

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

Kristopher A. Spooner,
Appellant

v.

Docket No. G1-04-130

Town of Hanover,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 31, s. 2(b), the Appellant, Kristopher Spooner, is appealing the decision of the Respondent, Town of Hanover as Appointing Authority, to bypass him for an original appointment of one (1) of five (5) Permanent Intermittent Patrolman positions. The appeal was timely filed. A full hearing was held on April 8, 2005 at the offices of the Civil Service Commission. Two (2) tapes were made of the hearing. Both parties submitted post-hearing briefs. As no notice was received from either party, the hearing was declared private. Seven (7) exhibits were stipulated to by the parties and entered into the record.

FINDINGS OF FACT:

Based upon the stipulated documents entered into evidence (Exhibits 1-7), and the testimony of the Appellant, Kristopher A. Spooner, Walter L. Sweeney, Lieutenant, Hanover Police Department and Steve Rollins, Administrator of the Town of Hanover, I make the following findings of fact:

1. The Town of Hanover is a municipal corporation and the Board of Selectman is the employer and Appointing Authority. (Testimony)
2. On April 18, 2003, the Town of Hanover submitted a civil service requisition form to the Human Resources Division (HRD) in order to fill five permanent intermittent police officer positions. (Exhibit 1)
3. On May 6, 2003, the Appellant was placed on a certified eligibility list by the HRD for an original appointment for one (1) of five (5) Permanent Intermittent Patrolman positions with the Hanover Police Department. (Exhibit 1).
4. On May 12, 2003, Appellant submitted an application for the position of permanent intermittent police officer in the Town of Hanover. (Exhibit 5).
5. The certified eligibility list directed that “selection must be of 5 of the first 11 highest who will accept” the Permanent Intermittent Patrolman positions with the Hanover Police Department. (Exhibit 1).

6. Due to his veteran status, the Appellant automatically received a veteran's preference over the non-veteran candidates pursuant to M.G.L. c. 31, s. 26. (Testimony, Exhibit 3).
7. The Appellant was placed second on the certified eligibility list following Timothy J. Wyse and he became the highest eligible candidate after Mr. Wyse withdrew his application. (Exhibits 1 and 3).
8. On May 16, 2003, Derek W. Richards, James E. Smith and John E. Voelkel submitted written applications to the Hanover Police Department. (Exhibits 6(b), (c) and (d)).
9. On May 18, 2003, Kristin L. Metivier submitted a written application to the Hanover Police Department. (Exhibit 6(a)).
10. On May 21, 2003, Mark K. Wheeler submitted a written application to the Hanover Police Department. (Exhibit 6(e))
11. Andrew Braun, Brian Doolin and Daniel Sweeney also submitted written applications to the Hanover Police Department. (Exhibit 4).
12. The selection process for the intermittent police officer positions included a background check investigation, an oral interview of each candidate before a panel of police officials, and, ultimately, a public interview before the Town of Hanover's Board of Selectmen. (Testimony, Exhibits 1-4).
13. Following receipt of the aforementioned applications, Lt. Walter Sweeney, a member of the Hanover Police Department with over twenty three (23) years of experience, and who is responsible for all investigations and background checks for new hires, commenced

background investigations into each candidate pursuant to Department policies and procedures. (Testimony, Exhibit 4).

14. Appellant's background check revealed the following:
 - a. Appellant attended Massasoit Community College for four semesters between 1998 and 2000. For the last of those two semesters he was placed on academic probation/academic deficiency. Appellant's major field of study was law enforcement. Appellant received a grade of "F" in a class entitled "Introduction to Law Enforcement". Appellant also received an "F" in "Introduction to Criminalistics". (Testimony, Exhibits 4-5).
 - b. Appellant had three (3) surchargeable driving accidents and two moving violation citations between 1997 and 2002. (Exhibits 4, 5 and 7).
 - c. Appellant's credit report indicated one charge account, on which a settlement was reached, and another collection account which was ultimately paid. (Testimony, Exhibits 4-5).
 - d. On or about May 26, 2000, Appellant joined the United States Army, where he underwent approximately eight (8) weeks of Basic Training and three (3) months of specialized training at Military Police School. He subsequently served with the U.S. Army Military Police for two and one half (2 ½) years during which time he was stationed at Fort Detrick in Maryland, as well as a top secret facility in Pennsylvania. While stationed at these military bases, Appellant obtained experience in numerous areas of law enforcement, including, but not limited to, patrolling, motor vehicle stops, search and seizure, and arrests. On May 25, 2003, after three (3) years of service, he received an honorable discharge from active duty. (Testimony, Exhibit 5).

