

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

SILVIO C. TORRES,
Appellant

v.

CITY OF LOWELL,
Respondent

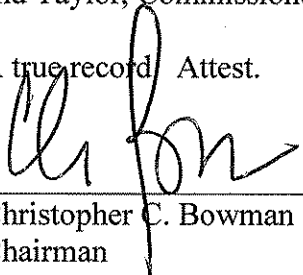
Case No.: G1-08-201

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on October 1, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 18, 2009. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on October 1, 2009.

A true record Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Silvio C. Torres (*pro se*)
R. Eric Slagle, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)
John M. Marra, Esq. (HRD)



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
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August 18, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108


Re: Silvio C. Torres v. City of Lowell
DALA Docket No. CS-08-721

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CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Acting Chief Administrative Magistrate

RCH/das

Enclosure

cc: Silvio C. Torres
R. Eric Slagle, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Silvio C. Torres,
Petitioner

v.

Docket Nos. G1-08-201
DALA No. CS-08-721

City of Lowell,
Appointing Authority

Appearance for Appellant:

Silvio C. Torres, *pro se*
[REDACTED]
[REDACTED]

Appearance for Appointing Authority:

R. Eric Slagle, Esq.
City of Lowell
375 Merrimack Street
Lowell, MA 01852

Administrative Magistrate:

Maria A. Imparato, Esq.

RECOMMENDED DECISION

Under G. L. c. 31, s. 2(b), Silvio Torres appeals the action of the Personnel Administrator in accepting reasons proffered by the City of Lowell in bypassing him for selection as a police officer in the Lowell Police Department. (Exs. 1, 2, 3)

I held a hearing on December 3, 2008 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA. I admitted document into evidence. (Exs. 1 – 7) Sergeant Thomas Fleming, Director of Recruitment and Hiring in the Lowell Police Department testified on behalf of the

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Appointing Authority. Mr. Torres testified on his own behalf. There is one tape cassette of the hearing.

FINDINGS OF FACT

1. Silvio Torres, d.o.b. 10/20/1968, took the Civil Service examination to become a police officer in the City of Lowell. His name appears on the Human Resources Division Certification list #280025 dated January 11, 2008. (Ex. 7; Testimony, Fleming.)
2. On January 20, 2008, Mr. Torres completed a Lowell Police Department Application for Employment Form. In answer to question 19a asking whether Mr. Torres had ever been involved in a motor vehicle accident, Mr. Torres answered "no." (Ex. 4, p. 4.)
3. Sgt. Fleming obtained Mr. Torres's driving history from the Registry of Motor Vehicles that demonstrated that Mr. Torres has been involved in two surchargeable motor vehicle accidents: on August 10, 1995; and on November 10, 2001. (Ex. 5, p. 048.)
4. Mr. Torres received 16 driving citations between 1988 and 2003. (Ex. 5.)
5. Mr. Torres had his driver's license suspended 9 times between 1988 and 2003. (Ex. 5; Testimony, Fleming.)
6. Sgt. Torres obtained Mr. Torres's CORI report that indicates that Mr. Torres was convicted on three driving violations: operating negligently in 2000; operating with a suspended license in 1993; and operating without a license in 1992. (Ex. 6, Testimony, Fleming.)

7. By letter of April 20, 2008, Lowell Police Superintendent Kenneth Lavallee advised the Human Resources Division that he was bypassing Mr. Torres for appointment as a police officer due to his poor driving history in the Commonwealth, including 16 motor vehicle citations, 9 license suspensions and two surchargeable accidents. (Ex. 1.)
8. By letter of July 29, 2008, the Human Resources Division informed Mr. Torres that the City of Lowell's "reasons are acceptable for appointing the individuals ranked lower on this certification." (Ex. 2.)
9. Mr. Torres filed a timely appeal with the Civil Service Commission on August 26, 2008. (Ex. 3.)
10. Mr. Torres indicated on his employment application that he had not been involved in any motor vehicle accidents because friends who are police officers told him it was only necessary only to go back 5 to 7 years. Mr. Torres acknowledges that question 19a is not limited in time. (Testimony, Torres.)
11. Most of Mr. Torres's license suspensions occurred because he could not pay court fines. (Testimony, Torres.)
12. Mr. Torres stopped driving from 1995 to 2000 because his insurance costs were too high. (Testimony, Torres.)
13. Of the 14 Lowell Police Officers who were appointed from certification list #280025, no one had double digit motor vehicle infractions. Other candidates on the list were bypassed because of a poor driving record. (Testimony, Fleming.)

CONCLUSION AND RECOMMENDATION

The City of Lowell has sustained its burden of proving that there was reasonable justification for bypassing Silvio C. Torres for appointment as a Lowell Police Officer in view of his poor driving record.

The role of the Civil Service Commission in bypass cases is to find whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority. *City of Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 303 (1997). “‘Justified’” in the context of review, 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.’” *Id.* at 304 (citing *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928)). The Civil Service Commission cannot “substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *Id.*

The City of Lowell bypassed Mr. Torres based solely on his poor driving record. In view of the fact that police officers drive department police cruisers, the City needs to hire police officers who are safe and careful drivers. The City of Lowell was therefore reasonably justified in finding that 16 motor vehicle citations, 9 license suspensions, and 3 criminal convictions for motor vehicle offenses between 1998 and 2003 render Mr. Torres unsuitable for the job of police officer.

In the recent case of *Jones v. Boston Police Department*, G107-392, 21 MCSR 568 (2008), the Commission upheld the bypass of a candidate for the job of police officer where his driving record included 3 motor vehicle accidents where he was found to be

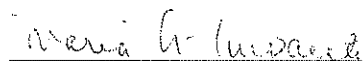
more than 50% at fault between 1993 and 2006; 10 motor vehicle citations between 1994 and 2005; and non-payment or payment by bad checks of citations on 8 occasions, as well as an employment record marked by a discharge for failing to follow the "no call/no show" rule of the employer.

The Commission concluded that the Appointing Authority was "justified in disqualifying a candidate whose driving record is problematic and presents a reasonable concern about the candidate's judgment, respect for the law and prudent operation of a motor vehicle," and that the Appellant's "driving record presents an unacceptable risk for someone seeking to be appointed a Boston police officer." *Id.* at 572.

I conclude that the City of Lowell's reasons for bypassing Mr. Torres were true and were applied equally to the other bypassed candidates, the allegations of poor driving are capable of substantiation and the City of Lowell did not use Mr. Torres's driving record as a pretext for other impermissible reasons to bypass him. *Borelli v. MBTA*, 1 MCSR 6 (1988).

I recommend that the Civil Service Commission affirm the bypass of Mr. Torres as a Lowell Police Officer.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Maria A. Imparato
Administrative Magistrate

DATED: **AUG 18 2009**