

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**JONATHAN W. WALLACE,**  
*Appellant*

**CASE NO. G1-18-139**

v.  
**TOWN OF SAUGUS,**  
*Respondent*

Appearance for Appellant:

Jonathan Wallace, Pro Se

Appearance for Respondent:

Eugene J. Sullivan, Esq.  
Sullivan & Reed LLP  
485 Massachusetts Avenue, Suite 300  
Cambridge MA 02139

Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Jonathan W. Wallace, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b)<sup>1</sup>, to contest his bypass by the Town of Saugus (Saugus) for appointment as a Firefighter with the Saugus Fire Department (SFD) and to remove him from the eligible list pursuant to Personnel Administration Rules PAR.09. A pre-hearing conference was held on August 28, 2018 and a full hearing, which was digitally recorded<sup>2</sup>, was held on November 7, 2018, both at the Commission’s Boston office. Seventeen exhibits (Exh.1 through Exh.17) were received in evidence. The parties waived the filing of Post-Hearing Proposed Decisions.

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

## **FINDINGS OF FACT**

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

*Called by the Appointing Authority:*

- NBPD Fire Chief Michael C. Newbury

*Called by the Appellant:*

- Jonathan W. Wallace, Appellant
- JA, Boston Area Restaurant Manager

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Jonathan W. Wallace, is a resident of Saugus MA, where he resides with his wife and two young daughters. He graduated from UMass Lowell in 2006 with a Bachelor Degree in Business Administration. He has been steadily employed during and since college, including work for an HVAC company. He now works nights as a bartender/manager for a Boston restaurant and cares for his two children while his wife works days. (*Exhs. 8 & 16; Testimony of Appellant & JA*)

2. Mr. Wallace took and passed the civil service examination for municipal firefighter and his name appeared on Certification No. 05324 issued to Saugus in March 2018 for appointment of 4 (later revised to 5) candidates to the position of Permanent Full Time Firefighter with the SFD. Mr. Wallace was ranked 5<sup>th</sup> on the Certification and was the third ranked candidate to sign willing to accept appointment. (*Exh. 2; Testimony of Chief Newbury*)

3. The Saugus Town Manager is the Appointing Authority for hiring SFD Firefighters. His decision is made on the recommendations of the Fire Chief, based on the candidates' 40-page application packet, including references, the results of a thorough background investigation, an initial (unscored) interview by a panel consisting of the Fire Chief, Deputy Fire Chief and a Saugus HR representative, and a second interview that includes the Town Manager and was scored. (*Exh. 16; Testimony of Chief Newbury*)

4. Mr. Wallace duly completed the application process. His background investigation disclosed that he had an excellent credit score (the highest of all candidates); had been steadily employed for fifteen years with an excellent attendance record and never been disciplined; and had an excellent marriage and family life; and presented himself as “pleasant, professional and responsive to any requests.” His interview with the Town Manager received a score of 4/5 in all categories, describing him as “Very well groomed”, “Speaks, thinks clearly and with confidence”, “Strong interest in position, asks reasonable questions”, “Good common sense reasoning ability” and “Good interpersonal abilities, will relate well to others.” (*Exh. 16; Testimony of Chief Newbury*).

5. Mr. Wallace’s references (which included neighbors, his current employer, a Massachusetts State Trooper and a Boston Firefighter consistently attested that he was “an excellent family man, respectful, courteous and willing to help others”, was “athletic and active”, “exercises very good judgment and is an outstanding communicator” and has a “strong sense of pride in his community.” (*Exhs. 8 & 16; Testimony of Appellant & JA*)

6. In response to specific questions asked of the references about Mr. Wallace’s use of drugs and alcohol, the references uniformly responded, on personal knowledge, that Mr. Wallace has never used illegal drugs and his alcohol consumption is solely confined to occasional and responsible social drinking. (*Exh. 8; Testimony of JA*)

7. In response to specific questions about how Mr. Wallace handled stress, the references provided explicit examples of how Mr. Wallace performed under pressure, both on the job and in private life. At the Commission hearing, his current supervisor amplified on his example with further details, adding considerable credibility to these responses. (*Exh. 8; Testimony of JA*)

8. Chief Newbury recommended that Mr. Wallace not be hired based on an “extensive” record of driving infractions and criminal history, and the Town Manager accepted that recommendation, bypassing Mr. Wallace for four other lower ranked candidates that Chief Newbury believed were better qualified. (*Exhs. 1 & 17*)

9. At the Commission hearing, Chief Newbury explained that his concerns about Mr. Wallace’s driver history and criminal record were premised on what he called a long pattern of his problematic behavior, especially those incidents that involved alcohol and questionable “interaction” with law enforcement. Specifically, Chief Newbury counted 13 driving infractions (including 5 speeding violations, 3 at-fault accidents, and an OUI/Driving to Endanger, as well as several criminal offenses (a 2007 charge of Assault with a Dangerous Weapon, a 2006 charge of Disturbing the Peace and two charges as a Minor in Possession of Alcohol). (*Exhs. 1, 3, 4 through 7; Testimony of Chief Newbury*)

10. Chief Newbury also pointed to the work history of the other hired candidates, all of whom he noted had “interviewed well”, had a background packet “without any deficiencies”, and had been employed in jobs that involved extensive use of heavy tools and required mechanical abilities that “translates well into the fire service.” He contrasted these candidates with Mr. Wallace whose only employment he recalled was as a bartender. (*Exhs. 17; Testimony of Chief Newbury*)

