

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ALEX STYLIEN,
Appellant

v.

G1-17-194

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

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

Appearance for Respondent:

Peter Geraghty, Esq.
Boston Police Department
Office of the Legal Advisor
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Boston, MA 02120

Commissioner:

Christopher C. Bowman

DECISION

On September 23, 2017, the Appellant, Alex Stylien (Mr. Stylien), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Police Department (BPD) to bypass him for original appointment to the position of police officer for: a) his criminal history; and b) his driving history. On October 24, 2017, I held a pre-hearing conference at the offices of the Commission, which was followed by a full hearing at the same location on January 8, 2018.¹ The full hearing was digitally recorded and both parties

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.

received a CD of the proceeding.² On March 2, 2018, the parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT

Fourteen (14) Exhibits were entered into evidence at the hearing (Respondent Exhibits 1-12 and Appellant Exhibits 1-2). Based on the documents submitted and the testimony of the following witnesses:

For the BPD:

- Bryan Rivers, BPD Detective;
- Nancy A. Driscoll, Director of the BPD's Human Resources Department;

For Mr. Stylien:

- Alex Stylien, Appellant;

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

1. Mr. Stylien is a thirty-six (36) year-old African-American male who is married with one (1) child. (Testimony of Mr. Stylien) He is fluent in Haitian Creole. (Respondent Exhibit 1)
2. For the past eleven (11) years, Mr. Stylien has been employed by a Boston-based special education day school for youth with emotional, behavioral and learning disabilities where he currently holds the position of Head Caseworker. (Testimony of Mr. Stylien and Respondent Exhibit 1)

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

3. During his eleven (11)-year tenure at the day school, he has used only one (1) sick day and is described by his supervisor of three (3) years as someone who can be counted on, meets his responsibilities and would be an asset to the Boston Police Department. (Testimony of Mr. Stylien)
4. During his tenure at the day school, Mr. Stylien has been required to drive students to and from school daily in a school van which requires him to obtain a special “7D” certification that must be renewed annually. In 2014, while driving the school van, Mr. Stylien was involved in two (2) accidents. In March 2014, Mr. Stylien swiped the left side of a parked car. He stopped, waited for police to respond, and provided all required information to the BPD. The BPD contacted the owner of the parked car. (Exhibit 10) In May 2014, Mr. Stylien struck the rear of an automobile while it prepared to merge with traffic onto Route 93 North near the Columbia Road on-ramp. Mr. Stylien stopped, exchanged information with the other driver, and waited for the State Police to respond. (Exhibit 11) Neither of these incidents appear on Mr. Stylien’s driver history from the Massachusetts Registry of Motor Vehicles (RMV). (Respondent Exhibit 2)

Stipulated Facts

5. On April 25, 2015, Mr. Stylien took and passed the civil service examination for police officer.
6. On November 1, 2015, the state’s Human Resources Division (HRD) established an eligible list of candidates for Boston police officer.
7. On May 31, 2017, HRD, at the request of the BPD, sent Certification No. 04516 (Haitian Creole-speaking candidates) to the BPD, from which the BPD ultimately appointed four Haitian Creole-speaking (4) police officers, one of whom was ranked below Mr. Stylien.

8. On August 31, 2017, notified Mr. Stylien that it was bypassing him for appointment.

Reasons for Bypass

9. The BPD bypassed Mr. Stylien for: a) his criminal history; and b) his driving history.

(Respondent Exhibit 12)

Criminal History

10. On May 8, 2002, approximately sixteen (16) years ago, while he was a student at Mt. Ida College, Mr. Stylien was employed at an Abercrombie and Fitch retail store. Two (2) of his friends from Mt. Ida College came into the store and made a purchase. Mr. Stylien took the security tags off some of the items, placed them in a bag, and did not require the students to pay for the items. (Testimony of Mr. Stylien and Respondent Exhibit 8)

11. The stolen items (jeans, shirts and shorts) were valued at \$281.90 - \$31.90 over the \$250 threshold that triggers a felony charge in Massachusetts. (Respondent Exhibit 5)

