COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
617-979-1900

RYAN J. SWEENEY,
Appellant

G1-23-082

v.

CITY OF MEDFORD,
Respondent

Appearance for Appellant:	Ryan J. Sweeney, *Pro Se*
Appearance for Respondent:	Jared M. Collins, Esq. KP Law, P.C. 101 Arch Street Boston, MA 02110 (617) 556-0007
Commissioner:	Shawn C. Dooley

Summary of Decision

A majority of the Commission allowed the Appellant's bypass appeal for original appointment as a permanent, full-time Medford police officer and ordered his reconsideration based on its findings and conclusion that the City failed to establish by a preponderance of the evidence the necessary nexus between a single event that took place 21 years ago (particularly when significant doubts have been raised as to the facts of said event) and the Appellant's current ability to meet the high standards required of serving as a Medford Police Officer.

DECISION

On June 23, 2023, the Appellant, Ryan J. Sweeney (Appellant), filed a timely appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 31, § 2(b). The appeal challenged the decision of the Mayor of the City of Medford (City) to bypass the Appellant for appointment

as a police officer for the Medford Police Department (Department).[1]

The Commission held a remote pre-hearing conference on July 25, 2023. On October 10, 2023, I conducted an in-person full hearing. The hearing was recorded via the Webex videoconferencing platform, and copies were provided to the parties.[2] Both parties filed Proposed Decisions. For the reasons set forth below, Mr. Sweeney's appeal is allowed.

FINDINGS OF FACT

The City submitted into evidence four exhibits (Exhibits 1-4; R0001-R0032)[3]. The Appellant did not submit any exhibits into evidence. Based on the documents submitted and the testimony of the following witnesses:

Called by Respondent

- Jack Buckley, Chief of Police, City of Medford
- James M. Benoit, Captain, City of Medford
- Brooke Stanton Hurd, Detective, City of Medford

Called by Appellant:

- Ryan J. Sweeney, Appellant

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 the following facts:

[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] A link to the audio/video recording was provided to the parties. 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 they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

[3] Exhibit #4 has been marked as confidential.

1. The Appellant, Ryan J. Sweeney, is a 39-year-old male who has resided in Medford, Massachusetts his entire life and has "strong ties to the community." *(Testimony of Stanton Hurd; Exhibit 2).*

2. He is married with three children: twin infant daughters from his current marriage, and an older daughter from a previous relationship. *(Exhibit 2)*

3. The Appellant has glowing references from his current wife, his previous girlfriend who is the mother of his oldest daughter, as well as personal references and neighbors who were interviewed by the investigators. All stated that they believe he would make a good police officer and highlighted the fact that the Appellant is trustworthy, loyal, reliable, and a great father and husband. *(Exhibit 2)*

4. The Appellant is currently employed by Harvard University in their Property Maintenance division and has been employed there for over ten years. *(Exhibit 2)*

5. One of the Appellant's co-workers was interviewed as part of the application process and he recommended that the Appellant be hired as a police officer. The co-worker stated that Appellant is a "great guy, honest, hardworking, and capable," and finds him to be trustworthy and a leader. *(Exhibit 2)*

6. The Appellant's work supervisor also recommended that the Appellant be hired as a police officer. He stated that the Appellant "leads by example," has been a great employee, and has been promoted two or three times. *(Exhibit 2)*

7. The Appellant has been twice nominated for the "Harvard Hero" Award. This Award is a university-wide award that honors high-performing staff**.** These staff members are nominated and/or selected by their peers and departments for work that supports the mission of Harvard at the highest levels of contribution, impact, and excellence. *(Exhibit 2)*

8. The Appellant's criminal history consists of one charge of Domestic Assault & Battery on 11/01/2002, which was dismissed on 12/09/2003. *(Exhibits 2 and 4)*

9. While there are 18 total entries in his driving history, the Appellant was found responsible for only four of those entries: one speeding violation and three citations for failure to wear a seat belt. These four incidents took place over 19 years ago. He has also had four surchargeable accidents, with the most recent one taking place in 2011. *(Exhibits 1 and 2)*

