number of other

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<sup>3</sup> Sgt. Geary described the Smith & Wesson M & P 9c carried by Mr. Starr as a "semi-automatic 13 round capacity" weapon. The evidence was not conclusive as to precisely how many rounds must actually be loaded into a firearm for it to be treated as a "high capacity" weapon, which has implications under the criminal law, but that distinction is not material to the issues in this appeal. (*Exh. 4: Testimony of Appellant, Sgt. Geary & Chief Meaney*)

occasions and had received verbal permission from Sgt. Kelley to bring the weapon on campus. While on duty, he stored the weapon in a file cabinet to which other members of the FSU police department (sworn, civilian and student) had access and which, at times, was unlocked. (*Exhs. 2, 4, 14, 25, 29; Testimony of Appellant, Sgt. Geary & Chief Meaney*)

13. A criminal complaint was sought against Mr. Starr in Framingham District Court on charges of Carrying a Firearm or Dangerous Weapon on School Ground (G.L.c.269,§10(j) and Improper Storage of a Firearm (G.L.c.140,§131L(a)), which was denied by the Clerk-Magistrate. (*Exhs. 2, 4, 14, 15, 25 & 29; Testimony of Appellant & Sgt. Geary*)<sup>4</sup>

14. Mr. Starr reported the FSU incident to MPD Sgt. Burton, his auxiliary police force supervisor. Sgt. Burton brought the matter to Chief Meaney's attention, who ordered Mr. Starr to surrender his license to carry and all other weapons he owned, and removed him from duty as an auxiliary police officer, pending the outcome of the criminal proceedings. In October 2013, Chief Meaney returned Mr. Starr's firearms and license. (*Exh. 18; Testimony of Chief Meaney*)

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<sup>4</sup> G.L.c.269,§10(j) provides, in part: "Whoever, not being a law enforcement officer and notwithstanding any license obtained by the person pursuant to chapter 140, carries on the person a firearm, loaded or unloaded, or other dangerous weapon in any building or on the grounds of any elementary or secondary school, college or university without the written authorization of the board or officer in charge of the . . . school, college or university shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 2 years or both. . . ."

G.L.c.140,§131L provides, in part: "(a) It shall be unlawful to store or keep any firearm . . . including, but not limited to, large capacity weapons . . . in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged . . . . [S]uch weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user. (b) A violation of this section shall be punished in the case of a firearm . . . that is not a large capacity weapon, by a fine of not less than \$1,000 nor more than \$7,500 or by imprisonment for not more than 1½ years or both . . . and in the case of a large capacity weapon . . . by a fine of not less than \$2,000 nor more than \$15,000 or by imprisonment for not less than 1 ½ years nor more than 12 years or both . . . ."

The FSU academic undergraduate catalogue contains, in relevant part, the following statement regarding "Firearms and Fireworks": "In accordance with the laws of the Commonwealth of Massachusetts, Chapter 269, Section 10 and Chapter 148, Section 39, no person may have in his or her possession or use nay firearm, loaded or unloaded, in any building or on the grounds of any college or university without the written authorization of the board or officer in charge of said college or university. . . . He or she may not sell, explode or cause to explode and composition or substance or any other article which was prepared for the purpose of producing a visible or audible effect by combustion, explosion or detonation. Any act by an individual or individuals in violation will be dealt with as a serious offense to the general well-being of the University community and will likely result in removal from the community. No student will be allowed to bring a paint, pellet, AirSoft or B.B. gun for any reason to campus without the express written permission of the [FSU] Police Chief."