12. Mr. Stylien was charged with Larceny Over \$250. (Respondent Exhibit 6)

13. On June 4, 2002, Mr. Stylien admitted to sufficient facts and was placed on probation for one (1) year. The case was continued without a finding for one (1) year, after which time it was dismissed. (Respondent Exhibits 6 & 7)

14. During the BPD orientation session for potential police officer applicants, Mr. Stylien (and other applicants present) were told that individuals with a CWOFF to a felony would be disqualified. (Testimony of Mr. Stylien)

15. Mr. Stylien disclosed this 2002 criminal charge on his 2017 BPD Student Officer Application and provided a written statement regarding what happened, stating that it was “an embarrassing situation that has never been repeated.” (Respondent Exhibits 1 & 8)

16. The background investigator reviewing Mr. Stylien’s candidacy told Mr. Stylien that, based on the felony CWOFF, he would be bypassed if he chose to go forward in the process.

(Testimony of Mr. Stylien)

17. Via letter dated August 31, 2017 to Mr. Stylien, the BPD stated in part: “You admitted to sufficient facts and received a continuance without a finding. Your felony conduct makes your (sic) ineligible for employment as a Boston Police Officer.” (Respondent Exhibit 12)

18. On December 12, 2017, Mr. Stylien filed a Motion for New Trial in Newton District Court. (Appellant Exhibit 1)

19. On January 5, 2018, the Motion for New Trial was allowed; a new trial was ordered; a stipulation of the parties was filed by the Commonwealth; and the case was dismissed at the request of the Commonwealth. In granting the Motion, the Court noted that the withdrawal of the admission is warranted and in the interest of justice. (Appellant Exhibit 1 and Testimony of Mr. Stylien)

Driving History

20. As referenced above, the two (2) accidents that occurred while Mr. Stylien was driving a van for the day school in 2014 do not appear on his RMV driving history. (Respondent Exhibit 9)

21. Mr. Stylien disclosed both of these two (2) accidents on this BPD Student Officer Application. (Respondent Exhibit 1)

22. Mr. Stylien completed his Student Office Application on June 23, 2017. (Respondent Exhibit 1)

23. During the ten (10)-year period from June 23, 2007 to June 23, 2017, the following moving violations appear on Mr. Stylien’s driving history:

- I. 3/16/10: Failure To Use Safety Roxbury R

- II. 1/25/11: Speeding S Boston R
- III. 1/24/12: Speeding Newton R
- IV. 1/9/17: Failure to Stop Watertown R³
- V. 4/8/17: Surchargeable Accid Abington

(Respondent Exhibit 9)

24. The August 31, 2017 bypass letter to Mr. Stylien, citing the above-referenced driving history, the 2014 incidents while driving the school van, and events dating back up to seventeen (17) years ago, including the requirement to take a National Safety Council (NSC) course in 2001, stated in part:

“Your driving history exhibits a pattern of conduct which is concerning to the Boston Police Department because the ability to safely operate a vehicle is an essential duty of a Boston police officer and officers are often called upon to issue citations for motor vehicle infractions. Your motor vehicle history reflects negatively on your ability to complete this essential task and deems you unsuitable for employment as a Boston police officer.”

(Respondent Exhibit 12)

25. As part of the hiring cycle in 2017 (Regular Certification No. 04401), the BPD petitioned the Commission to grant relief, and effectively allow the bypass appeal, for a candidate with the following driving history:

- | | | | |
|-----|-------|--------------------------------------|---|
| 1. | 1996: | Improper Equipment | R |
| 2. | 1996: | Safety Standards | R |
| 3. | 1996: | Impeding Operation | R |
| 4. | 1997: | Out ST DWI Alcohol / Drug NH | |
| 5. | 1997: | Revocation DWI Alcohol / Drug 1 Year | |
| 6. | 1998: | Surchargeable Accident Boston | |
| 7. | 1999: | Seat Belt Violation Roxbury | R |
| 8. | 1999: | No REG / LIC in Possess Roxbury | R |
| 9. | 1999: | Speeding Roxbury | R |
| 10. | 2000: | Seat Belt Violation Stoneham | R |
| 11. | 2001: | Speeding W Roxbury | R |
| 12. | 2002: | Seat Belt Violation | R |
| 13. | 2002: | Speeding Roxbury | R |

³ At the pre-hearing conference, Mr. Stylien stated that the failure to stop was related to a failure to stop at a red light when taking a right turn.