10. On June 12, 2021, the Appellant took and passed the civil service examination for police officer administered by the Massachusetts Human Resources Division (HRD). His name was placed on the eligible list established on January 10, 2023. (*Stipulated Facts*)

11. On March 24, 2023, HRD issued Certification #09110 authorizing Medford to hire six police officers. (*Stipulated Facts; Testimony of Chief Buckley*)

12. The Appellant signed Certification #09110 indicating his willingness to accept an appointment. He was ranked second on the list of individuals who had signed expressing their willingness to accept an appointment. (*Stipulated Facts*)

13. Chief Buckley referred the signed Certification to Captain James Benoit of the Professional Standards Unit so that detectives could be assigned to conduct background investigations into each interested and willing candidate. (*Testimony of Chief Buckley)*

14. Detectives Brooke Stanton Hurd and James Ricciardi were assigned to conduct the background investigation of Mr. Sweeney. *(Exhibit 2)*

15. The Appellant had previously applied for a patrol officer position with the Department in 2021 and had been subject to a background investigation already. Therefore, the background investigation in 2023 served as a follow-up / supplement to the earlier investigation. *(Testimony of Stanton Hurd)*

16. Consistent with standard procedure for such background investigations, Detective Stanton Hurd investigated the Appellant's residency history, employment history, past and present relationships, and personal references. She also reviewed the Appellant's driving history and criminal offender record information. *(Testimony of Stanton Hurd)*

17. Due to the Appellant's prior candidacy, it was known to the Department that he had been arrested in 2002 by the University of Massachusetts – Amherst Police Department for assault and battery against his girlfriend at the time. *(Exhibits 2 and 4)*

18. A UMass Amherst campus police report reviewed by the Department stated that, on November 16, 2002, a campus police officer observed "pushing and shoving" between a male and a female. According to the report, the officer originally thought it could have been "a snowball fight or joking in the snow" and therefore approached in his unmarked cruiser and observed the individuals. *(Exhibit 4)*

19. According to the report, the weather conditions at the time included snow and ice. *(Exhibit 4)*

20. The campus police officer reported observing the male, later determined to be the Appellant, pushing the female to the ground and yelling at her. He further reported that he observed the Appellant jumping on the female and pushing her back to the ground as she attempted to get up and striking the woman with a closed fist, after which the campus police officer reported that he stopped and exited his cruiser to intervene. *(Exhibit 4)*

21. The campus police officer arrested the Appellant for assault and battery. According to the police report, during the arrest, the female party approached the campus police officer crying, asking for the Appellant to be let go. The female was identified as the Appellant's girlfriend at the

time. According to the police report, she repeatedly attempted to approach the campus police officer to speak with him and he continued to inform her to stay back. *(Exhibit 4)*

22. The female refused any assistance from the responding officers and stated that she had no interest in pursuing a Chapter 209A restraining order. The report indicates that the female was later placed in protective custody due to visible intoxication. *(Exhibit 4)*

23. The Appellant was later arraigned on charges of assault and battery against his girlfriend. *(Exhibit 3)*

24. For the past three years, Detective Stanton Hurd has been assigned as a Detective in the Medford Police Department's Domestic Violence Unit. *(Testimony of Stanton Hurd)*

25. Detective Stanton Hurd interviewed the Appellant as part of the background investigation, including a discussion of the arrest report, and the underlying incident. *(Testimony of Stanton Hurd; Exhibit 3)*

26. Detective Stanton Hurd noted that in interviewing the Appellant that, "he had no hesitancy speaking with me. I did not get any nervous reaction. He just seemed to want to tell me what happened." *(Testimony of Stanton Hurd)*

27. The Appellant explained to Detective Stanton Hurd that he and his girlfriend were leaving a party during a snowstorm and had to cross an unplowed parking lot to reach their residence. He stated that they had both been drinking and his girlfriend was severely intoxicated and she kept slipping and falling on the snow/ice. He stated that he was repeatedly telling her to get up and helping her up including trying to lift her up by the straps of her backpack. *(Testimony of Stanton Hurd; Exhibit 2)*

