

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

LATARSHA BRIMLEY,
Appellant

v.

G1-06-295

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Pro Se
Latarsha Brimley

[REDACTED]

Respondent's Attorney:

Tsuyoshi Fukuda, Esq.
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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Latarsha Brimley (hereafter "Brimley" or Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the Boston Police Department (hereafter "Appointing Authority" or "BPD"), bypassing her for original appointment to the position of police officer. A pre-hearing was held on January 25, 2007 and a full hearing was held on May

2, 2007 at the offices of the Civil Service Commission. One tape was made of the hearing.

FINDINGS OF FACT:

Fourteen (14) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- Edward P. Callahan, former Human Resources Director, Boston Police Department;
- Sergeant Detective Norman Hill; Boston Police Department;

For the Appellant:

- Latarsha Brimley, Appellant;

I make the following findings of fact:

1. The Appellant is a thirty-three (33) year old female from Dorchester. She graduated from Boston High School and is completing courses at Curry College. (Testimony of Appellant; Exhibit 14)
2. The Appellant has two children and is currently not employed. (Testimony of Appellant)
3. The Appellant took an open examination for the position of police officer in 2005 and received a score of 79. (Stipulated Fact)
4. On December 12, 2005, the Appellant's name appeared on Certification 251238 for the position of full-time female police officer for the Boston Police Department. (Stipulated Fact)
5. The Boston Police Department filled sixteen (16) female police officer positions from Certification 251238. A total of 84 candidates were selected as part of this

overall hiring cycle. Three (3) of the candidates selected for appointment were ranked below the Appellant on the above-referenced Certification. (Stipulated Facts)

6. On May 1, 2006, the Boston Police Department notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment and proffered the following reasons: a) the Appellant has had three (3) 209A restraining orders issued against her in 1988, 1994 and 1995; b) From 1993 to 1995, the Appellant was charged with "Assault and Battery By Means of a Dangerous Weapon" & "Malicious Destruction of Property Over \$250.00", 2 counts of "Larceny by Check" and "Threatening"; c) In September 2004, the Appellant allegedly threatened a Boston police officer at the officer's home; and d) in February 2005, the Appellant was terminated from her former employer. (Stipulated Facts; Exhibit 1)
7. Both parties stipulated that the Appellant was subsequently bypassed a second time under Certification 260618 for the same reasons. (Stipulated Fact)
8. The above-referenced reasons for bypass were discovered as part of a background investigation completed by the Boston Police Department of all potential applicants. (Testimony of Callahan and Hill and Exhibits 4-13)
9. All BPD recruit applications, including the background investigations, are reviewed by a "roundtable" consisting of several members including the Director of Human Resources for the Boston Police Department, and Sergeant Detective Norman Hill, Commander of the Recruit Investigations Unit. (Testimony of Callahan and Hill)

10. The roundtable team has the option of conducting an additional “discretionary interview” with an applicant if they determine that additional information or clarification regarding the applicant is needed. The Appellant did not receive a discretionary interview. (Testimony of Hill)

209A Restraining Orders Issued in 1994, 1995 and 1998

11. As referenced above, the Appellant has two children. According to the Appellant, the children’s father is absent from the children’s lives and does not pay child support. (Testimony of Appellant)
12. The Appellant testified that each time she pressed the children’s father for child support, he retaliated by seeking a restraining order against her. (Testimony of Appellant)
13. The three restraining orders against the Appellant referenced by BPD in its reasons for bypass were all taken out by the father of the Appellant’s children – in 1994, 1995 and 1998. (Testimony of Appellant; Exhibits 4A – 4C)
14. Although one of the restraining orders referenced above lists the name of another complainant, the Appellant testified that the father of her children used another name at some point in time. This apparently led Sergeant Detective Norman Hill to reach the mistaken conclusion that two (2) different complainants had sought restraining orders against the Appellant. (Exhibits 4A – 4C and Testimony of Hill)
15. All three (3) of the above-referenced restraining orders expired after fourteen (14) days. BPD did not produce a copy of the original orders issued and/or a copy of the complainant’s application for the restraining orders. Rather, BPD submitted computer print-outs summarizing the actions taken by the court. (Exhibits 4A – 4C)

16. Both Sergeant Detective Hill and BPD's former HR Director confirmed during their testimony that the restraining orders were a concern that contributed to the decision to bypass the Appellant. (Testimony of Hill and Callahan)

