

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 979-1900

JONATHAN W. WALLACE,  
*Appellant*

v.

G1-20-062

TOWN OF SAUGUS,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Jonathan W. Wallace

Appearance for Respondent:

Eugene J. Sullivan, Esq.  
Sullivan and Reed, LLP  
245 First Street, 18th Floor  
Cambridge, MA 02142

Commissioner:

Christopher C. Bowman<sup>1,2</sup>  
Cynthia A. Ittleman

SUMMARY OF DECISION

The Civil Service Commission allowed the Appellant's appeal and overturned the Town's decision to bypass him for original appointment as a permanent, full-time firefighter. The Town's reasons for bypassing the Appellant are either unsupported by a preponderance of the evidence or unrelated to his current ability to perform the duties and responsibilities of a Saugus firefighter. Further, the Town applied *starkly* different standards regarding the review of the Appellant, who was 38 years old at the time of the hearing before the Commission, when compared to younger, lower-ranked candidates, some of whom were familiar to the Fire Chief or had familial connections to the Fire Department. Finally, the decision to bypass the Appellant also appears to be rooted in a personal animus that the Fire Chief has developed against the Appellant.

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Daniel Taylor in the drafting of this decision.

<sup>2</sup> Commissioner Ittleman conducted the remote full hearing regarding this appeal, but she retired from the Commission prior to drafting a decision. For that reason, the appeal was assigned to me. I have reviewed the entire record in this matter, including the audio / video recording of the remote full hearing and all exhibits.

## DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Jonathan W. Wallace (Appellant), timely appealed to the Civil Service Commission (Commission) to contest his bypass by the Town of Saugus (Respondent or Town) for appointment as a permanent full-time fire fighter with the Saugus Fire Department (SFD). On May 26, 2020, I conducted a remote pre-hearing conference. On August 25, 2020, Commissioner Cynthia A. Ittleman conducted a remote full hearing.<sup>3</sup> The hearing was recorded via Webex, and both parties were provided with a link to the recording of the hearing.<sup>4</sup> Commissioner Ittleman retired in March 2022 and the appeal was reassigned to me. I have carefully reviewed the hearing recording and the parties' exhibits and submissions. For the reasons stated herein, the appeal is allowed.

### **FINDINGS OF FACT:**

Eleven (11) exhibits were offered into evidence at the hearing, nine (9) by the Appellant, and two (2) by the Respondent. Both parties filed post-hearing briefs, and the Respondent filed two (2) post-hearing exhibits. Based on these exhibits and the testimony of the following witnesses:

#### *For the Respondent:*

- Scott C. Crabtree, Town Manager, Town of Saugus
- Michael J. Newbury, Fire Chief, Saugus Fire Department

#### *For the Appellant:*

- Jonathan W. Wallace, Appellant
- Andie S., General Manager, Bastille Kitchen

and taking administrative notice of all pleadings filed in the case, pertinent rules, statutes,

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<sup>3</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>4</sup> The Commission subsequently had a written transcript of the full hearing prepared.

regulations, case law and policies, and drawing reasonable inferences from the credible evidence, I make the following findings of fact:

1. Located 11 miles north of Boston, Saugus, Massachusetts has a population of about 29,000 (<https://www.census.gov/quickfacts/fact/table/saugustownessexcountymassachusetts/POP060210>).
2. At the time of the hearing, the Appellant was 38 years old, and a resident of Saugus where he lives with his wife and two daughters. He played varsity soccer and varsity hockey in high school and went on to receive a bachelor's degree in business management. He currently works as a bartender/manager<sup>5</sup> in Boston, as well as caring for his two children during the day while his wife works. He previously worked for several months as an HVAC installer, which required him to drive a large truck and use heavy tools. Under the section of the Town's employment application labeled "Hobbies / Athletics", the Appellant wrote: "Working out, men's hockey league, cooking, reading, hiking, running, biking, snowboarding, tennis." (Resp. Exhibit 1; App. Exhibit 6; Testimony of Appellant, Transcript (Tr.) pp. 178-81)
3. The Appellant, following a previous decision by the Town to bypass him for appointment, discussed in more detail below, recently obtained an EMT-Basic certification. Also, having heard the Fire Chief's concerns, generally, about the abuse of alcohol in the field of public safety, the Appellant opted to abstain from alcohol during the 1 ½ years since his prior bypass. (Resp. Exhibit 1; Testimony of the Appellant, Tr. p. 197; Testimony of Fire Chief Newbury, Tr. p. 161)

