

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

ROBERT WOJTCZAK,
Appellant

v.

G1-05-387

TOWN OF SOUTH HADLEY,
Respondent

Appellant's Attorney:

Pro Se
Robert Wojtczak
43 Dale Street
South Hadley, MA 01075

Respondent's Attorney:

Tim D. Norris, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Robert Wojtczak (hereafter "Wojtczak" or Appellant") appealed the decision of the Personnel Administrator to accept the reasons of the Respondent, the Town of South Hadley (hereafter "Appointing Authority", or "Town"), to bypass him for original appointment to the position of police officer on October 17, 2005. The Appellant filed a timely appeal with the Civil Service Commission. A pre-hearing conference was conducted at the offices of the Civil Service Commission on April 24, 2006 before Commissioner Marquis.

On October 11, 2005, the Town sought approval from the Personnel Administrator (HRD) to bypass the Appellant for original appointment as police officer. Their justification was three-fold. First, the Town argued that the basis of the Appellant's eligibility for appointment, his reserve police officer status, was no longer in effect because the Appellant had resigned from that position in 1999. Second, the Town argued that the reasons for bypass were the same reasons presented and deemed relevant by the Civil Service Commission in the Town's previous bypass of the Appellant in 2001 (having been terminated by the Chatham Police Department in 2001 during his probationary period). Third, the Town argued that the most recent background investigation showed no remedial training or other initiatives by the Appellant that could have "changed or improved his judgment perspective and the importance of the image portrayed by a Police Officer to the community." Further, the Town argued that the most recent employment application submitted by the Appellant was incomplete, all residential addresses were not listed and references of individuals who may have known the Appellant were not provided and five surchargeable accidents were discovered on his driving record. HRD approved the reasons for bypass.

Subsequent to the pre-hearing on this matter, the Appellant provided a written response to the Commission on June 9, 2006 offering a point-by-point response to the reasons for bypass. In regard to whether he resigned as a reserve police officer, the Appellant argues that a May 27, 1999 letter he submitted to the Police Chief with the subject line "resignation" was not a letter of resignation and he cites the Commission's decision in his prior bypass appeal to buttress his argument. In Wojtczak v. Civil Service Commission, CSC Case No. G-02-16 (2004), then-Commissioner O'Leary found that the

letter in question, “was not a letter of resignation. The letter was placed in the Appellant’s personnel file and he ceased working shifts for South Hadley, but the Appellant’s name was not removed from the roster of South Hadley as a reserve officer nor was...HRD...informed of this letter. This letter did not formally alter the employment relationship between the Appellant and South Hadley.” The Appellant argues that he was effectively blind-sided at the pre-hearing on this matter when he was informed by the Town that, on January 25, 2006, three months after they decided to bypass him – and seven years after he wrote the letter in question – the Town finally submitted his letter to HRD which agreed to give effect to the May 27, 1999 letter of resignation.

In regard to the Town’s contention that the reasons for bypass were previously determined by the Commission to justify a bypass, the Appellant argues that “it has been over 5 years since than (sic). How long should I be persecuted for a matter in a town (Chatham) I had no union representation in, and obviously gainsaid.” In regard to the underlying issue which resulted in his 2001 termination from the Chatham Police Department, the prior 2004 Commission decision states, “said termination is an uncontested fact and may be given reasonable consideration by the Appointing Authority. Given that his termination was recent, was for a similar position, and occurred only five months into employment makes this information particularly relevant. Lt. LaBrie’s investigation into the reasons behind this termination, which included conversations with two officers in Chatham and an interview with the Appellant himself, provides credible evidence that there were actions by the Appellant which contributed to this dismissal. The Appellant, for example acknowledged that a complaint was made against him by

several citizens who had been traveling in a van, which had been stopped for an equipment violation by Appellant.” In the 2005 letter to HRD requesting approval of the reasons for bypass, the Town provides a more detailed account of the reasons for termination, stating in part, “In a background interview with Lt. David LaBrie in July of 2001 Mr. Wojtczak states the reasons contributing to his termination were: While on patrol duty he left the Town of Chatham in his cruiser, to take this meal break at a private residence where a party was occurring and alcohol being consumed; Written complaints file by Chatham residences (sic) with the Chatham Police Department citing Mr. Wojtczak rude (sic) and unprofessional treatment of them during a traffic stop; and inappropriate solicitation of a female motorist’s phone number at a motor vehicle stop, and subsequent dating relationship.”