14. 2005:	Speeding Westborough	R
15. 2007:	OUT St Speeding NH	
16. 2009:	Failure to Stop Roxbury	R
17. 2010:	Speeding Weymouth	R

(Administrative Notice: CSC Case No. G1-17-217 (2018))

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304 (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, 60 Mass.App.Ct. 914, 915 (2004).

Analysis

The BPD relies on two (2) reasons to bypass Mr. Stylien: a criminal history that consisted of one (1) felony CWOFF from approximately sixteen (16) years ago related to stealing clothes from a retail store where he was employed when he was a college student; and his driving history.

In regard to the criminal history, the BPD makes some of the same arguments here that it proffered in Finklea v. Boston Police Department, 30 MCSR 93 (2017). (affirmed in part by Superior Court (Finklea v. Civ. Serv. Comm'n & Boston Police Dept., Suffolk Sup. Ct. No. 1784CV00999 (2018))). Specifically, the BPD argues that: a) a felony CWOFF is equivalent to a felony conviction, which, according to the BPD, would make Mr. Stylien ineligible for appointment as a police officer under Chapter 46, § 96A; and b) regardless of whether a CWOFF is equivalent to a conviction, the underlying felonious conduct disqualifies him for appointment as a police officer. For many of the same reasons discussed in Finklea, I reject both arguments here. In summary, an appointing authority, such as the BPD, is free to give some weight to an applicant’s criminal record when making its hiring decision, but it may not automatically disqualify a candidate because he/she has a felony CWOFF, particularly when, as here, that CWOFF appears to be stale (16 years old) and is not accompanied by any evidence showing some

type of pattern of criminal behavior. As stated by the Superior in Finklea, “Here, there is no such statutory definition in Massachusetts under which a CWOFF would be considered a conviction ...” Id. at p.11).

As in Finklea, the BPD, citing to Boston v. Boston Police Patrolmen’s Ass’n, 443, Mass. 813, 821 (2005), argues that, aside from the CWOFF, the underlying felonious misconduct makes Mr. Stylien ineligible to serve as a police officer. For many of the same reasons stated by the Commission in Finklea, I find the facts here to be distinguishable from BPPA and do not believe that engaging in felonious behavior, of any kind, at any time in a candidate’s life, automatically disqualifies him / her from consideration for appointment as a police officer.

As stated above, however, the Commission has consistently held that an appointing authority is free to give *some weight* to an applicant’s criminal history when making a hiring decision. Although the BPD took the commendable step of allowing Mr. Stylien to address his criminal history, the BPD has failed to articulate a cogent argument why this stale, isolated event provides a valid, reasonable reason for bypass. It is undisputed that there is no record of Mr. Stylien engaging in any other criminal behavior, before or after this 2002 incident. Rather, since this incident occurred, Mr. Stylien has married, started a family and been employed for eleven (11) years in the challenging position of Head Case Worker at a Boston-based special education day school for youth with emotional, behavioral and learning disabilities (where he has taken only one sick day in eleven years and is considered by his supervisor to be someone who would be an asset to the Boston Police Department.) This does not paint the picture of someone who, as stated by the BPD, is “unsuitable for employment as a Boston police officer” because of his criminal history. Rather, as I infer was recognized in part by the Court when it granted Mr.

Stylien's recent motion to re-open (and dismiss) the 2002 criminal case, the 2002 event appears to be an unfortunate outlier in an otherwise commendable life by Mr. Stylien.