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<sup>5</sup> The Appellant manages the restaurant one night a week. (Testimony of Andie S., Tr. p. 204)

4. The Appellant has an excellent credit score, and is described by former employers as a dependable, punctual hard worker. One of his current supervisors described him as one of her best employees, stating that the Appellant “goes out of his way to be a team player,” and it is her belief that his work ethic would make him an excellent firefighter. (App. Exhibit 6)
5. The Appellant’s references (which included his current employer, a Boston firefighter, a Massachusetts State Trooper, and an attorney) uniformly describe him as kind, resilient and thoughtful. Several placed special emphasis on his integrity and devotion to his family, especially his two daughters, and his brother, who the Appellant has helped through personal challenges.<sup>6</sup> All of the neighbors interviewed in the course of his background investigation said he is an excellent neighbor, very friendly, and always willing to lend a hand. (Resp. Exhibit 1; App. Exhibit 6)
6. His references also offered several examples of his good character, including one incident during high school when he took a hockey skate to the throat, and downplayed the injury to avoid causing panic or detracting attention from his teammates. He has also prevented physical altercations in both personal and professional settings, usually by deescalating such situations before they become violent. (Resp. Exhibit 1; Testimony of Andie S., Tr. p. 208)
7. As discussed in more detail below, the Appellant has never used illicit drugs and any medications taken by the Appellant have been prescribed by a doctor. (Testimony of the Appellant, Tr. pp. 181-82)
8. The Appellant previously appealed a decision by the Town to bypass him for appointment as a firefighter. In a decision dated January 17, 2019, the Commission allowed the Appellant’s

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<sup>6</sup> The Appellant also lost his father at a young age, and in the last few years of his mother’s life, was “always there to ensure her safe wellbeing.” (Resp. Exhibit 1)

appeal and ordered that the Appellant be placed at the top of any future certification for appointment to the position of Firefighter with the SFD, until he was appointed or bypassed.

Wallace v. Town of Saugus, 32 MCSR 29 (2019).

9. In the current hiring cycle, the negative reasons raised by the Town to justify the bypass of the Appellant are nearly identical to reasons offered in the previous hiring cycle, with two additions. In this hiring cycle, the Fire Chief concluded that the Appellant's application was "incomplete", allegedly missing one page, and that the Appellant had been dishonest regarding his use of "illicit drugs". As discussed in more detail below, these assertions are not accurate. (App. Exhibit 2; Wallace, 32 MCSR 29)
10. The Saugus Town Manager is the Appointing Authority for the hiring of SFD firefighters. The Town Manager generally defers to the recommendations of the Fire Chief regarding the appointment of firefighters, only departing from that recommendation if a reason to do so is brought to his attention. (Testimony of Town Manager Crabtree, Tr. pp. 56-59, 63; Testimony of Fire Chief Newbury, Tr. p. 160)
11. All candidates are interviewed by a human resources representative, the Fire Chief, Deputy Fire Chief, and Town Manager. The interviews in this hiring cycle were not recorded and candidates were not scored or formally ranked. (App. Exhibit 1; Testimony of Town Manager Crabtree, Tr. pp. 48-52, 67-69; Testimony of Fire Chief Newbury, Tr. p. 168)
12. On September 13, 2019, the state's Human Resources Division (HRD) issued Certification No. 06619 to Saugus for the appointment of seven permanent full-time firefighters to the SFD. Based on the relief ordered by the Commission in the prior bypass appeal, the Appellant was ranked first among those willing to accept appointment. The Town appointed

seven candidates ranked below the Appellant, hereafter referred to as candidates O, H, L, H1, C, C1 and C2.<sup>7</sup> (App. Exhibit 1; App. Exhibit 2)

13. The Fire Chief listed positive reasons associated with the seven appointed candidates including: “quality interview,” a “positive” background check, and one additional reason related to each successful candidate including: previous work for a delivery company; ongoing work to satisfy EMT-Basic testing requirements; work at a local ambulance company; enrollment in a fire science program; enrollment in a bachelor’s degree program; a reserve military role, and an active-duty military role. (App. Exhibit 1)
14. The Fire Chief also listed negative reasons for bypassing the Appellant including: a) the Appellant’s application was “incomplete”; b) his driving record raised “serious concerns” about his suitability for hire, and c) the Appellant had allegedly been dishonest about the use of “illicit drugs”. (App. Exhibit 2)
15. In a letter dated March 31, 2020, Town Manager Crabtree notified the Appellant that he had been bypassed for appointment. The letter relied entirely on the recommendation of the Fire Chief and the reasons provided therein. (App. Exhibit 2; App. Appeal Materials)

