

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

CARSON STRAUGHN,
Appellant

v.

G1-20-118

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Carson Straughn

Appearance for Respondent:

Joseph Santoro
Department of Correction
Industries Drive: P.O. Box 946
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION

On July 31, 2020, the Appellant, Carson Straughn (Appellant or Mr. Straughn), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Massachusetts Department of Correction (DOC) to bypass him for original appointment as a permanent, full-time Correction Officer I (CO I). I held a remote pre-hearing conference on August 25, 2020; a remote status conference on October 19, 2020; and a remote

full hearing on November 16, 2020.¹ The hearing was audio / video recorded via Webex video conferencing and the parties were provided with the recording.²

FINDINGS OF FACT:

Nine (9) exhibits were entered into evidence at the hearing: Respondent Exhibits 1-7 (R1 – R7) and Appellant Exhibits 1-2 (A1 – A2)). Based on the exhibits, the stipulated facts, the testimony of:

Called by DOC:

- Eugene T. Jalette, Supervising Identification Agent, DOC;
- Kyle Brouillette, Background Investigator, DOC;

Called by the Appellant:

- Carson Straughn, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. The Appellant is a forty-five year-old Black male. He was born in Barbados and became a United States citizen in his 20s. He has lived in Brockton for the past five years. He graduated from high school and has been a driver for a local ambulance service company for approximately fourteen years. (Testimony of Appellant; Exhibit R7)
2. The Appellant has lived with his partner since 1996. They have two daughters and one son.

(Testimony of Appellant)

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

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the recording should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

3. The Appellant's current employer describes him as "one of the best employees he has"; as someone who can always be counted on and who can handle and de-escalate stressful situations. (Exhibit R7)
4. The Appellant's co-workers describe him as "one of the best drivers they have ever worked with due to him being punctual, sociable, dependable and caring." (Exhibit R7)
5. On April 13, 2019, the Appellant took and passed the civil service examination for CO I. (Stipulated Fact)
6. On January 9, 2020, the Appellant's name appeared 63rd on Certification No. 06870, from which DOC ultimately appointed 57 candidates. 29 of those appointed candidates were ranked below the Appellant. (Stipulated Facts)
7. DOC conducted a background investigation of the Appellant. As part of the background investigation, DOC reviewed a police report from the Boston Police Department regarding a domestic incident in 2002 between the Appellant and his girlfriend, the same person that the Appellant resides with today.
8. The background investigator met with the Appellant and provided him with the opportunity to address the 2002 incident. The Appellant acknowledged that the incident occurred; he expressed his regret for it; and indicated to the investigator that it does not represent the person he is today. (Testimony of Brouillette)
9. DOC's review of CORI records also showed that the Appellant was arrested in 2016 for driving after his license was suspended. (Exhibit R7)
10. The Appellant was stopped by police in 2016 while driving. Unbeknownst to the Appellant, his driver's license had been suspended for failure to pay a speeding ticket. He was arrested and charged with operating without a license. He was released that day; paid the speeding ticket fine; and had his license reinstated shortly thereafter. (Testimony of Appellant)

11. DOC also reviewed State Police records that show that the Appellant was arrested for OUI while driving on Route 93 South in September 2018. (Exhibit R7)
12. The Appellant was at a friend's house from 8:00 P.M. to 1:00 A.M. on the night that he was charged with OUI. He consumed four alcoholic beverages during that time before driving home. He "blacked out"; crashed his car, which was "totaled"; failed a field sobriety test and was administered a breathalyzer test, registering a .09 blood alcohol content. He was arrested for OUI. (Testimony of Appellant)
13. The background investigator provided the Appellant with the opportunity to address the 2018 incident. The background investigator summarized his conversation with the Appellant as follows:

"Applicant stated the Operating under the influence was him coming home from a cookout where he admitted having some drinks. The applicant stated that one second he was driving and the next he [was] involved in an accident. The applicant stated that he was diagnosed with [a a medical condition] the week following this incident, and states that it was no excuse to driving after drinking any amount of alcohol but believes it may have had an effect."
(Exhibit R7)
14. The Appellant's CORI report, obtained by DOC as part of the background investigation, contains the following information regarding the above-referenced incident:

ARRAIGNMENT: (0001)
ARG-DATE: 09/17/18 PD; COURT: QUINCY DISTRICT OFF: OPER UND INFL OF LIQ . ,08%
STATUS: C .WPD: WOT:
DISP: C 11/30/18 CWOFF 11/26/19 PROG VWF PD DISM (Exhibit R4)

15. On October 21, 2020, the Appellant, in preparation for this hearing, received a text message from a Physician's Assistant stating:

"Alcohol can drive your blood sugar up very high at times depending on the type of alcohol and how much you are drinking. High sugar levels can cause you to pass out. It is tough to say if this was the cause at that time but it was around 2018 when you were having very high sugars and your A1C (the average of your sugar over 3 months) was 4.9 which the normal is <6.5."
(Exhibit A1 and Testimony of Appellant)

16. The same Physician Assistant provided the Appellant with a one-page letter containing a chart with more detailed information related to the Appellant's sugar level readings on 9/28/18. (Exhibit A2)
17. The background investigator provided his report to Eugene Jalette, the Supervising Identification Agent at DOC who oversees background investigations of prospective employees. (Testimony of Brouillette and Jalette)
18. Mr. Jalette forwarded any background reports that contained potential reasons for bypass, including the Appellant's, to the Chief of Staff at DOC. (Testimony of Jalette)
19. In hiring cycles immediately preceding this one, DOC's standard practice was to assemble several senior officials, including the DOC Commissioner, to review those background reports that raised potential reasons for bypass. Mr. Jalette would participate in those discussions. (Testimony of Jalette)
20. Due to reasons that Mr. Jalette attributed to COVID-19 restrictions, he did not attend or participate in such a discussion with senior DOC officials, nor is he aware if such a group discussion took place among senior DOC officials to discuss the bypass reasons. (Testimony of Jalette)
21. Mr. Jalette was informed by the Chief of Staff that some of the candidates' whose background reports were forwarded to him would be bypassed and some would not. The DOC Chief of Staff informed Mr. Jalette that the Appellant would be bypassed. (Testimony of Jalette)
22. Having not participated in any decision-making discussion, Mr. Jalette is not certain if the Appellant would have been bypassed but for the most recent OUI, but he is aware that DOC

puts greater emphasis on offenses, including offenses such as an OUI, that occurred within the past five years of being considered for employment. (Testimony of Appellant)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n., 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an

“impartial and reasonably thorough review” of the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington and another v. McCarthy, 60 Mass. App. Ct. 914, 915 (2004).

Disputed facts regarding alleged prior misconduct of an applicant must be considered under the “preponderance of the evidence” standard of review as set forth in the SJC’s recent decision in Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461 (2019), which upheld the Commission’s decision to overturn the bypass of a police candidate, expressly rejecting the lower standard espoused by the police department. Id., 483 Mass. at 333-36.

Analysis

DOC’s review process has changed considerably over the years. In the matter of Teixeira v. Department of Correction 27 MCSR 471 (2014), DOC relied upon two (2) criminal matters that had occurred almost twenty (20) years earlier, when the candidate was a junior in high school, without ever giving the candidate the opportunity to address his criminal record and without even considering the candidate’s life record over the intervening two (2)

decades. The Commission, in overturning DOC’s bypass decision, stated:

“The wisdom of looking behind a CORI report was on full display here. Without doing the type of thorough review referenced in Beverly, DOC, when making its hiring decision, did not know that Mr. Teixeira was a junior in high school when the crime was committed. They did not know that, during the two decades that has transpired since then, Mr. Teixeira has become a father who is actively involved in his son’s school and extracurricular activities, serving as a youth sports coach and chaperone for class trips. They did not know that, for the past eight (8) years, Mr. Teixeira has worked as the beverage coordinator for a popular restaurant in Southeastern Massachusetts, supervising many employees. In short, they knew almost *nothing* about Mr. Teixeira, his accomplishments, his character or his ability to perform the duties of a Correction Officer. DOC failed to conduct the type of thorough review that is required here; [and] they

inappropriately relied on a stale CORI report without discussing the CORI with the candidate ...”