15. Appellant's father, William Spooner, was a Hanover Police Department Patrolman for twenty-seven (27) years and is currently a Special Hanover Police Department officer, serving at the pleasure of Hanover Chief of Police Paul Hayes. While a Patrolman, William Spooner was the subject of a disciplinary investigation and was disciplined by Chief Hayes. (Testimony).
16. On June 10 and 13, 2003, Lt. Walter Sweeney convened an assessment center in order to interview and assess the candidates for the Permanent Intermittent Patrolman positions. The assessment team consisted of Lt. Walter Sweeney, Captain Taylor Mills of the Hingham Police Department and Deputy Chief David Majenski of the Abington Police Department. (Testimony, Exhibits 2, 3 and 4).
17. All members of the interview panel had previous experience interviewing and assessing police officer candidates. (Testimony, Exhibit 4).
18. Each interview lasted approximately 20-30 minutes. (Testimony, Exhibit 4). The interview panel asked all the candidates a standard set of questions, which focused on the candidates' respective backgrounds, including education, vision of law enforcement and work history. (Testimony, Exhibit 2).
19. During the assessment interview, Appellant did not make significant eye contact with the assessment board members, and exhibited a lack of confidence. Appellant admitted to his poor academic performance at Massasoit Community College and attributed that performance to attendance issues and a lack of attention on his part. In response to a question about community policing, Appellant cited his military police experience in the Army, but did not offer specific examples of how

that experience would help him as a Hanover Police Officer. Appellant did not articulate any specific time lines or plans for accomplishing his stated goal of studying criminal justice in the future. (Testimony, Exhibit 4). Lt. Sweeney testified at hearing that Appellant's military service was a positive element of his candidacy, and that the level of law enforcement training Appellant received while in the U.S. Army Military Police was probably more extensive than the training provided at the Massachusetts Criminal Justice Training Council Basic Reserve Academy (from which three of the five successful candidates had graduated). (Testimony).

20. Appellant was not specifically questioned during his interview with regard to his credit history or his driving record. (Testimony).
21. Investigation by Lt. Sweeney determined that none of the five successful candidates had negative educational, credit or driving issues comparable to Appellant. (Testimony, Exhibits 4, 5, 6(a)-(e)).
22. Thereafter, on June 16, 2003, Lt. Sweeney forwarded a memorandum to Hanover Chief of Police Paul R. Hayes entitled Employment Applications and Assessment Center Reports. In that memorandum, Lt. Sweeney outlined the results of the background investigations he performed on each candidate, as well as how they presented at their interview. (Testimony, Exhibit 4).
23. Thereafter, the Town of Hanover Board of Selectmen reviewed all of the candidates' applications, as well as Lt. Sweeney's report, and interviewed each of the candidates individually in a public meeting. Each interview lasted approximately thirty (30) minutes. (Testimony).

24. Appellant was interviewed first because he was the highest eligible candidate. During the Appellant's interview, the other candidates were voluntarily sequestered in an adjoining room. (Testimony).
25. Upon leaving the interview, Appellant encountered some of the other candidates. No one discussed the questions that were being asked by the Town of Hanover Board of Selectmen. (Testimony).
26. Appellant's interview performance before the Board of Selectmen was poor as compared to the other successful candidates' performances. Specifically, Appellant's eye contact, command of speech and presence, and communication skills, were found by the Board of Selectmen to be lacking. (Testimony, Exhibit 1).
27. During his interview before the Board of Selectmen, Appellant was unable to articulate, to the satisfaction of the Board, his desire to become a police officer for the Town of Hanover, or what he had done to prepare for the role. Appellant also acknowledged, during his interview before the Board of Selectmen, that he was "trying to get things in order", admitting that his quest to be selected for a public safety position was disjointed until that point in time. (Testimony, Exhibit 1).
28. Upon completion of the interviews, the Board of Selectmen voted to offer the five (5) Permanent Intermittent Patrolman positions to Kristin Metivier, Derek Richards, James Smith, John Voelkel and Mark Wheeler. (Testimony, Exhibits 1 and 4). The Board of Selectmen found that "the five successful candidates had superior work experience, superior educational achievements and presented themselves well during the interview. All background checks were clean, and were another indication of why these candidates would be a

credit to the Hanover Police Department...They all exhibited levels of maturity that boded well for them in the future. The Board feels that these five candidates will best fulfill the needs of the Town of Hanover and its Police Department and currently have the skills necessary to succeed in this position.” (Exhibit 1). According to the testimony of Mr. Rollins, the Board of Selectmen accepted Chief Hayes’ recommendation as to which candidates should be offered positions. (Testimony).