*Bypass Reason 1: Incomplete Application*

16. In a letter to the Town Manager dated March 11, 2020, the Fire Chief described the Appellant’s application as incomplete, stating that the application was missing page 27 of 40. Page 27, a cover page containing contact information for several of the Appellant’s

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<sup>7</sup> Discrepancies between submitted exhibits also have the appointed candidates designated as, respectively, candidates 1, 2, 3, 4, 5, 6, and 7. (Resp. Exhibit 2)

references, was later discovered by the Town to simply be out of order, preceding the letters provided by those references.<sup>8,9</sup> (Resp. Exhibit 1; App. Exhibit 2)

17. The Appellant reviewed the application multiple times before submitting it to the Town to ensure it was complete and in order. (Testimony of Appellant, Tr. pp. 39, 181)
18. In addition to the Fire Chief, the Appellant's file was handled by multiple people in the course of the Saugus Police Department's background investigation. (Testimony of Town Manager Crabtree, Tr. pp. 49-50; Testimony of Fire Chief Newbury, Tr. pp. 88-90)
19. With regard to incomplete or improperly completed applications, the Fire Chief emphasized that he "wants things done correctly, in order," "done right, and on time," because "it shows responsibility." (Testimony of Fire Chief Newbury, Tr. pp. 138-39)
20. Appointed Candidates L, H1, and C1 all turned in incomplete applications. Candidate L, who was placed on academic probation in college, failed to provide his undergraduate transcript. Candidate H1, at the time enrolled in a fire science program, also failed to provide his undergraduate transcripts, as well as his tax returns from the last two years, and a letter from one of his personal references. Candidate C1 failed to provide a credit report, a copy of his driver's license, a copy of his DD-214, his transcripts from a fire science program, contact information for two previous employers, his dates of service in the Army National Guard, and corroborating documentation for his Combat LifeSaver certification. He also noted in his

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<sup>8</sup> At the pre-hearing conference on May 26, 2020, long after this hiring cycle had concluded, the Town continued to represent that the Appellant's application was missing a page and, according to the Town, was a valid reason to bypass the Appellant.

<sup>9</sup> The application submitted as an exhibit by the Town had a Post-it note with the following handwritten note: "Page #27 missing? Professional (sic) references missing." (Resp. Exhibit 1)

application that he had been dismissed/suspended/expelled from school, but did not explain further, as required.<sup>10</sup> (Resp. Exhibit 2; App. Exhibit 5).

21. When questioned at the hearing by the Appellant, who was representing himself, about Candidate C1's incomplete application, the Fire Chief stated that he has "known [Candidate C1] since he was a little boy," and admonished the Appellant for "trying to trap [him] into some situation." (Testimony of Fire Chief Newbury, Tr. pp. 154-55)

*Bypass Reason 2: Driving History*

22. The Fire Chief's letter to the Town Manager also stated that the Appellant has: "multiple moving violations," "multiple surchargeable accidents," "multiple OUI offenses," and "multiple suspensions." (App. Exhibit 2; App. Exhibit 8)

23. The Appellant's attested driving record shows the following: a) the Appellant was involved in one OUI – *which occurred over 19 years ago*, in 2003; b) the Appellant's most recent surchargeable accident was seventeen years ago (in 2005); and c) the Appellant has not been found responsible for a driving infraction in 15 years – or since he was ticketed for failure to wear a seatbelt in 2007. (App. Exhibit 6; App. Exhibit 8)<sup>11</sup>

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<sup>10</sup> Background investigators noted these deficiencies in the candidate's background summaries, noting Candidate C1's application as having "several missing documents and incomplete sections." (Resp. Exhibit 2)

<sup>11</sup> The Fire Chief did not distinguish between those entries on the Appellant's driving history listed as "responsible" as opposed to "not responsible." When asked to explain his position, the Fire Chief said, "maybe he [the Appellant] gets lucky, maybe the cop doesn't show up," "maybe he can talk his way out of things," and "if he was cited for it, that's it." He also claimed that there were "multiple things since I first looked at [the Appellant] in 2016 that he's gotten out of after the fact and some of them are really concerning." It is not clear (at all) what the Fire Chief was referring to in this regard. (Testimony of Fire Chief Newbury, Tr. pp. 133-34)