15. Chief Meaney had the authority to revoke Mr. Starr's license to carry upon learning about the FSU incident and pending criminal case and said that probably would have been "the absolute correct thing to do." He did not take that action, however, which would have generated a permanent record, out of deference for Mr. Starr, whom he knew had just returned from a deployment and "sometimes people returning from a situation like that can have some difficulty integrating back into a civilian lifestyle." (*Testimony of Chief Meaney*)

*Appellant's Application For Permanent MPD Police Officer*

16. Mr. Starr passed the 2013 civil service exam for municipal police officer administered by HRD. His name appeared on the eligible list established from that exam. (*Stipulated Facts*)

17. On January 28, 2015, HRD issued Certification #02628 to Medfield for the appointment of four permanent full-time MPD police officers. Based on his examination score (97), status as a disabled veteran, and residency preference, Mr. Starr was ranked sixth on the Certification and he was the second highest ranking candidate (of the nine individuals) who signed the Certification as willing to accept appointment. (*Exh. 12; Stipulated Facts*)

18. On or about March 7, 2015, Mr. Starr completed the standard MPD Recruit Background Application, a packet of more than twenty-five pages covering a wide range of subjects, along with a resume and other required documents. (*Exhs. 2 & 2A*).

19. MPD Officer John Geary, a twenty-year MPD veteran (who was promoted to Sergeant in July 2015), was assigned to conduct a background investigation concerning Mr. Starr's application. (*Exhs. 2 & 13; Testimony of Sgt. Geary*)

20. As part of the application, Mr. Starr disclosed that he was then also being considered for appointment to the Massachusetts State Police and the MBTA Police. In the course of his investigation, Officer Geary obtained a copy of Mr. Starr's MBTA Recruit Application Package

and a Notice to Police Officer Candidates, signed by Mr. Starr, concerning the statutory prohibition that “in accordance with the provisions of Chapter 697, Section 117 of the Acts of 1987, no person who smokes any tobacco products shall be eligible for appointment as a Police Officer”.<sup>5</sup> Officer Geary also obtained a copy of the Commission’s Decision in Starr I. (*Exhs. 4 & 29; Testimony of Sgt. Geary*)

21. Officer Geary’s initial review of Mr. Starr’s application noted, among other things:

- The section on Employment Record seemed incomplete, only covering employment since 2013. He did not list his prior FSU employment at FSU (of which Officer Geary was aware) or appointment as a Massachusetts Court Officer (which Officer Geary learned from information in Mr. Starr’s MBTA application.
- Elsewhere, Mr. Starr described a “verbal dispute with a supervisor Sgt. Kelly”, but “do not recall all the details due to the occurrence happened several years ago.” He also disclosed the criminal complaint sought by FSU for carrying his weapon on campus. Both the MBTA application and the Commission’s decision in Starr I contained more detail than Mr. Starr had put into his MPD application.
- Mr. Starr did not answer Question 57 (“Have you ever been the subject of a police inquiry . . . If Yes, explain fully . . .”), circling neither YES nor NO.

(*Exhs. 2, 4 & 25*)

22. When Officer Geary inquired of Mr. Starr about the FSU omission, Mr. Starr initially said “It was on my resume” and “I didn’t have space”. Officer Geary asked why Mr. Starr didn’t use the space in the application provided for “additional response”, to which Mr. Starr stated: “I didn’t think it was important.” (*Exhs. 4 & 25; Testimony of Sgt. Geary*)<sup>6</sup>

23. Asked about the omission of the Court Officer’s job, Mr. Starr told Officer Geary: “I didn’t think it was important.” At the Commission hearing, Mr. Starr stated he never actually “worked” as a Court Officer because his “appointment” was subject to his successful completion of the Court Officer training academy. (*Exhs. 3, 4 & 25; Testimony of Sgt. Geary*)

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<sup>5</sup> This act is codified as G.L.c.41,§101A.

<sup>6</sup> The resume submitted to MPD did list Mr. Starr’s FSU employment from 2008-2010, but did not include his subsequent employment in 2011. (*Exh. 2A*)

24. As part of his background investigation, Officer Geary conducted a home visit of Mr. Starr's residence, at which time he noted a "pungent scent of cigarette smoke upon entering the home. During his interview with a reference that Mr. Starr had known for fifteen years, Officer Geary asked: "Does Matt smoke", to which the reference stated: "I know he smoked in the past but I'm not sure about now." (*Exh. 4; Testimony of Sgt. Geary*).