28. The Appellant's explanation of the event to Detective Stanton Hurd is consistent with what he reportedly told the arresting campus police officer 21 years prior. *(Testimony of Appellant)*

29. The Appellant told Detective Stanton Hurd that both he and the alleged victim repeatedly told the police officer that he was just helping her up and he had not assaulted her. *(Testimony of Appellant; Testimony of Stanton Hurd)*

30. After he was arrested, the alleged victim came to the police station to again state that the Appellant did not strike her, that there were no acts of violence, and that they should let him go. At this time the Amherst Police put her in protective custody due to her level of intoxication. *(Testimony of Appellant; Exhibit 2)*

31. At arraignment, the Appellant was required to speak with an anger management case worker / counselor. The alleged victim attended this meeting with the Appellant. The Appellant, as well as the alleged victim, informed Detective Stanton Hurd that this person recommended that he "fight" the criminal case. *(Testimony of Stanton Hurd, Exhibit 2)*

32. The Appellant told Detective Stanton Hurd that his criminal attorney at the time advised him that because the prosecution had the reporting officer's report and the ability to testify to his observations, that it would be advisable to admit to sufficient facts and receive a Continuance Without a Finding ("CWOF")[4] as opposed to risking being found guilty at trial. *(Testimony of. Stanton Hurd; Exhibit 2)*

[4] A continuance without a finding ("CWOF") is defined by the Massachusetts court system as follows: In a criminal case, if a judge finds there is enough evidence to support a finding of guilt, he or she can continue the case for a period of time without making a guilty finding. The charges will be dismissed without a finding of guilt at the end of that period if the defendant complies with any conditions imposed. "By definition, continuances without a finding are not considered convictions under Massachusetts law." Commonwealth v. Beverly, 485 Mass. 1, 7 (2020), citing Commonwealth v. Villalobos, 437 Mass. 797, 802 (2002). "Indeed, the attractiveness of a continuance without a finding over a traditional sentencing disposition stems from this characteristic; a continuance without a finding may allow a defendant to avoid many of the potential ramifications of a criminal conviction, such as the likely detrimental effects of a conviction on future employment opportunities." Id.

33. I credit the Appellant's explanation surrounding why he took the "CWOF," including his statement that his parents were not wealthy and he did not want to put an additional financial burden on them by hiring a private attorney and going through the process of a trial. *(Testimony of Appellant; Testimony of Stanton Hurd)*
34. I further credit the Appellant's testimony that it was his understanding from his attorney that if he accepted a "CWOF" and the subsequent one-year probation, the incident would be dismissed and erased from his record if he did not get into any trouble while on probation. *(Testimony of Appellant)*
35. I also credit the Appellant's statement that had known that a "CWOF" would remain a part of his permanent criminal record, he would have fought the charges in court and not accepted the "CWOF". *(Testimony of Appellant)*
36. In early December 2002, the Appellant resolved the criminal case against him through an admission to sufficient facts and a "CWOF" with probation for a period of one year. *(Exhibit 3).*
37. As the final step of the background investigation, Detective Stanton Hurd was able to locate the female involved regarding the Appellant's arrest. She is now living out of state and Detective Stanton Hurd spoke to her via phone. *(Testimony of Stanton Hurd; Exhibit 2)*
38. Detective Stanton Hurd informed her who she was and that she was calling to conduct a background investigation on the Appellant. Detective Stanton Hurd told her that this was simply a routine reference check that they do with all former relationships of applicants. *(Testimony of Stanton Hurd; Exhibit 2)*
39. Detective Stanton Hurd found the female's statements to be very credible and forthcoming. *(Testimony of Stanton Hurd)*