29. Following their vote, the Board of Selectmen sent a letter to the HRD in which they stated that they “found the five chosen candidates to be clear choices based in part on experience and provide[d] the following additional information to expand upon the reasons these choices were made.” (Exhibit 1).
30. Mr. Rollins drafted the letter to the HRD which was signed by R. Alan Rugman, as Chairman of the Board of Selectmen. However, Mr. Rollins acknowledges that he did not take part in the actual decision making process by the Board of Selectman. (Testimony).
31. The HRD accepted the reasons provided by the Board of Selectmen for bypassing Appellant, as well as a second candidate with veteran’s preference status. (Exhibit 1). By letter dated October 2, 2003, the HRD notified Appellant of same, as well as his right to appeal this decision. (Exhibit 1).
32. Thereafter, by letter dated November 5, 2003, Appellant timely filed an appeal of the bypass decision.
33. The Commission finds the testimony of all witnesses to be highly credible. Lt. Sweeney and Mr. Rollins credibly testified as to the

thorough screening process conducted of all candidates (including Appellant), and to the fact that at each level of the screening process, from the initial review of Appellant's application through the final interview with the Board of Selectman, only legitimate and relevant factors were considered in making the decision to bypass Appellant. I found them to be professional and comfortable while testifying. Similarly, Appellant credibly testified in a forthright manner as to the various deficiencies in his background. He was polite and even-toned. He was slightly nervous at times, which is to be expected, but was not evasive in offering answers that may not have helped his cause. I found that Appellant's testimony indicated integrity and a confidence that was no doubt lacking when he first embarked on this career path.

CONCLUSION:

In the context of reviewing a bypass decision by an Appointing Authority, 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). Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." City of Cambridge at 304, quoting 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. 211, 214 (1971).

In order to show that an Appointing Authority's decision was not justified, an Appellant must demonstrate that the stated reasons of the Appointing Authority were

untrue, applied unequally to the successful candidates, were incapable of substantiation, or were a pretext for other impermissible reasons. MacPhail v. Montague Police Department, 11 MCSR 308 (1998) *citing* Borelli v. MBTA, 1 MCSR 6 (1987). In the task of selecting public employees of skill and integrity, moreover, appointing authorities are invested with broad discretion. City of Cambridge at 304-5; Goldblatt v. Corporate Counsel of Boston, 360 Mass. 660 (1971). This tribunal cannot “substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” City of Cambridge. at 304. In light of these standards and the evidence in this case, the appeal must be dismissed.

It is the conclusion of this Commission that the Respondent has met its burden of proving that there was a reasonable justification for bypassing Appellant for the position of Permanent Intermittent Patrolman. Specifically, the evidence proffered by the Respondent is sufficiently reliable to warrant a reasonable mind to find that the Appellant was not among the top five candidates for the available positions.

It is the function of the agency hearing the matter to determine what degree of credibility should be attached to a witness’ testimony. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978). Doherty v. Retirement Board of Medicine, 425 Mass. 130, 141 (1997). The hearing officer must provide an analysis as to how credibility is proportioned amongst witnesses. Herridge v. Board of Registration in Medicine, 420 Mass. 154, 165 (1995).

Given the veracity of the testimony from all witnesses, it is evident, based on Appellant’s candid testimony with respect to his credit problems, poor academic performance, and substandard driving record (which confluence of concerns were not similarly present with respect to the other, successful candidates)¹, as well as the lesser degree of composure Appellant was noted to exhibit at all levels of the screening process (particularly when compared to the other candidates), that the Respondent’s bypass

¹ For example, while two other successful candidates (James Smith and John Voelkel) also exhibited mediocre to poor academic performance, their credit reports were unblemished and they did not have substandard driving records (unlike Appellant).

decision was based upon adequate reasons, sufficiently supported by credible evidence. Respondent failed to submit objective, credible evidence to even suggest that the bypass decision was a result of political considerations, favoritism or other bias. Indeed, the sole avenue of potential bias suggested by Appellant (that his father, William Spooner, had a “bad personal history” with Chief Hayes, having been disciplined by Chief Hayes while a Patrolman) was disproved by the fact that subsequent to Mr. Spooner’s retirement from the force, Chief Hayes nevertheless appointed him a Special Hanover Police Department officer.

In sum, this case is a classic example of an appointing authority exercising its lawful discretion and choosing from among a group of candidates on the basis of legitimate and relevant factors. The Commission cannot substitute its judgment for that of the Appointing Authority in such a case.

For all of the above stated reasons, it is found that the Respondent has established by a preponderance of the reliable and credible evidence in the record that it had just cause to bypass Appellant for the position of Permanent Intermittent Patrolman. Therefore, this appeal on Docket No. G1-04-130 is *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Goldblatt; Chairman, Taylor, Guerin, Marquis and Bowman; Commissioners) on December 21, 2006.

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. A motion for reconsideration shall be deemed a motion for rehearing in accordance with MGL ch. 30A sec. 14(1) for the purpose of tolling the time of appeal.

Pursuant to MGL ch. 31 sec. 44, any party aggrieved by a final decision or order of the Commonwealth may initiate proceedings for judicial review under MGL ch. 30A sec. 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 To:

Daniel C. Brown, Esq.

Edward M. Joyce, Jr., Esq.