25. On Friday, June 12, 2015, Officer Geary contacted Mr. Starr to pursue the smoking issue. Mr. Starr then worked part-time for Scotts Seed Company setting up displays at Home Depot and Lowe's. Officer Geary contacted the supervisor at Scotts Seed who identified two locations where Mr. Starr would be working. Officer Geary went to these locations intending to ask Mr. Starr specifically about his smoking, but he was not found. (*Exh. 4; Testimony of Sgt. Geary*)

26. On Monday June 15, 2015, Officer Geary again called Mr. Starr's supervisor at Scotts Seeds who said Mr. Starr had called in sick on Friday, June 12, 2015, but he should be at the Home Depot in Rockland that morning and Officer Geary proceeded to the Home Depot. He spotted Mr. Starr's pick-up truck and, upon approaching the truck, saw a pack of Pall Mall cigarettes on the dashboard. Officer Geary took a photo of the dashboard and returned to his vehicle. A few minutes later, Mr. Starr appeared, opened the door to the truck, took out a cigarette and smoked it, which Officer Geary also photographed. He then contacted Chief Meaney who decided that Mr. Starr should not be confronted at that time. (*Exhs. 4 & 11; Testimony of Sgt. Geary & Chief Meaney*)

27. Officer Geary contacted Mr. Starr later that week and set up a meeting for Saturday, June 20, 2015. A few minutes before the time for the meeting, Mr. Starr emailed Officer Geary that he was cancelling the meeting and did not immediately reply to Officer Geary's further effort to contact him by email and telephone. (*Exh. 4; Testimony of Sgt. Geary*)

28. Officer Geary submitted a report of his background investigation on Mr. Starr. The report is titled “Background Investigation report – by-pass”. It documents Officer’s Geary’s findings through June 20, 2015, all of which were negative. (*Exh.4; Testimony of Officer Geary*)

29. At a meeting of the Medfield Board of Selectmen (BOS) on June 16, 2015, on the recommendation of Chief Meaney, the BOS voted to appoint three candidates (Candidates B, C & D) as MPD police officers, all ranked below Mr. Starr on Certification #02628. (*Exh. 27*)

30. On or about July 1, 2015, Officer Geary and Chief Meaney met Mr. Starr, with his attorney present, and informed him that he was going to be bypassed for smoking during the application process and for additional reasons that would be set forth in the bypass letter. (*Testimony of Appellant, Sgt. Geary & Chief Meaney*)

31. About a week after his meeting with Mr. Starr, on or about July 7, 2015, Chief Meaney received a letter from Mr. Starr which stated: “It may show up in past medical records that I was a smoker. I have since then quit.” (*Exh. 10; Testimony of Chief Meaney*)

32. At a meeting of the Medfield BOS on July 7, 2015, on the recommendation of Chief Meaney, the BOS voted to appoint a fourth candidate (Candidate A) to the position of MPD police officer, also ranked below Mr. Starr on Certification #02628. (*Exh. 28*)

33. At the Commission hearing, Mr. Starr admitted that he still smoked until August 2015. (*Testimony of Appellant*)

34. By letter dated August 18, 2015, Mr. Starr received notice that he had been bypassed for appointment as an MPD police officer for the following three reasons:

- I. You Omitted Information On Your Employment Application Concerning Your Prior Employment History.
- II. You Exercised Poor Judgment and Brought a Loaded Weapon on Campus.
- III. You Were Untruthful During the Application Process Regarding The Fact That You Currently Smoke Tobacco Products, Which Makes You Ineligible For Appointment.