24. The Fire Chief stressed the importance he places on a candidate's driving record, stating that it is an "awesome responsibility" to drive a large fire apparatus in Saugus. (Testimony of Fire Chief Newbury, Tr. p. 129)
25. Among the lower-ranked candidates selected for appointment, Candidate O's driving record contains the following entries, for which he was found responsible between February 2012 and July 2019: four (4) surchargeable accidents, one (1) seatbelt violation, and one (1) failure to secure load. The most recent entry is dated only a few months before the current hiring cycle began. (Resp. Post-Hearing Exhibit 1; Resp. Exhibit 2)<sup>12</sup>
26. Candidate C2's driving record contains the following, for which he was found responsible between December 2015 and May 2017: four (4) surchargeable accidents and one (1) obstruction of an emergency vehicle. (Resp. Post-Hearing Exhibit 1; Resp. Exhibit 2)

*Bypass Reason 3: Untruthfulness/Illicit Drug Use*

27. In his March 11<sup>th</sup> letter to the Town Manager, the Fire Chief, wrote in part that: "... Jonathan stated on page 31 out of 40 on the Drug Use and Experimentation Section of the application packet that he has never used illicit drugs. Jonathan, however has a Dennis, Massachusetts Police Department report that states he admitted to ingesting an unknown amount of pills in 2001." (App. Exhibit 2)
28. The 2003 Dennis Police Department report relates to the Appellant's OUI arrest, which occurred shortly after the Appellant turned 21. Two Dennis police officers prepared detailed narratives regarding all aspects of that 2003 arrest, including what appears to be an almost

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<sup>12</sup> When questioned by the Appellant about Candidate O's numerous driving infractions, many of which are more recent than the Appellant's, the Fire Chief testified that Candidate O "has shown maturity," and "his driving history wasn't as concerning as yours." (Testimony of Fire Chief Newbury, Tr. pp. 159-160)

verbatim summary of their conversations with the Appellant. There is no reference (at all) in either narrative to pills nor is there any reference in the narratives that remotely resembles the Fire Chief's written statement to the Town Manager that the Appellant "admitted to ingesting an unknown amount of pills." (Resp. Exhibit 1; App. Exhibit 2)

29. Aside from the narrative, the Saugus Fire Department was actually sent two documents titled "Dennis Police Department Arrest Booking Report" containing contradictory information. The first report, "Report 1", is unsigned, and states in the "age" field that the Appellant was 21. "Report 2", which was signed by a Dennis Police Department employee, states that the Appellant was 18. Report 1 states in the "arrest date" field that the arrest occurred on May 31, 2003. Report 2 lists the arrest date as May 31, 2000. Report 1 indicates that the day of arrest was a Saturday and Report 2 lists the day of arrest as Wednesday. Also, peculiarly, the "time placed in cell" is data entered on Report 1 but handwritten on Report 2. In both reports, the words "Took Pills in 2001" appear to have been data-entered under "remarks." (Resp. Exhibit 1)<sup>13</sup>

#### *Positive Reasons Associated with Successful Candidates*

30. In his March 11 recommendation letter, the Fire Chief explained that he would be recommending other candidates whose qualifications allegedly were superior to the Appellant's. At the Commission hearing, he focused in particular on what the Respondent later referred to as his three "favored qualifications": military experience<sup>14</sup>, sporting

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<sup>13</sup> In the documents submitted by the Town to the Commission, the Town's agent opted to highlight (in yellow highlighter) a question related to an arrestee's mental health. (Resp. Exhibit 1)

<sup>14</sup> A preference for veterans is already built-in to the names of candidates sent to cities and towns, with the names of all veterans appearing above non-veterans. This is the so-called "absolute

achievement, and relevant work experience or education.<sup>15</sup> (App. Exhibit 2; Resp. Post-Hearing Brief; Testimony of Fire Chief Newbury, Tr. pp. 104-06, 109-13, *passim*)

31. As referenced above, the Appellant was a varsity soccer and hockey player in high school; his current hobbies include working out, playing in a men's hockey league, hiking, running, and biking; he has a bachelor's degree in business management; he has management experience working in stressful situations<sup>16</sup>; he worked as an HVAC installer<sup>17</sup>; and recently obtained his EMT Basic Certification. (Resp. Exhibit 1; Testimony of Appellant, Tr. pp. 179, 192)

32. Four (4) of the seven (7) successful candidates had not obtained college degrees, but, rather, were still enrolled in—or had dropped out of—college programs. Candidate L enrolled in a fire science program at the Fire Chief's personal recommendation but was placed on academic probation during his first semester, subsequently dropped out, and as referenced

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veterans' preference" that distinguishes Massachusetts from most other states (and the federal government), which provide a far more limited preference to veterans.