That leads to the issue of Mr. Stylien's driving history. It is appropriate for a police department to carefully review the driving history of any candidate who will be expected to drive a police cruiser at potentially high speeds - particularly when it involves driving on the streets of Boston. This is not a new issue for the Commission. Dozens of Commission decisions concern bypass appeals where a candidate's driving history has been relied upon, often in conjunction with other reasons, to justify a bypass. Consistent with the discussion above, the Commission owes the appointing authority substantial deference in determining whether a candidate's driving record is problematic enough to justify his/her non selection. Again, however, the appointing authority must show that the reason is valid, and reasonable, and not arbitrary and capricious.

The BPD's "Exclusions and Timeframe Guidelines" for police officer candidates, submitted to the Commission at my request after the hearing, includes an exclusion for candidates who have a: "NSC Class (bad driver class attended) within 5 years, NSC Class taken 3 surchargeable events in 2 years." Although these guidelines provide disqualifiers, effectively serving only as a floor for consideration, they do reflect, consistent with other cases reviewed by the Commission, an emphasis on focusing on more recent driving infractions as opposed to stale or non-moving violations that are not reflective of a candidate's ability to effectively drive a police cruiser. This is consistent with the BPD's recent decision, as part of CSC Case No. G1-17-217 (2018) where the candidate's lifetime driving record included 9 moving violations, 7 equipment violations, 2 surchargeable accidents and an OUI. The BPD agreed to grant relief to this candidate, and reconsider his candidacy, after determining that he did not, as initially thought, have 3 surchargeable accidents, including one (1) in 2017. Even without this 2017 accident,

however, that candidate had two (2) speeding violations and one (1) failure to stop in the past ten (10) years. Mr. Stylien's driving history over the past ten (10) years includes: two (2) speeding violations; one (1) failure to stop; a surchargeable accident (in 2017) and a "Failure to Use Safety" (in 2010).

As noted in the findings, Mr. Stylien also self-disclosed two (2) accidents, both in 2014, that occurred while he was driving a van for the day school. To me, a fair and impartial comparison of candidates requires these two (2) incidents to be put in the proper context. First, as part of his job, Mr. Stylien was required to drive a van, pick up students from their homes on weekday mornings, drive them to school, and then drive them home on weekday afternoons. Logic and commonsense dictate that other candidates (i.e. – a candidate with a job that does not require daily driving and may commute to and from work during rush hour using public transportation) are less likely to be involved in an accident than Mr. Stylien. Put another way, I infer that Mr. Stylien, over a period of several years navigating a van through the local roads and highways of Boston during rush hour, was involved in two (2) relatively minor accidents. I can't reasonably conclude that, when put in the proper context, this shows or contributes to showing a pattern of poor driving habits that justifies a bypass here. Second, it is worth noting that Mr. Stylien, unlike most candidates, has been entrusted by the State to drive young children to and from school, after undergoing an annual review for a special "7D" certification on his drivers license.

For all of these reasons, I have concluded that standing alone, or in conjunction with the "criminal history", the BPD has not shown that Mr. Stylien's driving record provides a reasonable and valid reason to bypass him for appointment as a police officer. At a minimum, the BPD should reconsider Mr. Stylien's candidacy, which the limited relief being ordered here will provide.

Conclusion

Mr. Stylien's appeal under Docket No. G1-17-194 is hereby *allowed*.

Pursuant to its authority under Chapter 310 of Acts of 1993, the state's Human Resources Division (HRD), or the BPD, in its delegated capacity, shall:

1. Place the name of Alex Stylien at the top of any future (regular or special) Certification for Boston Police Officer for which Mr. Stylien is eligible until such time as he is appointed or bypassed;
2. If Mr. Stylien is appointed as a Boston Police Officer, he shall receive a retroactive civil service seniority date the same as those candidates appointed from Certification No. 04516.

This retroactive civil service seniority date is for civil service purposes only and is not meant to provide Mr. Stylien with any additional pay or benefits, including creditable service for retirement.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Commission (Bowman, Chairman; Camuso, Commissioner; Ittleman, Commissioner, Stein, Commissioner and Tivnan, Commissioner) on April 12, 2018.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

James Gilden, Esq. (for Appellant)

Peter Geraghty, Esq. (for Respondent)