(*Exh. 1*)

### Appellant's Claim To Disparate Treatment

35. At the Commission hearing, Mr. Starr proffered evidence from the background reports conducted on the four lower ranked candidates who were hired as MPD police officers, which are identified as Candidates A, B, C & D for purposes of confidentiality. (*Confid.Exhs. 5 through 7 & 19 through 24*)

36. Officer Geary performed the background investigation on Candidate D. The investigation disclosed no criminal history as well as a positive work history. His background report was submitted on or about May 31, 2015 as a "To/From" addressed to Chief Meaney with the subject heading: "Background Investigation —". (*Confid.Exh. 8; Testimony of Sgt. Geary*)

37. Officer Larz Anderson, a 10-year veteran of the MPD (who was promoted to Sergeant in July 2015) performed the background investigations on Candidates A, B & C. He reported that Candidates A & C both had clean criminal records and positive employment references. (*Confid.Exhs. 5 through 7, 19 through 24; Exh.26; Testimony of Sgt. Anderson*)

38. The background investigations disclosed no evidence that Candidates A, B, C or D then smoked cigarettes or had a history of smoking. (*Testimony of Sgt. Geary & Chief Meaney*)

39. Officer Anderson's background report on Candidate B contained both positive and negative findings, including positive current employment history, both positive and negative prior employment history, a juvenile criminal record and one abuse prevention order, also as a juvenile, prior marijuana use, and positive personal references. Candidate B had disclosed all of his juvenile record and negative employment history on his application (*Confid.Exhs. 6 & 19 through 24; Testimony of Sgt. Anderson*)

40. Chief Meaney and Officer Anderson had initial reservations about Candidate B based on his prior criminal and employment history and said Candidate B "had some convincing to do",

but found Candidate B “very truthful”, “forthcoming” and “remorseful” about the bad decisions he had made as a teenager that he wasn’t proud of, all of which he disclosed on his application. His disclosures matched up with the police records. He provided medical documentation that explained he had been taking prescription medication that had caused him to fail a drug test with a prior employer. (*Confid.Exh. 19; Testimony of Sgt. Anderson & Chief Meaney*)

41. Eventually, Chief Meaney came to the conclusion that “Candidate B admitted his errors, his mistakes [and] that impresses me because things are going to happen to people. . . . And when they do, I simply want them to raise their hands and look me in the eyes and tell me I did it. You do that I can deal with it. You don’t do that, I have a tough time dealing with it . . . .So I look on that – and this is going to sound a little bit odd – but sometimes a person who has had some adversity, successfully overcomes it, and is willing to tell me about it and be honest about it, that’s going to be a factor in my decision-making, a positive factor in my decision-making. Don’t tell me things and I have issues with it.” Chief Meaney also distinguished “from a criminal point of view” incidents that occurred “many years ago when [a candidate] was in high school” from those “that happened as an adult when you probably should know a bit better to not do that.” (*Testimony of Chief Meaney*)

#### **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31 for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” 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. The mechanism for ensuring adherence to basic merit principles in hiring and promotion is the

provision for regular competitive qualifying examinations, open to all qualified applicants, from which eligible lists of successful applicants are established, ranking them according to their scores on the qualifying examination, along with certain statutory credits and preferences, which then may be used by appointing authorities to make civil service appointments based on a “certification” of candidates according to their standing on the applicable eligible list. G.L.c. 31, §§6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the “2n+1” formula. G.L.c.31,§27; PAR.09.

In order to deviate from the rank order of preferred hiring, and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L.c.31,§1,§27; PAR.08. Pursuant to the Personnel Administration Rules (PAR) promulgated by the Massachusetts Human Resources Division (HRD), the statement of reasons must be specific and complete:

“Upon determining that any candidate on a certification is to be bypassed . . . an appointing authority shall, immediately upon making such determination, send . . . a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked. . . . Such statement shall indicate all . . . reasons for bypass on which the appointing authority intends to rely or might, in the future, rely to justify the bypass. . . . No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed . . . shall later be admissible as reasons for selection or bypass in any proceeding before the . . . Civil Service Commission.” PAR.08(4)

