

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

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

CHRISTOPHER GOULD,  
Appellant

v.

G1-04-190

CITY OF WORCESTER,  
Respondent

Appellant's Attorney:

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Commissioner:

Christopher C. Bowman

**DECISION**

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Christopher Gould (hereafter "Gould" or Appellant") appealed the decision of the Respondent, the City of Worcester (hereafter "Appointing Authority", or "City"), bypassing him for original appointment to the position of firefighter. A full hearing was held on September 21, 2006 at the offices of the Civil Service Commission.

## **FINDINGS OF FACT:**

Sixteen (16) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

### For the Appointing Authority:

- John Sullivan, District Chief, City of Worcester Fire Department;

### For the Appellant:

- Christopher Gould, Appellant;

I make the following findings of facts:

1. On or about June 2002, the City of Worcester Fire Department requested a civil service certification list for the selection of 65 permanent full-time firefighters.  
(Exhibit 16)
2. On July 11, 2002, the state's Human Resources Division (HRD) certified civil service list number 220721 of eligible applicants for the Worcester Fire Department. (Exhibit 16)
3. The Appellant achieved a score of one hundred (100) on the firefighter's exam which was used to generate the above-referenced certification list. The Appellant has a strong interest in the fire service and, as the fire union photographer, takes pictures at many fire scenes that are used in the firefighter union's yearbook. (Testimony of Appellant)
4. After the individuals who had veteran's preference were added into the listing, Gould was #15 on the certification list. (Exhibit 16)
5. The City hired sixty-five (65) firefighters from Certification #220721. (Exhibit 16)

6. On or about February 14, 2003, the Appellant was notified that he was bypassed for appointment due to his poor employment history. (Exhibit 4)
7. The Appellant had been previously bypassed for the position of firefighter with the City of Worcester in 2001 for the same reasons provided in 2002 and did not appeal this decision. (Testimony of Appellant; Exhibit 5)
8. District Chief Sullivan conducted the background investigation of the Appellant during both the 2001 and 2002 screening process. (Testimony of District Chief Sullivan, Exhibit 5)
9. The Appellant sent a letter to the Civil Service Commission seeking to appeal the reasons for bypass on or about February 28, 2003, shortly after being notified by HRD that he had been bypassed. (Testimony of Appellant)
10. The Appellant periodically called the Commission in 2003 for a status update on his appeal and sent at least one email via the Commission's website but did not receive any response from the Commission. (Testimony of Appellant)
11. Frustrated by a lack of response from the Commission, the Appellant hired the firm of Brackett and Lucas on or about February 2004 to ascertain the status of his appeal. The firm of Brackett and Lucas wrote to the Civil Service Commission on February 12, 2004 to determine the status of the Appellant's appeal. That inquiry generated an acknowledgement form from the Commission noting a filing date of February 13, 2004, the date the Commission received the inquiry from Brackett and Lucas seeking to determine the status of the appeal filed with the Commission one year earlier. (Testimony of Appellant)

12. The Appellant's testimony regarding the filing of an appeal in February 2003 is credible. Further, I take notice that the Commission was experiencing serious administrative problems during the time period in question, including, among other things, an inoperable phone system and an inability to respond to email inquiries. As I believe the Appellant's testimony that he did indeed file an appeal with the Commission in February 2003, the filing of the appeal is deemed timely.
13. As part of the background investigation process required by the City of Worcester, the Appellant completed a personal history statement in which the Appellant listed the following past employers: YMCA – Greendale, 12/99 – 6/24/02; Sylvan Testing Center, 1/99 – 7/99; AMI Leasing, 8/98 – 1/99; and Ritz Camera, 11/97 – 8/98.  
(Exhibit 11)
14. District Chief Sullivan testified that as part of the background investigation process, the prior employers were asked to complete an employment performance analysis form, and then face to face interviews were conducted with each prior employer when possible. (Testimony of Sullivan)
15. In regard to the Appellant's employment with the YMCA, an employment performance analysis form was completed by Bartt Pinchuck. District Chief Sullivan also met with Mr. Pinchuck on 8/12/02 and recorded his conversation in the previous employer / supervisor interview form. (Testimony of Sullivan, Exhibits 14 and 15)
16. The Commission heard testimony from both District Chief Sullivan and the Appellant in regard to whether or not Pinchuck was in a position to offer an informed opinion about the performance of the Appellant during his tenure at the YMCA. When asked to provide the name of his (YMCA) supervisor on the personal history statement he

filed with the City of Worcester, the Appellant wrote, “Josh Zeirler-Broudo / Bartt Pinchuck”. However, the Appellant testified that Pinchuck was never his direct supervisor at the YMCA and that Mr. Zeirler-Broudo, his most recent direct supervisor, reported directly to Pinchuck. (Exhibit 11; Testimony of Appellant)

17. When District Chief Sullivan asked Pinchuck during his interview on August 12, 2002 whether or not he would rehire or recommend the Appellant for hire, Pinchuck said, “probably not”. When District Chief Sullivan asked Pinchuck at the conclusion of the interview if he had any general comments regarding the Appellant’s application to be a firefighter, Pinchuck said, “Right now, I wouldn’t want him to be responding to my house.” (Exhibit 14)