<sup>15</sup> The Respondent's post-hearing brief disingenuously claims that "each of the hired candidates possessed one or more of these skills," but "Appellant has none." (Resp. Post-Hearing Brief) *But see* Analysis, *infra*, at 18.

<sup>16</sup> When the Appellant asked the Fire Chief whether his work as a manager indicated that he was responsible or had leadership skills, the Fire Chief stated: "I'm happy for you, Jonathan, that through your extensive career in the service industry ... that people in that industry see your skillset pertaining to that industry and trust you to manage their restaurant one day a week ... I'm very happy for you." (Testimony of Fire Chief Newbury, Tr. pp. 143-44)

<sup>17</sup> When the Appellant reminded the Fire Chief that he had relevant experience working in HVAC, driving a large truck and using heavy tools, the Fire Chief stated that he "looked at the brevity," and that the Appellant "present[s] as someone in the service industry." (Testimony of Fire Chief Newbury, Tr. p. 143)

above, failed to provide any transcript along with his application.<sup>18</sup> (Resp. Exhibit 2; Testimony of Fire Chief Newbury, Tr. p. 107)

33. Candidate C has no relevant work or military experience.<sup>19</sup> (Resp. Exhibit 2)

34. The Fire Chief observed during his testimony that the selected candidates represented one of the “youngest bunch of hires”. He observed that Candidate O was “physical” and a “big, tough guy,” Candidate H was a “big, rugged kid,” Candidate L was also a “big, rugged kid,” Candidate H1 was the “most awesome physical specimen out of the whole group,” a “star athlete,” and a “big, strong kid,” and Candidate C was an “all-American kid,” and a “sports star.” (App. Exhibit 1; Testimony of Fire Chief Newbury, Tr. pp. 101-15)

35. Three of the successful candidates have relatives currently serving in the Saugus municipal government, or who formerly served in the Saugus municipal government. (Testimony of Fire Chief Newbury, Tr. pp. 122-25)

### *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

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<sup>18</sup> Candidate L’s grandfather is a former Saugus firefighter who was serving in the SFD when the Fire Chief was hired. The Fire Chief stated that he knows Candidate L “through life,” testifying that “even having a tough life ... he didn’t really fall off the deep end, if you know what I mean.” (Testimony of Fire Chief Newbury, Tr. pp. 106-08)

<sup>19</sup> Candidate C is the son of a Saugus firefighter who has a leadership role in the local union. (Testimony of Fire Chief Newbury, Tr. p. 123)

personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 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.

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. 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*

There is something amiss here. The Town’s reasons for bypassing the Appellant are either unsupported by a preponderance of the evidence or unrelated to his current ability to perform the duties and responsibilities of a Saugus firefighter. Further, the Town applied *starkly* different standards regarding the review of the Appellant, who was 38 years old at the time of the hearing before the Commission, when compared to younger, lower-ranked candidates, some of whom were familiar to the Fire Chief or had familial connections to the Fire Department. Finally, the decision to bypass the Appellant also appears to be rooted in a personal animus that

the Fire Chief has developed against the Appellant. For all of these reasons, the Town has not shown that there was reasonable justification to bypass the Appellant; the bypass must be overturned; and appropriate relief must be ordered to ensure that the Town complies with basic merit principles on a going forward basis.

#### *Incomplete Application*

The Town's reliance on the Appellant's purported "incomplete application" to justify the Appellant's bypass touches on all of the fatal flaws of the Town's case here. The Town now concedes that the application was not "incomplete" as stated in the bypass letter, but, rather, one page of the application was purportedly "out of order". Even that bizarre reason is not supported by a preponderance of the evidence, given that multiple Town employees touched the Appellant's application, and it is equally as likely that the application, when received, was complete and in order.

The applications of other lower-ranked candidates who were *selected for appointment over the Appellant* were indeed "incomplete". The most egregious examples of the Town applying a different standard regarding this reason is that it overlooked that Candidate L, who was placed on academic probation in college and failed to provide his undergraduate transcript, and Candidate H1, who, at the time was enrolled in a fire science program, also failed to provide his undergraduate transcript, as well as his tax returns from the last two years and a required letter from one of his personal references. When asked to explain these glaring inconsistencies, the Fire Chief offered non-responsive answers, instead simply stating, repeatedly, that he took a "holistic" approach to the review process. Tr. pp. 142, 154-55.