A person who is bypassed may appeal that decision under G.L.c.31,§2(b) for de novo review by the Commission. When a candidate appeals from a bypass, the Commission's role is not to determine if the candidate should have been bypassed. Rather, the Commission determines whether, by a preponderance of evidence, the bypass decision was made after an “impartial and

reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and that there was “reasonable justification” for the decision. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012) citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban , 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 241 (2006) and cases cited; Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003). See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (appointing authority must prove, by a preponderance of evidence, that the reasons assigned to justify the bypass were “more probably than not sound and sufficient”); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (same)

“Reasonable justification in this context 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, 543 (2006) and cases cited; Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), *citing* Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

In selecting public employees of skill and integrity, appointing authorities are vested with a certain degree of discretion. City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997). It is not necessary, however, for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Rather, the governing statute, G.L.c.31,§2(b), gives the commission broad “scope to evaluate the legal basis of the appointing authority's action, even if based on a rational ground.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997). In deciding “whether there was reasonable justification” shown for an appointing authority’s exercise of

discretion, the Commission's primary concern is to ensure that the action comports with “[b]asic merit principles.” G.L.c.31,§1. See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 188 (2010); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev.den.,423 Mass.1106 (1996); Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991). Although it is not within the authority of the commission “to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority”, 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.” Id. (*emphasis added*)

## **ANALYSIS**

Medfield has proved by a preponderance of the evidence that its decision to bypass the Appellant, Matthew Starr, was reasonably justified after an impartial and reasonably thorough review of his application. The credible evidence established that he continued to smoke cigarettes up to, and probably well after, the date on which MPD made the appointments for which he was bypassed. This, alone, justified his disqualification for appointment. In addition, Medfield was reasonably justified to rely on the credible evidence of Mr. Starr’s poor judgment in bringing his personal firearm to work at Framingham State University in November 2011, and leaving it improperly stored, despite the laws and university rules that prohibited him from doing so without written permission from an appropriate university official. Mr. Starr’s errors and omissions on his application related to the 2011 incident, as well as the non-disclosure of his termination from a law enforcement position in 2015, are also troubling indications that Mr. Starr

still does not take responsibility for his mistakes which, in addition to adding to the doubt about his judgment, presents an unacceptable risk that he could be trusted to be truthful in carrying out the responsibilities of a Medfield police officer.

### Disqualification for Smoking

Medfield rightly construes Massachusetts law to prohibit the appointment of a candidate to serve as a police officer who has been observed smoking tobacco during the application process.

M.G.L.c.41,§101A (*emphasis added*) states:

“Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a police officer or firefighter in a city or town and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products. The personnel administrator [HRD] shall promulgate regulations for the implementation of this section.”

The statutory language of Chapter 41, Section 101A has been construed to apply to disqualify a candidate who smoked during the application process. In Gaul v. City of Quincy, 19 MCSR 1 (2006), decision aff’d, 2007 WL 5445210 (Mass.Sup.Ct.), judgment aff’d, 73 Mass.App.Ct. 1122 (2009) (unpublished), the Commission upheld the bypass of a candidate for appointment as a firefighter who was an “occasional” smoker. The Commission concluded:

“The language of Chapter 41, Sec. 101A does not make distinctions between degrees of smoking; the language of the statute denies appointment to any individual who smokes ‘any tobacco product’. In Town of Plymouth v. Civil Service Comm’n, 426 Mass.1 (1997) the Court . . . found that the statutory language [of G.L.c.41,§101A] makes termination mandatory and leaves no discretion to the appointing authority or the Commission. The prohibition on appointing such individuals to those positions shares that mandatory language.”

Id., 19 MCSR at 4. In affirming the judgement of the Superior Court upholding the Commission’s Decision, the Appeals Court stated: “The evidence that Gaul smoked, which was supported in the record, alone justified the city’s decision.” Id., 73 Mass.App.Ct. at 1122, citing Town of Plymouth v. Civil Service Comm’n, *supra*.