40. The female specifically stated to Detective Stanton Hurd that the incident that the Appellant was arrested for "did not happen" and repeatedly stated that she was "not heard" by the police on the night of the incident or by the court during the initial hearing even though she repeatedly vocalized that it did not happen to the judge. She reiterated that in both instances she felt she was not being heard. *(Testimony of Stanton Hurd)*
41. The female's parents came to the initial hearing to support their daughter as well as the Appellant. *(Exhibit 2)*
42. The female reported to Detective Stanton Hurd that her understanding was that the result of the case was a "wash-out" and the Appellant got "1-year probation and then it got dropped." The female further stated that "it was a nothing incident" and that she was very upset that this event, that she insists was not violent at all and the officer's account was in error, could be what prevents the Appellant from being hired as a police officer. *(Testimony of Stanton Hurd; Exhibit 2)*
43. The female told Detective Stanton Hurd that she has had no contact with the Appellant for some 20 years and that she has no reason to lie for him. She thanked Detective Stanton Hurd for finding her and calling because she was happy that her side of the story was finally being heard and stated that she "wants the truth out." *(Testimony of Stanton Hurd; Exhibit 2)*

44. Detective Stanton Hurd stated that the alleged victim reiterated that Appellant "is not a violent person and he was trying to help her" on the night of the incident. Detective Stanton Hurd said that the alleged victim's "reaction seemed genuine." *(Testimony of Stanton Hurd).*
45. Detective Stanton Hurd inquired of her superiors if she should go further in the investigation and attempt to contact the UMass police or the arresting officer. She was told that was not

necessary and that they would let the arrest report stand on its own. *(Testimony of Stanton Hurd)*

46. Upon completing the background investigation, Detectives Stanton Hurd and Ricciardi prepared a Background Investigation Report dated May 11, 2023, and submitted it to Chief Buckley and Captain Benoit. *(Testimony of Stanton Hurd)*
47. Detectives completing background investigation reports are required to include in their reports any positive or negative aspects of a candidate as it pertains to their prospective employment as a police officer. Detectives are neither expected nor authorized to provide their opinions on the candidates or the aspects noted in their reports. *(Testimony of Stanton Hurd; Exhibit 2)*.
48. Detectives Stanton Hurd and Ricciardi reported a number of positive aspects regarding the Appellant's potential employment, including possession of various licenses and certifications, residency, transparency and honesty in his interview, and candid discussion of negative aspects of his background. *(Testimony of Stanton Hurd; Exhibit 2)*
49. Detectives Stanton Hurd and Ricciardi reported as negative aspects that the Appellant has a "CWOF" for domestic assault and battery and a driving record including multiple entries. *(Testimony of Stanton Hurd; Exhibit 2)*.
50. Following the submission of background investigation reports and any necessary interviews, Chief Buckley, Captain Benoit, and other Department Captains reviewed all the materials provided for the Appellant in order to make recommendations to the Mayor, who is the appointing authority. *(Testimony of Benoit)*
51. Chief Buckley credited the version of events detailed by the reporting officer from the UMass Amherst Police Department. *(Testimony of Chief Buckley; Exhibit 4)*

52. Chief Buckley found that the report was timely relative to the events giving rise to the arrest, and that it included the officer's own observations rather than relying on a hearsay account of what took place. *(Testimony of Chief Buckley)*.
53. Chief Buckley's recommendation was based largely on his expectation that a reporting officer (in this case, the campus police officer's report), will be honest in his reporting unless given a reason to believe otherwise. *(Testimony of Chief Buckley)*
54. Chief Buckley credited the police report not only because of the presumption of honesty that he makes towards the reporting officer, but also because of the Appellant's admission to sufficient facts in the process of disposing of the matter by CWOF. *(Testimony of Chief Buckley)*
55. Chief Buckley gave more weight to the Appellant's admission to sufficient facts, which occurred in closer proximity to the arrest, than to the Appellant's assertion that the reporting officer's account was erroneous and essentially untrue. *(Testimony of Chief Buckley)*
56. Chief Buckley also based his recommendation on the Department's "near" zero-tolerance policy towards domestic violence. *(Testimony of Chief Buckley)*
57. Chief Buckley's recommendation to bypass the Appellant was also based on the requirement that he attest to the good moral character of police officers in his department to the Peace Officer Standards and Training ("POST") Commission. *(Testimony of Chief Buckley)*.
58. Chief Buckley has already had to attest to the good moral character of officers currently within the ranks of the Medford Police Department and, in one instance, did not attest to the good moral character of an existing officer due to a CWOF that the officer received in connection with a past domestic violence issue. Chief Buckley reported that POST did re-certify this

officer due to how long ago the incident took place (15 years) with no additional instances of bad behavior since that time. *(Testimony of Chief Buckley).*[5]

