

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617)979-1900

MATTHEW WRIGHT,
Appellant,

v.

G1-17-191

CITY OF LAWRENCE,
Respondent

Appearance for Appellant:

Thomas J. Gleason, Esq.
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Appearance for Respondent:

Caroline Thibeault, Esq.
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Nicholas Dominello, Esq.
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One University Ave., Suite 300B
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Commissioner:

Cynthia Ittleman, Esq.

DECISION

On September 26, 2017, the Appellant, Matthew Wright (Appellant), pursuant to G.L. c. 31, s. 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Lawrence (City or Lawrence) to bypass him for appointment to the position of permanent, full-time firefighter with the Lawrence Fire Department (“LFD”). A pre-hearing conference was held on October 31, 2017 at the Armand P. Mercier Community Center

¹ At the time of the hearing, Respondent’s counsels were associated with another firm. I encourage then-Respondent’s counsel to notify the appropriate person at their prior firm.

in Lowell, Massachusetts and a full hearing was held on January 8, 2018 at the same location.²

The hearing was digitally recorded and both parties were provided a copy of the recording of the hearing.³ The parties submitted post hearing briefs. For the reasons stated herein, the appeal is allowed.

FINDINGS OF FACT

Based on the fifty (50) exhibits entered into evidence⁴, the stipulations of the parties and the testimony of the following witnesses:

Called by the Respondent:

- Frank Bonet, Director of Personnel for the City of Lawrence

Called by the Appellant:

- Matthew Wright, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, rules, and policies, a preponderance of the credible evidence, and reasonable inferences from the evidence, establishes the following findings of fact:

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to supply the court with the 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.

⁴ The exhibits include twelve (12) for the Respondent (R.Ex.) and twenty-three (23) for the Appellant (A.Ex.) entered at the hearing, as well as fifteen (15) documents ordered by the Commission at the hearing to be produced thereafter (PH.Ex.) The Respondent states that its Exhibit 6, the CJIS License to Carry a Firearm printout, printed November 7, 2017, is identical in substance to the report that was generated by the Lawrence Police Department during its residency investigation for the Lawrence Fire Department and that because the LPD did not keep a hard copy of the report it generated, a second copy was generated for the purpose of this appeal. Regarding Respondent's Exhibit 7, the Respondent states that the version that was introduced into evidence is identical in substance to the report that was generated by the LPD during its residency investigation but because the LPD did not keep a hard copy of the report it generated, a second copy was generated for the purpose of this appeal. Finally, the Respondent notes that while its Exhibit 12 is a copy of G.L. c. 140, s. 129B regarding firearm licenses generally, the more applicable citation is to G.L. c. 140, s. 131(l), which it references in its post-hearing brief.

Background

1. The Appellant is a veteran who has served overseas, has also served in the Army National Guard for six (6) years and has a Bachelor's degree in criminal justice. In addition, at the time of the hearing in this appeal, the Appellant had been working at an area hospital in security for approximately (2) years. Prior to that, the Appellant worked at the Middlesex Sheriff's office for approximately two (2) years. (Testimony of Appellant)
2. The Appellant took and passed the April 16, 2016 Firefighter civil service exam with a score of 92. (Stipulation)
3. In January 2017, the City sought to appoint three (3) permanent, full-time firefighters to the Lawrence Fire Department. (Stipulation)
4. HRD issued Certification # 04314, dated January 3, 2017, upon which the Appellant was listed fourth among those who signed the certification indicating that they would accept employment. (Stipulation)
5. The City ultimately appointed four (4) applicants, all of whom were ranked below the Appellant on Certification # 04314. (Stipulation)⁵

Appellant's Application and Residency Investigation

6. On or about January 8, 2017, the Appellant filled out and submitted an "Application for Employment" form to the City's Personnel Department. (R.Exs. 3 and 4; Testimony of Bonet)
7. The Appellant indicated that he qualified for the Lawrence residency preference. (R.Ex. 2)