The mandatory prohibition against smoking by those who serve as police officers and firefighters, which leaves no discretion to deviate from its mandate, is distinguished from the prohibition against “habitual” use of alcohol (G.L.c.31,§50) as to which some discretion can be applied. The distinction turns on the different public policy considerations that are involved.

“There are important differences between both the language and legislative purposes of §§ 50 and 101A. . . . § 50 . . . allows for discretion by the appointing authority and the commission in evaluating whether an employee's alcohol consumption has reached a chronic level that violates the statute. By contrast, § 101A contains no such discretionary language and, unlike § 50, expressly delegates to the personnel administrator the authority to enforce the statute in a manner that obviates the case-by-case determinations usually made under § 50.

“Furthermore, the legislative purposes behind §§ 50 and 101A appear to be different. While the legislative history is sparse, § 50 was likely enacted because serious abuse of alcohol presumptively has a negative effect on job performance. Allowing an employee to be reinstated after completion of an alcohol rehabilitation program and demonstration of satisfactory job performance is consistent with ameliorating deficient job performance.

There is material in the record suggesting that the purpose of § 101A is to prevent police officers and fire fighters from increasing their risk of hypertension and heart disease by smoking and, therefore, their eligibility for disability retirement benefits under G.L. c. 32, § 94. See note 4, supra. Unlike § 50, § 101A does not apply to all civil service employees, but only to police officers and fire fighters who, because of the nature of their jobs, are already at high risk for developing hypertension and heart disease. *The Legislature appears to have made a policy decision, based on financial interests, that employment in these positions should no longer be open, after January 1, 1988, to persons who smoke tobacco products so that, over a period of time, police and fire departments will have a workforce free of a serious disease-causing addiction.*

Town of Plymouth v. Civil Service Comm’n, 426 Mass. 1, 6-7 (1997) (*emphasis added*). In this regard, it bears notice that Section 101A is one of six such smoking prohibitions included by the legislature within Chapter 697, which is entitled: “An Act Further Regulating Public Employee Retirement in the Commonwealth”, enacted on an emergency basis to provide “immediate . . . reform of the pension system”, and applies to both civil service and non-civil service positions in the State Police, Department of Corrections, MBTA police, Capitol police, any “investigator or examiner” empowered to perform police duty, and certain employees of MassPort. St.1987, c.697, Preamble, §§ 5, 6, 11, 117, 120 & 123. See also Morehouse v. Weymouth Fire Dep’t, 26

MCSR 179 (2013) (firefighter hired after enactment of Section 101A was not grandfathered out of statute by having other pre-1988 employment)

The Appellant claims that proof of his smoking during the application process cannot constitute reasonable justification for his bypass, pointing to the provision in the Smoking Prohibition Rule, PAR.23, adopted by HRD pursuant to St.1987, c.697 which states:

“23.3. No person shall be bypassed or denied an appointment to a covered position because he or she smokes tobacco products prior to appointment or has a history of smoking tobacco products.”

Read literally and out of context with the statute, this language, arguably, would mean that an applicant selected for appointment as a State Trooper, police officer or firefighter in the Commonwealth, or in any municipality, could smoke a cigarette outside his or her barracks or station and then walk inside and be sworn in. That result would be both illogical and inconsistent with the plain statutory language and underlying legislative purpose of Chapter 697, as well as judicial construction of the law, and the Commission cannot construe the rule to that effect. See, e.g., ENGIE Gas & LNG LLC v. Department of Public Utilities, 475 Mass. 191 (2016), citing Franklin Office Park Realty Corp. v. Commissioner of the Dep't of Env'tl. Protection, 466 Mass. 454, 459–460, (2013) (“Where the court determines that a statute is unambiguous, we will reject any agency interpretation that does not give effect to the Legislative intent”); Goldberg v. Board of Health, 444 Mass.627, 632-33 (2005), citing Smith v. Commissioner of Transitional Assistance, 431 Mass. 638, 646 (2000) (“An agency regulation that is contrary to the plain language of the statute and its underlying purpose may be rejected by the courts”)

In sum, Medfield established reasonable justification to bypass Mr. Starr for smoking, based on the preponderance of evidence obtained through its investigation, including the “pungent” odor of tobacco at his residence, the percipient evidence of him smoking as well as his belated and inconsistent statements about quitting.