59. Additionally, Chief Buckley found that the Appellant's driving history was cause for concern. *(Testimony of Chief Buckley)*

60. If the only thing in question were the Appellant's past driving history, Chief Buckley would not have considered that to be a sufficient reason to bypass the Appellant for appointment. *(Testimony of Chief Buckley)*

61. By letter dated May 25, 2023, Medford Mayor Breanna Lungo-Koehn informed the Appellant that he had been bypassed for the position of Patrol Officer in the Medford Police Department. *(Exhibit 1)*

Applicable Civil Service Law

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the state's Human Resources Division (HRD) or, in certain cases, by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. This statute provides:

> No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.

[5] Chief Buckley noted that the POST Commission ended up certifying this officer, but specifically explained that they were able to certify because they were able to look at a 15-year law enforcement career to substantiate their decision. Chief Buckley sought to distinguish this from the instant appeal, stating that the Chief's attestation is based on a snapshot of the candidate's background. *(Testimony of Chief Buckley).*

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

> If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

The fundamental mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31, which command, among other things, "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. A mechanism for ensuring adherence to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority of a "certification" that ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. 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

and 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a "reasonably thorough review" of the background and qualifications of the candidates' fitness to perform the duties of the position and was "reasonably justified". Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688 (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, 543 (2006) and cases cited; Beverly v. Civil Service Comm'n, 78 Mass. App. Ct. 182 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

Analysis

The City did not establish a reasonable justification to bypass the Appellant for appointment as a police officer. In reaching this conclusion, I focus particularly on the charge for which the Appellant was arrested, the statements of the alleged victim both at the time of the incident and some 21 years later, the acceptance by the Appellant of a "CWOF", and the credibility assessment of Detective Stanton Hurd. Detective Stanton Hurd is a Detective in the Domestic Violence Unit of the Medford Police Department and it is commendable that she went above and beyond during this background investigation by taking additional steps to fully vet the arrest and subsequent CWOF that were the primary factors in the City's decision to bypass.

A series of prior Commission decisions demonstrate that the Commission takes issues surrounding domestic violence very seriously and that they merit particularly strict scrutiny when any violence has been perpetrated by police officer candidates. Police officers are held to a higher standard of conduct and proven acts of domestic violence are a valid reason for bypassing a candidate for appointment (or disciplining an incumbent police officer). If the allegations in this

case were not so vehemently denied by the alleged victim, both at the time of the incident and present day, the City would have unquestionably been within its right to bypass the Appellant. Here, however, the alleged victim has consistently stated that the arresting officer was wrong and has unequivocally stated that no violence ever happened and that neither the police nor the court allowed her to have a voice. She has not wavered in her account for 21 years. Importantly, Detective Stanton Hurd, a trained investigator with a background in investigating domestic violence allegations, found her to be extremely credible. I give significant weight to Detective Stanton Hurd's expertise in dealing with matters of domestic violence and her credibility assessment of the alleged victim's statements.

While I appreciate the fact that there was a police report stating otherwise, I am unwilling to accept the notion that the reporting officer is infallible and that there is no possibility that he was mistaken in his interpretation of events on a snowy night. If there were any wavering or vagueness in the alleged victim's account of the evening, I would agree with the City and err on the side of caution. But when the victim is adamant and wants her voice to be heard, dismissing that voice in favor of a report of a police officer from over 20 years ago, who was not contacted as part of the City's investigation, is not the right course of action.