⁵ The City's decision to hire a fourth applicant was made after the City discovered that it had bypassed an individual on Certification # 04314 in error. After discovering the error, the Personnel Department sought and received permission from the Chief of the Fire Department and the Human Resources Division ("HRD") to extend a conditional offer of employment to that individual. (Testimony of Bonet)

8. Pursuant to the City's hiring procedure, the Personnel Department provided the names, stated addresses, dates of birth, and social security numbers of the applicants, including the Appellant's, to the Lawrence Police Department ("LPD") to conduct a residency investigation. (Testimony of Bonet)
9. The task of conducting the City's residency investigations for employment candidates for the Lawrence Fire Department (LFD) is delegated to the Lawrence Police Department (LPD) by the City Personnel Department. (Testimony of Bonet)
10. The residency investigation for applicants to the LFD involves the review by LPD personnel of LexisNexis Public Records reports, records from the Registry of Motor Vehicles (RMV), and licenses held by the applicants. It does not involve interviews or home visits. (Testimony of Bonet)
11. Pursuant to G.L. c. 31, s. 58, the relevant period for purposes of determining eligibility for residency preference is one (1) year prior to the pertinent civil service exam. Since the Appellant took the April 16, 2016 firefighter civil service exam, the residency preference period was April 16, 2015 through April 15, 2016. (Administrative Notice)
12. The residency preference investigation by the LPD found:
 - a. The Appellant's driver's license was issued to the Appellant in 2014 and would expire in 2019 at an address in Methuen.
 - b. The Appellant's license to carry a firearm (LTC) was issued by the Methuen Police Department to the Appellant in 2011 and expired in 2017 at an address in Methuen.
 - c. The information obtained by the LPD stated, in pertinent part, that:
 - i. the Appellant had a Methuen address in October 2015,

ii. the Appellant's voter registration was in Methuen, although not all of the dates of the voter registration information were provided,

iii. the Appellant had a car registered in Methuen between 2013 and 2017.

R.Ex. 7; Testimony of Bonet)

13. The Appellant did not notify the RMV that his address had changed to Lawrence and he did not notify the Methuen Police (regarding the LTC it had issued to the Appellant) that he had moved to Lawrence and he did not notify the LPD that he had an LTC and had moved to Lawrence. (R.Ex. 7; Testimony of Bonet and Appellant) G.L. c. 140, s. 131(I) requires that an LTC licensee notify the police in the municipality in which the LTC was issued and the police in the municipality to which the licensee that he is moving. (G.L. c. 140, s. 131(I))

14. There are errors in the residence information contained in the residency information obtained by the LPD. Specifically, the information erroneously stated that:

the Appellant resided on Broadway in Methuen;

the Appellant lived in Methuen in 2015;

the Appellant lived on Hideaway Lane in Methuen in March 2011; and

the Appellant bought a Camaro in 2013.

(Testimony of Appellant)

15. Then-LFD Chief Moriarty and Captain Martin interviewed the Appellant on March 17, 2017. The LFD does not maintain a written list of the questions it asks at interviews. The question categories are: education, relevant job experience, supervisory experience, technical skills, interpersonal skills, motivation, strengths, weaknesses and overall ranking. The Appellant's interview rankings were not a basis for the Appellant's bypass.

(PH.Ex. 10) The interviewers did not ask the Appellant about his residence. (Testimony of Appellant; Post-Hearing Affidavit of Appellant) Since the LPD investigates residency, Chief Moriarty and Capt. Martin did not ask the candidates about the candidates' residences at the Fire Department interviews. (Testimony of Bonet)

16. The following documents indicate that the Appellant resided in Lawrence continuously for at least the one (1) year prior to the 2016 firefighter exam that the Appellant took and passed:

- a. the initial and renewing leases for the one (1) apartment in Lawrence where the Appellant lived for:
 - i. June 2014 to June 2015
 - ii. June 2015 to January 2016
 - iii. February 2016 to August 2016
- b. the apartment complex ledger of charges and payments for rent and associated expenses for the Appellant's apartment in Lawrence:
 - i. from April 2014 through January 2016
 - ii. from February 2016 through August 2016
- c. electricity bill payments for the Appellant's Lawrence apartment from March 2015 through March 2016
- d. the Appellant's W-2 Wage and Tax Statements for 2015 and 2016
- e. the Appellant's car insurance policy for April 2015 to April 2016