#### *Driving History*

Similar to its stated reason relating to an incomplete application, the Town now concedes that

the bypass letter sent to the Appellant was not accurate in regard to the allegation that the Appellant has “multiple OUI offenses” on his driving history. The original charge is not true. Rather, as stated in the findings, the Appellant had one OUI offense on his driving history, dating back 19 years ago, when the Appellant had just turned 21 years old. The Fire Chief, at least in regard to the Appellant, also made no distinction between those entries for which the Appellant was found responsible with those in which he was found not responsible. Tr. pp. 133-134. As stated in the findings, an accurate summary of the Appellant’s driving record shows, that in addition to the OUI, the Appellant’s most recent surchargeable accident was seventeen years ago (in 2005); and the Appellant has not been found responsible for a driving infraction in 15 years, since he was ticketed for failure to wear a seatbelt in 2007.

On the other hand, the driving records of some lower ranked candidates selected for appointment over the Appellant show a troubling, far more *recent* pattern of driving infractions. Between 2012 and 2019, Candidate O was found responsible for four (4) surchargeable accidents, one (1) seatbelt violation, and one (1) failure to secure load. The most recent infraction is dated only a few months before the current hiring cycle began. During the 17-month period between December 2015 and May 2017, Candidate C2 was found responsible for four (4) surchargeable accidents and one (1) *obstruction of an emergency vehicle*.

In regard to the OUI offense, the Town has also not shown a sufficient nexus between the Appellant’s prior misconduct from almost two decades ago and the Appellant’s current ability to perform the duties of a Saugus firefighter. See Finklea v. Boston Police Dep’t, 30 MCSR 93 (2017) (Commission unanimously concluded that the BPD failed to show a nexus between the Appellant’s admission to receiving stolen property 14 years prior and his current ability to serve as a police officer); Finklea v Civil Service Commission and Boston Police Department, Suffolk

Superior Ct. (Fahey, J.) 1784CV00999 (Feb. 5, 2018)(affirmed on this point); Morgan v. Boston Police Dep't, 33 MCSR 131 (2020) (Commission unanimously concluded that the BPD failed to prove a nexus between the Appellant's criminal conduct 16 years prior and his current ability to serve as a police officer); Teixeira v. Dep't of Correction, 27 MCSR 471 (2014) (Commission unanimously concluded that DOC failed to show a nexus between the criminal conduct from 20 years prior (solicitation - prostitution) involving the Appellant, then 38 years old, with his current ability to perform the duties of a Correction Officer); Stylien v. Boston Police Dep't, 31 MCSR 154, 209 (2018) (overturning bypass based on a lack of evidence, and consequent failure to indicate a pattern of criminal behavior or poor driving habits).

Rather, over the past decade and a half, the Appellant has a rather exemplary record as a good driver, good employee, good parent and good citizen, none of which supports the Fire Chief's conclusion that the Appellant was not a suitable candidate for appointment.

#### *Untruthfulness / Illicit Drug Use*

The most damning, and arguably least supported reason for bypass, is the conclusion of the Fire Chief, adopted by the Town Manager, that the Appellant "... stated on page 31 out of 40 on the Drug Use and Experimentation Section of the application packet that he has never used illicit drugs. Jonathan, *however* has a Dennis, Massachusetts Police Department report that states *he admitted to ingesting an unknown amount of pills in 2001*" (emphasis added). Despite some artful wording, the Fire Chief's allegation is unmistakable: the Appellant allegedly took illicit drugs many years ago and then lied on his application when he stated he had not.

A charge of untruthfulness is "an inherently subjective determination that should be made only after a thorough, serious and [informed] review that is mindful of the potentially career-ending consequences that such a conclusion has on a [candidate]." Kerr v. Boston Police



Dep't, 31 MCSR 35 (2018), citing Morley v. Boston Police Dep't, 29 MCSR 456 (2016). That did not happen here. Rather, the Town relies solely on four words contained in a 19-year-old arrest record relating to the OUI from the Dennis Police Department which reads: "Took Pills in 2001". First, as noted in the findings, the Town actually received two different versions of an arrest report that are littered with inconsistencies, misstating the *year* of the arrest, the *day* of the arrest, and the age of the Appellant. Further, two narratives attached to these reports, which appear to be almost verbatim accounts of conversations that two police officers had with the Appellant 19 years ago, make no mention of the Appellant ever admitting to taking pills, let alone admitting to using *illicit drugs*. In short, the Town's irresponsible statement here is based on unreliable documents that, even without their inconsistencies, do not support the Town's conclusion that the Appellant used illicit drugs and then lied about it on his application for employment with the Town almost two decades later.