1993 Malicious Destruction of Property

17. On March 26, 1993, the Appellant was charged with Malicious Destruction of Property Over \$250 in Cambridge District Court. The matter was continued to September 1993 at which time the case was to be dismissed upon payment of \$300 in restitution. (Exhibit 6)
18. For eight (8) years, the Appellant failed to pay the \$300 in restitution, eventually resulting in the issuance of a default warrant against her leading to her arrest for an outstanding warrant in 1999. (Exhibits 6 and 9)
19. The Appellant testified before the Commission regarding the 1993 incident as well as her reason for failing to pay the \$300 in restitution.
20. According to the Appellant, she was driving her mother's car in Cambridge, MA in 1993 with a female friend as a passenger. At some point while they were driving, the female friend spotted her boyfriend with another woman. At this point, the Appellant pulled her car over and her female friend exited the car, picked up a brick and threw it at the boyfriend's car window. The female friend got back in the car and the Appellant drove away. (Testimony of Appellant)
21. As referenced above, the Appellant, as a result of this incident, was charged with Malicious Destruction of Property over \$250 and ordered to pay \$300 in restitution. (Exhibit 6)

22. Asked by this Commissioner why she failed to pay the \$300 in restitution for eight (8) years, the Appellant testified that she didn't believe she should have to pay for the transgression of her female friend. (Testimony of Appellant)

1995 Charges of Assault by Dangerous Weapon and Malicious Destruction of Property

23. On April 12, 1995, the Appellant was arrested and charged with Assault by Dangerous Weapon and Malicious Destruction of Property over \$250. The charges were ultimately dismissed for want of prosecution. (Exhibit 8)

24. Neither of the BPD witnesses could provide any details regarding the above-referenced charges beyond the limited information on the docket sheet from Dorchester District Court.

25. In regard to these charges, the Appellant testified that she thinks these charges resulted after she entered a district police station in Mattapan to "file a report" against the father of her children. Again according to the Appellant, the father of her children came into the police station, pushed her and she pushed him back. She was unable to provide any further details regarding what led to her arrest that day. (Testimony of Appellant)

July 2001 Incident Report

26. Exhibit 11 is a July 9, 2001 Boston Police Department Incident Report. According to the report, two Boston police officers responded to a radio call that day regarding an assault and battery in progress. The report identifies the reporter as the Appellant's then-boyfriend (not the father of her children) and the Appellant as the alleged offender. (Exhibit 11)

27. According to the above-referenced incident report, the officers spoke with the victim who stated that he and the Appellant had just returned from a trip to North Carolina when he asked the Appellant to drop him off at a friend's house. Again according to the report, the boyfriend alleged that an argument ensued between the two of them and the Appellant grabbed a gold chain from around his neck and pulled it off. According to the same incident report, the officers observed scratch marks on the boyfriend's chest and right shoulder as well as a cut about the size of a nickel on his shin where he was also allegedly kicked by the Appellant. The boyfriend declined medical treatment and no charges were brought against either party. (Exhibit 11)

September 2004 Incident Involving a Boston Police Officer

28. Exhibit 12 is a Boston Police Department Incident Report dated September 17, 2004 which identifies a female Boston police officer as the victim and the Appellant as one of four offenders. The report appears to be written by another Boston police officer who responded to a call at the female Boston police officer's home. (Exhibit 12)

29. According to the above referenced incident report, two (2) Boston police officers responded to a call from the off-duty female police officer who reported that "a group of people were ringing her doorbell and asking her to come outside to fight...Officers identified [the Appellant] as the person ringing victim's doorbell. Victim states [the Appellant] stated, 'I heard you wanted to kick my butt; come on down'." (Exhibit 12)

30. The incident report goes on to state that the Appellant told the responding police officers that “there was a traffic incident earlier in the day involving [the female Boston police officer] and [the Appellant’s] younger brother.” Again according to the incident report, “[the Appellant] stated she did ring [the female police officer’s] doorbell and attempted to talk to her about the incident.” (Exhibit 12)
31. The Appellant testified before the Commission regarding the above-referenced incident. According to the Appellant, the female police officer was harassing her brother, whose friend lived upstairs from the female Boston police officer. Again according to the Appellant, she was told by her brother and his friends that the female Boston police officer tried to hit her brother with her car. (Testimony of Appellant)
32. The Appellant testified that she went to the home of the Boston police officer, “to get her side of the story...I went up to her house and rang the doorbell.” The Appellant then testified that she asked for the female police officer by name, but that she never came to the door. Again according to the Appellant, she then left the property without incident and walked down the street at which point she was approached by two Boston police officers and brought to the Roxbury police station for questioning. (Testimony of Appellant)
33. No documents were entered to show that any charges were brought against the Appellant regarding the above-referenced incident.