I find the fact that the alleged victim was so forceful in her denial of the incident when interviewed by Detective Stanton Hurd to militate heavily in favor of giving her denial significant consideration. To clarify, the alleged victim is not recanting or changing her testimony from 21 years ago. She told the police officer, as well as the judge, that a mistake had been made, the officer's interpretation of the events was incorrect, and no violence had taken place. The alleged victim also told this to the case worker who was assigned to do the anger management evaluation. The alleged victim had her parents come out to Amherst to support her and the Appellant during

the initial hearing. While I understand that victims may be willing to protect their abuser for a variety of reasons; the fact that 20 years has passed since she and the Appellant had contact, coupled with Detective Stanton Hurd's assessment that her testimony was honest, credible, and not coerced; gives further weight to the possibility that the arresting officer simply made a mistake.

Further, we have the benefit of 21 years of history since the alleged incident, during which time the Appellant has been an exemplary citizen, employee, father, and husband. There have been no other allegations of violence and everyone interviewed, including his wife and ex-girlfriend with whom he shares a child, testify to his sound moral character and that he is not a violent person. The Appellant was also found credible and forthright by Detective Stanton Hurd who noted that his and the alleged victim's recounting of the events in question were very similar, as they both were on the night of the arrest.

I do not find it compelling that an admission to sufficient facts in order to get a Continuance Without a Finding is tantamount to an admission of guilt. I am certain that most 19-year-olds who had never been in trouble with the law, find themselves arrested, are under duress, and have little-to-no understanding of what a CWOF fully entails and would end up in a similar situation without good legal advice. The Appellant states that he was advised by his attorney that accepting a CWOF would end the case, eliminating the risk of a guilty verdict, and would result in a dismissal after a year of probation. Both he and the alleged victim stated that they were led to believe that if the Appellant did not get into any further trouble, the arrest would be wiped from his record after a year. While ignorance of the law is not an excuse, I do find it very plausible that this was his understanding. He stated that he was concerned about the effect a trial would have upon his parents' financial well-being. I am confident the threat of possible jail time played a significant

role in getting him to admit to facts that he disagreed with, especially given his understanding that this plea would result in a dismissal.

I fully understand the Appellant's misperception about the effect of a CWOF as there is considerable confusion for the general public as well as ambiguity in case law, in some contexts, as to the precise meaning and effect of a criminal defendant's "admission to sufficient facts" followed by a CWOF. At one end of the spectrum, according to federal immigration rules, a conviction after "admission to sufficient facts" puts the defendant "in the same posture as if he had pleaded guilty" and is, therefore, the "functional equivalent" of a guilty plea, at least for purposes of determining federal immigration status. See, e.g., Commonwealth v. Casimir, 68 Mass. App. Ct. 257 n.1 (2007) (defendant found guilty after admitting facts); Commonwealth v. Mahadeo, 397 Mass. 314, 316-17 (1986) (same).

Under Massachusetts law, however, there are no circumstances under which an admission to specific facts, followed by a CWOF in a case that is later dismissed, would be considered a conviction in the absence of a guilty plea or finding. See, e.g., Memorandum of Decision, Finklea v. Massachusetts Civil Service Comm'n, Suffolk Sup. CA No. 1784CV00999 (Feb. 9, 2018) and cases cited, *affirming in relevant part*, Finklea v. Boston Police Dep't, 30 MCSR 93 (2017).

Indeed in cases relevant here, especially in cases involving administrative review of agency decisions concerning the use of a CWOF in an employment context, an "admission to sufficient facts" that is followed by a CWOF and later dismissed without any guilty plea or finding is explicitly held "not the entry of a formal guilty plea and is, therefore, not a conviction"[6]—

[6] This Decision does not question the use of true prior convictions as disqualifiers. The City would stand on clear footing to disqualify a candidate who was convicted of a serious crime. The ommission notes that police officers may, in the course of their duties, be called to testify in court, where a felony conviction could be used to impeach the officer's testimony. See, e.g.,

specifically distinguishing the immigration line of cases. E.g., Fire Chief of East Bridgewater v. Plymouth Co. Ret. Bd., 47 Mass. App. Ct. 66, 71 n.13 (1999), citing Commonwealth v. Jackson, 45 Mass. App. Ct. 666 (1998).