#### *Positive Reasons Associated with Selected Candidates*

I now turn to the positive reasons of the selected candidates that the Fire Chief cited in favor of Town's reliance on the positive reasons associated with the seven lower-ranked candidates that bypassed the Appellant for appointment. First, the only reference to the positive reasons in the Town's bypass letter to the Appellant is the following sentence: "In addition, I am recommending candidates for selection whom I believe are better qualified for the position."

Personnel Administration Rule .08 (4) states in part that:

*"Upon determining that any candidate on a certification is to be bypassed ... an appointing shall, immediately upon making such determination, ... send ... in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reason or reasons for selecting another person or persons, lower in score or preference category. Such statement shall indicate all positive reasons for selection and/or negative reasons for bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are*

known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission ...”.

The Town’s perfunctory assertion in the bypass letter that other selected candidates were “better qualified” is not the type of “full and complete statement” envisioned by the PAR .08(4). Rather, the Town failed to disclose to the Appellant, at the time of the bypass, the specific reasons why other candidates were purportedly “more qualified” than him for appointment. Thus, the Fire Chief’s testimony regarding those specific reasons should not be admissible in the proceeding before the Commission.

Even if the Fire Chief’s testimony regarding the positive reasons of the selected candidates were admitted substantively, those reasons testified to by the Fire Chief do not justify the Town’s decision to bypass the Appellant. In Borelli v. MBTA, 1 MCSR 6 (1988), and its progeny, the Commission has held that reasons which are "untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons" cannot be used to support a bypass.

In regard to the positive reasons associated with the selected candidates, the Fire Chief testified that he gave great weight to a candidate’s work experience and education; military experience; and involvement in sports. Tr. pp. 104-06, 109-13, *passim*. As noted in the findings, the Appellant has a bachelor’s degree in business management; he was a multisport varsity athlete in high school, and he has since participated in a men’s hockey league, both of which necessitate working in a team and taking orders; he has experience working in stressful situations; he worked as an HVAC installer; and he has recently obtained his EMT-Basic certification.

Candidates O and C have no relevant work experience or education, nor any military

background. Candidates L, H1, C, and C1 had enrolled in, but not completed, a college degree program at the time of their appointment. As noted above, Candidates L, H1, and C1 did not even provide their undergraduate transcripts and Candidate L had actually dropped out of college shortly before the Town's decision to appoint them over the higher-ranked Appellant.

*Reliance on Other Impermissible Reasons & Personal Bias*

The Town's brief provides a glimpse into what appears to be one of the impermissible reasons for bypass here. For example, the Town's post-hearing brief states in part:

“Appellant states that he played high school hockey, but he graduated from high school approximately 20 years ago and he did not describe any particular accomplishment in high school sports, or since. Candidate 1 played college hockey and Candidate 5 was the local high school sports “star.” Neither Candidate 1 nor 5 had military experience or relevant work experience or training, but both are *recent* graduates, meaning their physical skills remain fresh.” (emphasis in original)

The unmistakable point here is that the Town placed a premium on a candidate's youth, with the Fire Chief apparently concluding that younger candidates were more fit, and therefore, more qualified, than the 38-year-old Appellant. The Fire Chief opined that this class of recruits was “one of the youngest bunch[es]” of candidates he has ever seen and described some of the candidates appointed as: a “big, rugged kid, a “big, tough guy,” “most awesome physical specimen out of the whole group,” “star athlete,” “big, strong kid,” and “all-American kid.” Tr. pp. 101-15

"Basic merit principles", requires, in part, the “... fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, *age*, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens ...” (emphasis added). As there was no statutory age limit that

prohibited the Appellant from becoming a Saugus firefighter, the Town's preference to appoint younger candidates was a violation of basic merit principles and, under certain circumstances, could be in violation of the state's anti-discrimination law.

The decision to appoint certain candidates also appears to have been influenced by the Fire Chief's personal familiarity with the candidate and/or members of the candidate's family. The Fire Chief first indicated that he only knew Candidate C1 "vaguely," but later stated that he had known him since he was a "little boy," and that he knew his mother personally. Tr. pp. 116, 155. Candidate C, who lacks any record of military service, relevant work experience or education is the son of a Saugus firefighter serving in a union leadership role.