### Possession of Firearm on School Property

The Appellant rightly argues that the Commission's decision in Starr I, does not expressly prevent, as a matter of "issue preclusion", re-litigating the alleged misconduct in carrying a firearm on FSU property and improperly storing it there. The issue for the Commission in a bypass case, however, is not whether the alleged misconduct actually occurred, but, rather, whether, after a reasonable and thorough review, Medfield established, by a preponderance of evidence, a "credible basis for the allegations" that present "legitimate doubt" that the candidate posed an unacceptable risk. See City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 189 (2010). See also Keller-Brittle v. Boston Police Dep't, 23 MCSR 276 (2010) (declining to reopen bypass appeal, noting, but not deciding, among other things, the "high hurdle" the appellant would face to overcome prior written bypass decision by NYPD on similar grounds)

Here, Medfield surpassed the threshold required to prove that its conclusions about the FSU incident were based on an impartial and reasonably thorough review. In particular, Medfield had a written decision from the Commission, which included specific findings of fact, established after a contested evidentiary hearing. In addition, MPD personnel had direct, percipient knowledge of the incident as well as access to the records of the percipient FSU personnel.

The Appellant also contends that the FSU incident was too stale and was inconsistent with Chief Meaney's decision to restore Mr. Starr's weapons and continue his employment as an auxiliary police officer. While those factors are legitimate considerations in deciding whether, in the exercise of sound discretion, to excuse Mr. Starr for a prior mistake, and may be a close call, that was a call made in the exercise of sound discretion and free of bias by the appointing authority. In addition, as noted below, Mr. Starr's lack of candor about the FSU incident played a role in Chief Meaney's conclusion that Mr. Starr had not yet truly put this issue behind him.

### Lack of Candor in Application Process

The duty imposed upon a police officer to be truthful is one of the most serious obligations he or she assumes. “Police work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” Falmouth v. Civil Service Comm’n., 61Mass. App. Ct. 796, 801 (2004) citing City of Cambridge v. Civil Service Comm’n., 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (“The city was hardly espousing a position devoid of reason when it held that a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.”) See, also, Desmond v. Town of West Bridgewater, 27 MCSR 645 (2014); Ung v. Lowell Police Dep’t, 24 MCRS 567 (2011); Gallo v. City of Lynn, 23 MCSR 348 (2010). An officer who has a demonstrated record of untruthfulness also may compromise the officer’s ability to serve as a credible witness in the prosecution of a criminal case. See generally, United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2400 (1976), citing Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). See also Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995); United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375 (1985).<sup>7</sup>

The Commission also has affirmed that an Appointing Authority is as equally entitled to impose discipline upon a police officer whose credibility can be questioned by a demonstrated

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<sup>7</sup>It bears notice that the jurisprudence of the Commonwealth has taken a somewhat different path in the type of exculpatory evidence that must be disclosed in a criminal prosecution and, in particular, evidence “beyond information held by agents of the prosecution team”, including, in particular, internal affairs investigatory material, does not generally come within the sweep of the “Brady” test, but is subject to other, stricter rules. See, e.g., MASS.R.CRIM.P. 14(a)(1)(A); Commonwealth v. Laguer, 448 Mass. 585 (2007); Commonwealth v. Tucceri, 412 Mass. 401 (1992); Commonwealth v. Daye, 411 Mass. 719 (1992); Commonwealth v. Gallerelli, 399 Mass. 17 (1987); Commonwealth v. Wilson, 381 Mass. 90 (1980) See also Commonwealth v. Wanis, 426 Mass. 639, 643-44 (1998); Reporter’s Notes – Revised, 2004, *Subdivision (a)(1)(A)*, MASS.R.CRIM.P. 14(a)(1)(A); Commonwealth v. Thomas, 451 Mass. 451 (2008)

lack of objectivity as it is upon an officer who knowingly distorts the truth through lying, as neither trait is acceptable behavior for a police officer. See Robichau v. Town of Middleborough, 24 MCSR 352 (2011) and cases cited.