Thus, in the Fire Chief of East Bridgewater case, the Appeals Court stated:

> [T]he [retirement] board rejected Chief Pratt's assertion that Smith's admissions to sufficient facts rose to the level of conduct unbecoming because it was equivalent to his pleading guilty. *The board correctly determined that Smith's admission was not akin to a guilty plea* and, further, that if Smith completed his probationary period without violating the terms of his probation or committing another offense, all charges against him would then be dismissed and he would have no criminal conviction on his record."

Id., 47 Mass. App. Ct. at 647 (emphasis added).

In Wardell v. Director of Div. of Empl. Sec., 397 Mass. 433, 436-37 (1986) (emphasis added), the Supreme Judicial Court similarly held:

> An admission to sufficient facts, absent a subsequent finding of guilt, *does not constitute substantial evidence from which a finder of fact in a collateral civil proceeding can determine that the alleged misconduct has indeed occurred*. Factors other than consciousness of guilt – including expedience or avoidance of publicity – may motivate a defendant to admit to sufficient facts in exchange for a continuance and eventual dismissal. Criminal charges not resulting in conviction do not provide adequate or reliable evidence that the alleged crime was committed. To the extent that the 'deliberate misconduct' relied upon by the board refers to the alleged criminal act of the employee, there was no substantial evidence on the record to warrant his disqualification [from receiving unemployment benefits].

Commonwealth v. Fano, 400 Mass. 296, 302-303 (1987) ("earlier disregard for the law may suggest to the fact-finder similar disregard for the courtroom oath"); Brillante v. R.W. Granger & Sons, Inc., 55 Mass. App. Ct. 542, 545 (2002) ("one who has been convicted of crime is presumed to be less worthy of belief that one who has not been so convicted'). As discussed in this Decision, however, these policy reasons do not apply where the disposition does not amount to a conviction. See Commonwealth v. Jackson, 45 Mass. App. Ct. 666, 670 (1998) (admission to sufficient facts not a conviction for purposes of statute allowing impeachment by prior conviction); Commonwealth v. Petros, 20 Mass.L.Rptr. 664, 2006 WL 1084092 *4 n.3 (2006) (same).

See also Burns v. Commonwealth, 430 Mass. 444, 449-451 (1999) (State Police trial board's discipline based on officer's admission to sufficient facts and resulting CWOF on the underlying charges was reversed as legal error); Santos v. Director of Div. of Empl. Sec., 398 Mass. 471, 474 (1986) ("The record reflects that the plaintiff claimed he was innocent; for all that is shown in the record, he may have admitted to sufficient facts to avoid the expense, publicity, and notoriety which a full trial might engender").

I acknowledge that there are another handful of appellate cases which have held that an "admission to sufficient facts" may be introduced as a "testimonial admission" in a collateral civil case, citing language that such disposition is the "functional equivalent of a guilty plea", but those cases also appear to involve situations in which the defendant actually did plead guilty or was found guilty, as opposed to CWOF cases that were later dismissed without any guilty plea or finding. See, e.g., Peabody Properties, Inc. v. Sherman, 418 Mass. 603, 604-606 (1994) (defendant admitted to sufficient facts, found guilty of drug charges and sentenced to six months in prison; "plea-taking colloquy admissible" as evidence of "current" drug use); Hopkins v. Medeiros, 48 Mass. App. Ct. 600, 612-13 (2000) (unclear whether defendant pleaded guilty but court refers to a "conviction"); Davis v. Allard, 37 Mass. App. Ct. 508, 510-11 (1994), *rev'd on other grounds sub nom*. Davis v. Westwood Group, 420 Mass. 739 (1995) (admitted documents that "substantiated the facts of Allard's admissions and the subsequent entry of convictions").