Finally, a review of the audio / video recording of the hearing appears to show a palpable personal animus that the Fire Chief has developed against the Appellant. When asked fairly routine, probative questions by this pro se Appellant, the Fire Chief accused the Appellant of trying to "trap" him (similar to the prior proceeding according to the Fire Chief). Tr. pp. 155-56. He dismissively told the Appellant that he "present[s] as somebody in the service industry". Tr. pp. 143. Similarly, when the Appellant asked the Fire Chief whether his work as a manager indicated that he was responsible or had leadership skills, the Fire Chief stated: "I'm happy for you, Jonathan, that through your extensive career in the service industry ... that people in that industry see your skillset pertaining to that industry and trust you to manage their restaurant one day a week ... I'm very happy for you." Tr. pp. 143-44. Asked why he would consider entries on a driving record for which the Appellant was found not responsible, the Fire Chief stated: "maybe he [the Appellant] gets lucky, maybe the cop doesn't show up," "maybe he can talk his

way out of things,” and “if he was cited for it, that’s it.” Tr. pp. 133-34. In summary, the Fire Chief has inexplicably formed an intractable negative opinion of the Appellant that is not supported by the record.

### *Conclusion / Relief*

The Town has not shown, by a preponderance of the evidence, that it had reasonable justification for bypassing the Appellant for original appointment as a Saugus firefighter, in favor of other lower-ranked candidates. For this reason, the Appellant’s appeal under Docket No. G1-20-062 is hereby *allowed*.

The Commission’s power of relief is derived from St. 1976, c. 534, s. 1, as amended by St. 1993, which states, in relevant part: “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 ...”. The most common type of relief ordered by the Commission regarding bypass appeals is to order the placement of the candidate’s name at the top of the next Certification to ensure reconsideration and to order a retroactive civil service seniority date, if and when the candidate is appointed. The Commission, however, has broad discretion regarding the appropriate relief to be granted based on the circumstances regarding each appeal. See Boston Police Dep’t v. Kavaleski, 463 Mass. 680 (2012) (nothing in the HRD rules requires further [psychological] screening after BPD candidate had successfully appealed a psychological bypass decision); Mulhern v. Civ. Serv. Comm’n & Mass. Bay Transportation Authority, 57 Mass. App. Ct. 920 (2003) (“The remedy to be accorded a plaintiff is a matter within the commission’s discretion and will rarely be overturned”) citing Bielawski v. Personnel

Administrator of the Div. of Personnel Admn., 422 Mass. 459, 464, n. 11, 465 (1996) and Thomas v. Civil Serv. Comm'n, 48 Mass. App. Ct. 446, 451 (2000).

I considered several factors in regard to the appropriate relief regarding this particular appeal, including: the Town's likely unlawful preference in favor of younger candidates; the Town's damning and unfounded allegation that the Appellant was untruthful about prior, alleged illicit drug use; and the Fire Chief's personal animus against the Appellant, which, left unchecked, will be a permanent barrier to the Appellant receiving fair and impartial consideration in the future. While, based on the circumstances here, vacating the appointment of at least one of the lower-ranked candidates would be warranted, I have concluded that the appropriate relief is as follows:

1. A copy of this decision shall be placed in the Appellant's personnel file. If and when the Town, or any agent thereof, is contacted by potential employers regarding the reasons for bypassing the Appellant, the Town shall provide the potential employer with a copy of this Commission decision.
2. HRD shall place the name of the Appellant at the top of any current or future certification issued to the Town of Saugus for the appointment of permanent, full-time firefighter until he is appointed or bypassed.
3. In any future consideration of the Appellant, the Town shall not bypass him as a result of any facts or circumstances of which it had knowledge prior to this most recent decision to bypass him. Chief Newbury shall recuse himself from consideration of any future application for employment by the Appellant.
4. No appointment to firefighter of any candidate ranked below the Appellant shall become effective until such time as: a) the Town has provided the Appellant with reasons for bypass;

b) the Appellant has had the opportunity to file an appeal with the Commission; and c) the Commission has issued a final decision related to the bypass.

5. If the Appellant is appointed as a firefighter, he shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 05324.

Civil Service Commission

Christopher C. Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on July 28, 2022.

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 the 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:  
Jonathan W. Wallace (Appellant)  
Eugene J. Sullivan (for Respondent)