(A.Exs. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11)

17. By letter dated April 12, 2017, the City informed HRD that it was bypassing the Appellant for lack of residency during the one year prior to the 2016 firefighter exam,

stating that the Appellant had provided “conflicting information” in that regard. (R.Ex. 9)

By email dated September 7, 2017, HRD informed the Appellant HRD that it accepted the reason provided by the City for the Appellant’s “non-selection” and attached the City’s April 12 letter to HRD in this regard. (Administrative Notice)

18. The Appellant timely filed this appeal. (Administrative Notice)

Applicable Law

G.L. c. 31, the civil service statute, is based on basic merit principles. That phrase is defined in section 1 of the G.L. c. 31, in part as,

(a) 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; . . . ; (e) assuring 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

Id.

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).

Analysis

The City has failed to establish by a preponderance of the evidence that the Appellant was not a resident of Lawrence for one year prior to taking the April 2016 firefighter civil service exam. The City Personnel Department assigns to the LPD the task of verifying a candidate's residency for the one year prior to the pertinent civil service exam under G.L. c. 31, s. 58. In this case, that one year period was April 2015 to April 2016. The LPD researched the Appellant's residency, checking certain online sources, and reported that the sources checked indicated that he resided in Methuen for at least part of the pertinent time period. For example, the information appeared to indicate that he was registered to vote, he registered a car and he lived in multiple places all in Methuen. When the Appellant was interviewed by the LFD, no one asked him about his residency. On the Appellant's application, the only address provided

was the Appellant's then address in Methuen.⁶ However, the bypass letter asserts that the Appellant provided "conflicting information" about his address in the one year prior to the civil service exam.

At the Commission hearing, the Appellant had his first opportunity to provide information about his residence the year before the exam. It includes ten (10) documents indicating that he did indeed live in Lawrence for the pertinent time. The documents include the multiple leases in the Appellant's name at the Lawrence address, W-2s for both 2015 and 2016, a car insurance policy for that time period, rent and related payments for that time period, and electricity charges for that time period. In addition, some of the information obtained by the LPD was erroneous stating, for example, that he bought a car while he was overseas at the time on active military duty in 2013 but he did not buy the car until 2016 and the erroneous information stated that the Appellant lived at two (2) addresses in Methuen where the Appellant had not lived (one address in 2011; another address in 2015). Thus, the City failed to establish by a preponderance of the evidence that the Appellant did not reside in Lawrence between April 2015 and April 2016. Moreover, it was not the Appellant who provided "conflicting information" since he was not afforded the opportunity to provide added or clarifying residence information and the only address he provided on his application that is in the record here provides his then-current address in Methuen.

Conclusion

For the reasons established herein, the Appellant's appeal under Docket No. G1-17-191, is hereby ***allowed***. Therefore, pursuant to the powers of relief inherent in Chapter 534 of the

⁶ The LFD application in the record is only four (4) pages long and there is only one place to indicate a residence and that is on the first page, where the candidate is asked to fill in his name and, presumably, current address. (R.Ex. 3)

Acts of 1976 as amended by Chapter 310 of the Acts of 1993, the Commission hereby orders HRD, or the City of Lawrence, as delegatee, to:

- 1) place the name of Matthew Wright at the top of the existing or next Certification issued to the City of Lawrence for the position of permanent fulltime firefighter until such time as he is appointed or bypassed.
- 2) If Mr. Wright is appointed, he shall receive the same civil service seniority date as those candidates appointed from Certification No. 04314. This retroactive civil service seniority date is related solely to civil service seniority and is not intended to provide the Appellant with any additional compensation or benefits, including creditable time towards retirement.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on July 30, 2020.

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 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. 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:

Thomas J. Gleason, Esq. (Appellant)
Caroline Thibeault, Esq. (Respondent)
Nicholas Dominello, Esq. (Respondent)
Michele Heffernan, Esq. (for HRD)