This appeal is not a case in which the City was presented with an applicant whose background investigation revealed an undisclosed prior criminal record or contained other credible, corroborating evidence that inferred a pattern of criminal or other unsuitable traits or behavior. Cf. Henrick v. City of Methuen, 20 MCSR 215 (2007) (failure to disclose prior charge); Tracy v. Cambridge Police Dep't, 18 MCSR 221 (2005) (multiple charges exhibits "patterns of behavior");

Thames v. Boston Police Dep't, 17 MCSR 125 (2004) (improper to bypass based on pending charges, but bypass upheld based on long history of arrests and applicant's own testimony); Soares v. Brockton Police Dep't, 14 MCSR 109 (2001) (numerous criminal charges and motor vehicle violations); Lavaud v. Boston Police Dep't, 12 MCSR 236 (1999) (five prior criminal charges); Brooks v. Boston Police Dep't, 12 MCSR 19 (1999) ("considerable criminal history").

Rather, the Appellant's brush with the law was an isolated incident 21 years ago, completely out of character (if portrayed in line with the campus officer's observations), a blemish on an otherwise positive record, and the charge in question has always been denied by the Appellant as well as by the alleged victim. The Appellant was forthcoming about the incident to both the Department and to the Commission. Chief Buckley and the City predominantly relied on the police report and the Appellant's "admission to sufficient facts" as its justification to bypass him while giving very little weight to the alleged victim's insistence that no incidence of violence ever took place and the police officer was mistaken. While this is not a forum to litigate or decide the original criminal case, the alleged victim has a right to finally be heard. The Medford Police Department, especially Detective Stanton Hurd, should be commended for taking the additional steps on this second hiring investigation for not simply reviewing the previous file and solely relying on the paper record. The investigator found the Appellant's testimony credible and decided to continue the investigation in order to get the full picture. She then went above and beyond to locate the alleged victim out of state and eventually interviewed her with sensitivity and compassion.

Given all of these factors, especially the testimony of the alleged victim, citing the arrest and admission of facts in order to obtain a CWOF as the primary reasons for bypassing the Appellant is not enough.

I now turn to the issue of the Appellant's driving history. In examining his record, there are no entries in the past 12 years in which the Appellant has been found responsible. Of further note, aside from surchargeable accidents (none of which were accompanied by a police citation), the Appellant was found responsible for only four police citations, all some 20 years ago. Of these four, three were for failure to wear a seat belt (2000, 2003, and 2004) and one was for speeding (2001). I note this, not to sweep aside these incidents or wholly minimize their importance, but to put his driving record into context. Further, Chief Buckley stated during his testimony before the Commission that the Appellant's driving history, on its own and without the arrest and subsequent CWOF, would not have constituted a reason for bypass.

Therefore, with the facts surrounding the arrest and subsequent admission to facts in question, coupled with the Chief's admission that the driving record on its own would not constitute a reason to bypass, I find that the City was not justified in its bypass of the Appellant.

CONCLUSION

For all of the above stated reasons, the appeal of Ryan J. Sweeney, under Docket No. G1-23-082 is ***allowed.*** Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- HRD shall place the name of the Appellant at the top of any current or future certification for the position of permanent full-time police officer in the Medford Police Department until he is given one additional consideration for appointment.

- If the Appellant is appointed as a Medford Police Officer, he shall receive the same civil service seniority date as the candidate appointed from Certification No. 09110. This date is for civil service purposes only and is not intended to provide the Appellant with any additional compensation or benefits, including creditable service toward retirement.

- Once the Appellant has been provided with the relief ordered above, the Department shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

CIVIL SERVICE COMMISSION

/s/ Shawn C. Dooley
Shawn C. Dooley
Commissioner

By a 4 to 1 vote of the Civil Service Commission (Bowman, Chair – Yes; Dooley, Commissioner – Yes; McConney, Commissioner – No; Stein, Commissioner – Yes; and Tivnan, Commissioner – Yes) on January 25, 2024.

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:
Ryan J. Sweeney (Appellant)
Jared M. Collins, Esq. (for Respondent)
Sheila Gallagher, Esq. (HRD)
Regina Caggiano (HRD)