18. Pinchuck also completed a written “employment performance analysis form” on August 16, 2002 which includes 12 multiple choice questions and a final section for additional comments. In the additional comments section, Pinchuck wrote, “Chris was often tardy and did the minimum while at work. His poor performance may be related to his lack of interest in the position he held. Chris has some very strong qualities such as flexibility, integrity and a positive attitude. Chris may excel in a position that holds his interest and that is more in line with his personal goals.” (Exhibit 15)

19. There was no dispute that Nancy Boland did indeed serve as the Appellant’s supervisor earlier in the Appellant’s tenure at the YMCA (1999-2000). As part of the Appellant’s previous application with the Worcester Fire Department, District Chief Sullivan interviewed Ms. Boland. According to District Chief Sullivan, Ms. Boland characterized the candidate’s employment record in less than glowing terms. She

questioned why the Appellant took the job originally, because in her estimation he was not well suited to it. She was forced to reassign the Appellant to work with older children because he didn't associate well with the younger kids. Ms. Boland told District Chief Sullivan that tardiness was an issue as he was attending college and often times "gets caught up" at school. When asked whether she would rehire Mr. Gould, Ms. Boland stated, "probably, but not for the job he does now, perhaps in another part of the building." (Testimony of Sullivan, Exhibit 5)

20. The Appellant submitted Exhibits 2 and 3 to counter the less than stellar references from Pinchuck and Boland. Exhibit 3 is a "Performance Appraisal Form" completed by Nancy Boland, on August 22, 2000. The form is signed by Ms. Boland, the Appellant and the "Branch Executive". The Appellant was rated by Boland on a scale from 0 to 205, which five different point thresholds for an overall rating of "Far Exceeds", "Exceeds", "Fully Meets", "Marginally Meets", and "Fails to Meet" standards and expectations. Staff members scoring between 123 and 163 receive a "fully meets" rating. The Appellant scored a 123, the lowest possible score to attain the rating of "fully meets" standards and expectations. Exhibit 2 is a copy of a "Performance Appraisal Form" dated February 7, 2003 and signed by Josh Zierler-Broudo. The Appellant last worked for the YMCA in June 2002. Unlike the 2000 evaluation form completed by Ms. Boland, this form is not signed by the Appellant or a "Branch Executive". Exhibit 2 is not reliable and is given no weight. (Exhibits 2 and 3)

21. Prior to working at the YMCA, the Appellant worked for Sylvan Learning Center from January 1999 to July 1999. He was terminated after performing a prank of

changing the names on the office speed dial buttons on the telephone. (Testimony of Appellant)

22. Prior to his employment at Sylvan Learning Center, the Appellant worked at AMI Leasing Company from August 1998 to January 1999 as a parking lot attendant. He was 18 years old at the time. During this period of time, the Appellant's father was stricken with cancer (late 1998) and he died in June 1999. The Appellant testified sincerely regarding his close relationship with his father and the impact his father's death had on him. (Testimony of Appellant)

23. District Chief Sullivan met with a representative from AMI Leasing and did not receive a favorable evaluation. (Testimony of Sullivan)

24. The Appellant acknowledged that he was not a "good fit" for the parking lot attendant job and agreed to be laid off. (Testimony of Appellant)

25. The Appellant had also been employed part-time by Ritz Camera from November 1997 until August 1998. When a new supervisor with "control issues" started, he decided to leave. (Testimony of Appellant)

26. District Chief Sullivan testified that he met with the Appellant in order to discuss the results of the investigation of his employment history and to give the Appellant an opportunity to respond to the unfavorable evaluations that were given to him by the supervisors interviewed. During the interview with the Appellant, Sullivan reviewed the results of the background investigation and the information the employee had provided in his personal history statement. According to Sullivan, the Appellant did not offer any information or explanation that contradicted what was told to him by the Appellant's prior employers. The Appellant admitted that during his prior

employment, he was bored and due to his boredom, would not always give 100% to the position. Sullivan testified that the Appellant displayed a nonchalant attitude when questioned concerning these unfavorable evaluations and did not take any responsibility for his actions. (Testimony of Sullivan)

## **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, 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.

Christopher Gould is a smart, well-groomed young man who achieved a perfect score on the civil service firefighter exam. He has a strong interest in being a firefighter as evidenced by his freelance work as a photographer for the local firefighter's union. By a preponderance of the evidence, however, the City of Worcester has proven that District Chief Sullivan made the correct decision in not recommending Mr. Gould for one of the 65 available firefighter positions in 2002 because of the Appellant's poor employment history.

Gould left a part-time job at Ritz Camera because his new supervisor had "control issues". He agreed to be laid off from his next job as a parking lot attendant for which he was not a good fit. He was then fired from his next job at Sylvan Learning Center after pulling a childish prank involving the names of employees listed on the company's voicemail. He then worked for a few years as a counselor at the YMCA for which his references are far from flattering. Gould chalks this all up to being a bored youth who had yet to find his way --or a job that sufficiently challenged him. That may be so, but the above-referenced jobs represented the entirety of the then-22-year-old's employment

history that District Chief Sullivan could not --and should not-- ignore. The City bypassed Mr. Gould with just cause, providing sound, rationale reasons for its decision and there is no evidence of inappropriate motivations or objectives on the part of the Appointing Authority that would warrant the Commission's intervention.

For all of the above reasons, the appeal under Docket No. G1-04-190 is hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Marquis and Taylor, Commissioners) on October 26, 2006.

A true record. Attest:

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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:

Lisa M. Carmody, Esq.

James T. Masteralexis, Esq.

John Marra, Esq. (HRD)