Since 2014, DOC has significantly modified its hiring process and, except in cases where there is a statutory disqualifier, gives all candidates the opportunity to address issues in their CORI report *before* making a decision to appoint or bypass the candidate. This is consistent with the principles espoused by policy makers on both sides of the aisle, in which employers are not required to look “beyond” a candidate’s CORI, but, rather, look “behind” it, considering the candidate’s entire life record, as opposed to a past snapshot.

As shown here, DOC now has a background investigator meet personally with the candidate and give him/her the opportunity to address any CORI-related issues, in addition to discussing any other negative or positive factors of the applicant. The background investigator then completes a summary which, in addition to CORI-related information, includes a thorough discussion of the Appellant’s background, including employment history, military record, educational history, neighbor interviews, etc.

As referenced in the findings, DOC’s modified review process has also required that, prior to any decision being made to bypass a candidate for appointment, a team of senior DOC managers, including the DOC Commissioner, reviews the candidate’s background report and discusses the merits of the applicant’s candidacy. In the case of Kodhimaj v. Dep’t of Correction, 32 MCSR 377 (2019), DOC had to consider whether criminal conduct that occurred ten years prior was a valid reasons for bypassing a candidate whose record in the interim was exemplary. In Kodhimaj, a senior DOC Deputy Commissioner testified before the Commission regarding the senior management review that was completed. His testimony showed that the review was serious and substantive and that senior managers did in fact consider the nature of the misconduct, the amount of time that had transpired since the misconduct occurred and balanced

all of the many positive attributes regarding the Appellant that were listed in the background investigator's report. After considering all of those factors, the DOC Commissioner at the time decided that he didn't want to take the risk of appointing Kodhimaj, who, albeit briefly and many years ago, had admittedly sold marijuana illegally. The Commission, after hearing that testimony regarding the thorough and thoughtful review process, concluded that DOC's judgment call was rooted in a legitimate concern surrounding the core need to enforce a zero tolerance policy regarding illegal drugs in any DOC correctional facility.

The requirement to complete a *thorough* review, which was completed in Kodhimaj, is particularly important when a decision to bypass a candidate for appointment can hinder DOC's stated goal of ensuring a diverse workforce. While all state agencies, particularly DOC, have faced Herculean challenges in dealing with the ongoing pandemic, DOC should not step back from its laudable efforts in which:

- DOC senior managers, including the DOC Commissioner, *who is the appointing authority here*, carefully review a candidate's entire record; and
- After such review is completed, is able to explain why a candidate's criminal misconduct from approximately twenty years ago is a valid reason to bypass the candidate today.

Here, however, the undisputed facts show that the Appellant, approximately seven (7) months prior to taking the civil service examination for CO I, was in a serious automobile accident after attending a social gathering in which he acknowledges consuming four alcoholic beverages. He failed a field sobriety test and the breathalyzer reading was .09, slightly over the legal limit to drive. The Appellant then admitted to sufficient facts regarding the OUI. This (very) recent event, standing alone, provided DOC with reasonable justification to bypass the Appellant for

appointment. While I did review the evidence submitted by the Appellant, it was not sufficiently reliable to show that his OUI was related to medical reasons.

In summary, even though DOC's review process here was not flawless, the Appellant's recent OUI, standing alone, provided a valid reason for bypassing him for appointment at this time. Had the only reason for bypass been misconduct that occurred approximately two decades ago, DOC's failure to conduct a more thorough review likely would have resulted in this appeal being allowed.

Conclusion

The Appellant's appeal under Docket No. G1-20-118 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – Absent]) on December 17, 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)(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:
Carson Straughn (Appellant)
Joseph Santoro (for Respondent)