Likewise, an Appointing Authority is well within its rights to bypass an individual for “purposefully” fudging the truth as part of an application process for the position of police officer. See, e.g., Barbosa v. New Bedford Police Dep’t, CSC No. G1-15-34, 29 MCSR --- (2016) (pattern of inattention to detail and lack of candor regarding prior employment and criminal history); Minoie v. Town of Braintree, 27 MCSR 216 (2014) (multiple omissions about prior domestic abuse restraining orders and residences); Noble v. Massachusetts Bay Trans. Auth., 25 MCSR 391 (2012) (concealing suspension from school for involvement in criminal activity); Burns v. City of Holyoke, 23 MCSR 162 (2010) (claiming he “withdrew” from another law enforcement application process from which he was actually disqualified) Escobar v. Boston Police Dep’t, 21 MCSR 168 (2008) (misrepresenting residence)

The corollary to the serious consequences that flow from a finding that a police 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 --- (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 --- (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)

Applying these principles to the facts of this appeal, I conclude that the pattern of carelessness in Mr. Starr's responses to questions in his application about his employment established a level of inattention to detail and potential untruthfulness that reasonably justify Medfield's legitimate doubts about his candor in explaining the FSU incident justified the NBPD's determination that he was not presently suitable for appointment to the NBPD.

Starr's errors and omission in the application process went well beyond the level of a few isolated, honest mistakes.<sup>8</sup> For instance, he intentionally left out employment at FSU and the Massachusetts Superior Court, giving different explanations when asked why he did so. He claimed that he had forgotten the details of his "verbal reprimand" at FSU, when, in fact, he had described the details in the MBTA application that he has also just recently submitted, and the incident was fully described in the Commission's 2013 decision in Starr I. His self-serving description of the charges brought against him in the FSU incident as being wholly without any evidentiary support shows that he still fails to fully appreciate the problematic nature of his behavior in bringing a firearm onto school property without the required permission, especially, when it was not necessary to do so (as his route from FSU to the firing range would have permitted him to retrieve the weapon after work on his way to the range).

#### Claim of Disparate Treatment

I have carefully reviewed the evidence presented by the Appellant to suggest that he was treated unfairly and judged more harshly than the other lower-ranked applicants who were appointed, in particular, Candidate B. I find this claim to be without merit. In fact, the preponderance of the evidence supports the conclusion that Chief Meaney had been more lenient with Mr. Starr when the FSU incident first arose. What ultimately distinguished Mr. Starr from

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<sup>8</sup> I have not overlooked the fact that the Mr. Starr assumed that MPD knew all about his FSU employment but that does not excuse his failure to disclose it as required on the application. In fact, it tends to reinforce the conclusion that the omission was conscious and purposeful.

Candidate B, who also had a spotty prior record, was the fact that Candidate B, unlike Mr. Starr, satisfied Chief Meaney that he took responsibility for his mistakes, primarily when he was still in high school, had learned from them, and was completely candid and truthful about his past shortcomings in the application process. Similarly, the fact that Officer Geary's investigative report differed in form and substance from the investigative reports on other candidates fails to suggest any ulterior motive. Although the report plainly was written after the bypass decision had been made with the primary intent to justify the bypass, nothing in the evidence suggests that the bypass decision, itself, was pre-determined, but rather was a bona fide conclusion reached after the reasonably thorough investigation had been concluded, which disclosed the reasons that formed the basis for the bypass decision.

## **CONCLUSION**

In sum, for the reasons stated herein, the appeal of the Appellant, Matthew Starr, is *dismissed*.

Civil Service Commission  
/s/Paul M. Stein  
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 22, 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:

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