In regard to the five surchargeable accidents raised in the Town’s 2005 bypass letter to HRD, the Appellant argues that the last 5 full-time appointments who have been hired over him have “a similar or worse driving record” and that one of those appointed was arrested.

The Town, in response to the Appellant’s June 9, 2006 letter, filed a written response with the Commission on June 15, 2006 and a Motion to Dismiss on July 28, 2006. First, the Motion to Dismiss argues that the Town has now taken (on January 25, 2006) the necessary steps to perfect the Appellant’s resignation as a reserve police officer and that HRD agreed that the Appellant should be removed from the reserve list which is the sole basis of the Appellant appearing on the certification list which is the subject of this bypass appeal. Second, the Town argues that the prior reasons for bypass are still valid disqualifying factors today and that the Appellant’s unwillingness to accept responsibility

for his misconduct (as evidenced by his recent letter) simply confirm that the reasons should still be considered valid reasons justifying the most recent bypass. In the Motion to Dismiss, the Town is silent regarding the issue of surchargeable accidents.

The role of the Civil Service Commission is to determine "whether 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 Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, s. 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991).

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision."

Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, 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. City of Cambridge, 43 Mass. App. Ct. at 304.

When a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense.

Although the Town has submitted a Motion to Dismiss, the grounds for which they seek the dismissal are more consistent with a Motion for Summary Decision and the Commission thus treats the motion as such.

In this case, it is an undisputed fact that the Appellant was terminated for misconduct during his probationary period with the Chatham Police Department in 2001 which was based on, among other things, leaving the Town of Chatham while on duty to take a meal break at a private residence where a party was occurring and alcohol was being consumed and soliciting a female motorist's phone number at a motor vehicle stop. Subsequent to his termination from the Chatham Police Department, the Town of South Hadley, also in 2001, bypassed the Appellant for appointment as a police officer citing as one of the primary reasons, the termination from the Chatham Police Department and the reasons behind the termination. That reason for bypass was subsequently determined by the Commission to be justified when it ruled in favor of the Town in the Appellant's 2001 bypass appeal. There is no way to turn back time and erase this black mark from the

Appellant's employment history. On this issue, the only question is whether the Town, five years later, is reasonably justified in continuing to use this as a primary reason for bypassing the Appellant. That is a judgment call for the Town of South Hadley to make and, absent some evidence of political motivation or bias on behalf of the Town, there is no justification warranting the Commission's intervention to overturn the Town's decision to continue to give the prior termination significant weight in their selection process and again bypass the Appellant for the position of police officer. Further, the Commission concurs with the Town that, even today, the Appellant, as shown by his letter to the Commission, has failed to take appropriate responsibility for his misconduct while serving as a police officer in the Town of Chatham. Instead, he talks of his "persecution" and lack of union representation at the time without ever acknowledging his errors in judgment, a key factor in determining whether he is likely to continue his misbehavior with the Town of South Hadley.

Finally, even assuming *arguendo*, that other candidates selected by the Town have a similar or worse driving record, that would not change the end result in this case. The prior termination itself and the reasons behind it, provide the Town with reasonable justification to again bypass the Appellant from appointment.

For these reasons, the Respondent's Motion for Summary Decision is allowed and Appellant's appeal under Civil Service Commission Docket No. G1-05-387 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairperson; Bowman, Guerin, Marquis and Taylor, Commissioners) on November 30, 2006.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Robert Wojtczak

Tim D. Norris, Esq.

Patrick Mulroney, Esq. (HRD)