11. At the Commission hearing, Mr. Wallace presented as a strong and credible witness on his behalf. He did not deny or excuse his record of poor behavior and took full responsibility for his actions, but he believed that Saugus’s characterization of that record did not provide a fair assessment of his current fitness for the job of a SFD Firefighter. (*Testimony of Appellant*)

12. In particular, Mr. Wallace proffered his own CORI and RMV history which, he noted, showed that, in fact, none of the criminal offenses with which he was charged resulted in a conviction and that he was found not responsible for most of the driving infractions on which Saugus relied to bypass him. For example, the serious charges of Assault with a Dangerous Weapon, Disturbing the Peace and Driving to Endanger were dismissed outright. The OUI was thirteen years ago (2003) and dismissed after a CWOFF in 2004. He was found not responsible for most of the driving citations on his record. His most recent surchargeable at-fault accident was in 2005 and his most recent driving infraction for which he was found responsible (failure to wear a seat belt) was in 2007. Mr. Wallace credibly explained that, while three 2013 driving infractions appeared on the driver history used by Saugus, he was found not responsible for all three. (*Exhs. 7, 14 & 15; Testimony of Appellant*)

13. Mr. Wallace pointed out that, although the bypass letter said that the other lower ranked candidates' background investigations "were without deficiencies", a number of those candidates did, in fact, have driving infractions and criminal charges on their records, some dating more recently than those on his own record. (*Exhs. 9 through 13*)

14. Mr. Wallace also pointed out that Saugus discounted or overlooked that his employment record also included work for an HVAC company which required the same type of mechanical ability as the similar work Saugus cited as justification for the other candidates being "better" qualified. (*Testimony of Appellant*)

### **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31 for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants

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

In order to deviate from the rank order of preferred hiring, and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons, consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L.c.31,§1,§27; PAR.08.

A person who is bypassed may appeal that decision under G.L.c.31,§2(b) for de novo review by the Commission. When a candidate appeals from a bypass, the Commission determines whether, by a preponderance of evidence, the bypass decision was made after an “impartial and reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and that there was “reasonable justification” for the decision. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012) citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban , 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 241 (2006) and cases cited; Beverly v. Civil Service Comm’n,

78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003). See also Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315, 321 (1991) (appointing authority must prove, by a preponderance of evidence, that the reasons assigned to justify the bypass were “more probably than not sound and sufficient”); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (same) “Reasonable justification in this context means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’ ” Brackett v. Civil Service Comm'n, 447 Mass. 233, 543 (2006) and cases cited; Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), *citing* Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

### **ANALYSIS**

Saugus had not established that the preponderance of the evidence proves that its decision to bypass Mr. Wallace met the standard of reasonable justification under basic merit principles of civil service law.

First, Saugus misconstrued Mr. Wallace’s driver history and criminal record, overstating the actual number of incidents for which he was held legally responsible. When fairly considered, Mr. Wallace has had a clean driver’s history (save for a 2007 seat-belt violation) and a clean criminal record for more than thirteen years. Similarly, although comparisons of one candidate’s background with another are not always relevant, I find that the conclusion that other hired candidates had records that “were without deficiencies” was clearly taken by looking through a different perspective than the one used to examine Mr. Wallace’s flaws.

Second, on the particular fact of this case, Mr. Wallace’s one OUI infraction (and two minor in possession infractions) are not sufficient, when taken together with the impeccable record of

his family life, employment and strong evidence from references and the Commission testimony, to fairly raise any serious question about his present suitability and fitness for appointment to the position of an SFD Firefighter. The evidence simply contains no reasonable suspicion that Mr. Wallace has any character traits that presents him as a risk of substance abuse or calls into question his present ability to use good judgment under stress, to operate a motor vehicle safely or perform any of the other duties required of a firefighter. See, e.g., Stylien v. Boston Police Dep't, 31 MCSR 154, 209 (2018) and cases cited.

Third, I cannot say whether or not Saugus would have made a different decision in deciding Mr. Wallace's suitability, had full and fair consideration been given to all of the facts which Saugus knew or should have known about him. Certainty, however, is not the standard; a conclusion based on a preponderance of the evidence after de novo review of the facts is what basic merit principles require. In sum, Mr. Wallace presented a strong and compelling case that he was bypassed for reasons that a reasonably thorough review do not justify. Therefore, basic merit principles compel that he be afforded the opportunity for a fair and proper reconsideration of the merits of his present fitness for employment with the SFD.

## **CONCLUSION**

In sum, for the reasons stated herein, this appeal of the Appellant, Jonathan W. Wallace, is *allowed*. Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS that the Massachusetts Human Resources Division and/or the Town of Saugus in its delegated capacity take the following action:

- Place the name of Jonathan W. Wallace at the top of any current or future Certification for appointment to the position of Firefighter with the Saugus Fire Department (SFD) until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. Wallace is appointed as an SFD Firefighter, he shall receive a retroactive civil service seniority date which is the same date as the first candidate ranked below Wallace who was appointed from Certification No. 05324. This retroactive civil service seniority date is not



intended to provide Mr. Wallace with any additional pay or benefits including, without limitation, creditable service toward retirement.

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

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on January 17, 2019.

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:

Jonathan W. Wallace (Appellant)  
Eugene J. Sullivan, Esq. (for Respondent)  
Patrick Butler, Esq. (HRD)