2005 Termination from Employment

34. It is undisputed that the Appellant was terminated from her employment at Citizens Bank in 2005.

35. The Appellant testified in regard to the reasons for this termination before the Commission. According to the Appellant, she was a “tele-manager” at Citizens bank for approximately five (5) years. Again according to the Appellant, she was terminated because she “yelled at” one her employees. (Testimony of Appellant)
36. According to the Appellant, she did indeed yell at the employee in question, but with good cause. Specifically, the employee had opened a public door to the bank at a time when the vault was open and cash was visible. (Testimony of Appellant)
37. As part of her testimony, the pro se Appellant was permitted to read a written statement that she had prepared in preparation for the hearing before the Commission. The Appellant’s statement focused on the fact that she had followed all of the procedures in regard to the application process to become a Boston police officer. Further, the Appellant, as part of her statement, reiterated much of the testimony that is already referenced in the findings of fact above. The Appellant did, however, acknowledge, that she was indeed an accessory regarding the above-referenced brick-throwing incident in Cambridge and admitted this was an error in judgment that she regrets. Finally, the Appellant stated that she doesn’t use drugs, alcohol or cigarettes and, as a result of her rejection for employment with the Boston Police Department, has become disillusioned with the process. (Testimony of Appellant)

Decision to Bypass

38. Mr. Hill testified that the BPD reviews applications on a case-by-case basis and considers the “recency” and “severity” of the underlying incidents and/or charges. (Testimony of Hill)

39. Sergeant Detective Hill testified that taken as a whole, the Appellant's background raised serious concerns for the Boston Police Department including her criminal behavior, being the subject of three restraining orders, threatening a Boston police officer and being terminated from her last place of employment. Mr. Hill described the Appellant as "simply unsuitable" for employment with the Boston Police Department. (Testimony of Hill)
40. During his testimony, Mr. Hill and former BPD HR Director Edward Callahan stressed the awesome responsibility of Boston police officers and the need to select suitable candidates who can be entrusted with a deadly weapon. (Testimony of Hunt and Callahan)
41. On June 15, 2006, the state's Human Resource Division (HRD) approved the reasons proffered by the City in bypassing the Appellant. (Stipulated Fact)
42. The Appellant filed a timely appeal with the Civil Service Commission regarding HRD's decision. (Stipulated Fact)

CONCLUSION:

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, § 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). G.L. c. 31, § 43.

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.

Ms. Brimley is a life-long resident of Boston. She attended Boston High School and is completing courses at Curry College as part of a bachelors degree program. She has two children and is currently unemployed. I don't doubt her sincere desire to serve the City of Boston as a police officer as she described during her articulate testimony before the Commission.

Unfortunately, however, the Appellant's background provides the City of Boston with reasonable justification for bypassing her for employment as a police officer. In 1993, Ms. Brimley was involved in an alarming incident that ultimately led to her being charged with malicious destruction of property over \$250. The incident, in which the Appellant's female friend threw a brick through the car window of her boyfriend and was then driven away by the Appellant, is disturbing on two fronts. First, it shows horrendous judgment on the part of the Appellant. Second, while the incident may have occurred while the Appellant was in her teens, she subsequently refused to comply with a court-ordered restitution of \$300 for eight years, believing she should not be held responsible for the bad act of her female friend. Only after being arrested on a default warrant several years after the incident did the Appellant abide by the court order.

While the details are somewhat sketchy, other subsequent events make it painfully clear that the 1993 incident was not an isolated event. In 1995, the Appellant was charged with assault with a dangerous weapon and malicious destruction of property followed by an incident in 2001 in which the Appellant allegedly assaulted her then-boyfriend.

Most troubling, however, is the relatively recent and specific allegation involving an off-duty Boston police officer. Even accepting the Appellant's version of events regarding the 2004 incident, the Appellant once again used horrible judgment. Believing that a female Boston police officer was harassing her brother, the Appellant decided to take matters into her own hands and confront the police officer at her home. As someone who was considering a career in law enforcement at the time, the Appellant should have realized the inappropriate nature of her actions and, rather than confronting an off-duty

police officer at her home, taken advantage of the well-established means of addressing citizen complaints within the Boston Police Department. Finally, there is no dispute that the Appellant was terminated from her most recent employment after a verbal altercation with one of her employees.

Taken together, the Appellant's actions confirm the conclusion of Sergeant Detective Hill that Ms. Brimley is not suitable for employment as a Boston police officer.

After considering all the testimony and evidence in the record, I conclude that the Boston Police Department had sound and sufficient reasons for bypassing the Appellant for selection as a police officer in the City of Boston and there is no evidence of inappropriate motivations or objectives that would warrant the Commission's intervention in this matter.

For all of the above reasons, the appeal under Docket No. G1-06-295 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners) on May 10, 2007.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration

shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice:

Latarsha Brimley (Appellant)

Tsuyoshi Fukuda, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)