

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

ANTHONY ALLEN,
Appellant,

v.

G1-07-278

BOSTON POLICE DEPARTMENT,
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, Anthony Allen (hereafter "Allen" or "Appellant") seeks review of the Personnel Administrator's (Human Resources Division "HRD") decision to accept the reasons of the Boston Police Department (hereafter "Appointing Authority" or "BPD"), bypassing him for original appointment to the position of police officer and removing him from consideration during the current two-year hiring cycle pursuant to Personnel Administration Rule .09 (PAR.09). A pre-hearing was held on October

18, 2007 and a full hearing was held on December 5, 2007 at the offices of the Civil Service Commission. Two tapes were made of the hearing.

FINDINGS OF FACT:

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

For the Appointing Authority:

- Robin Hunt, Human Resources Director, Boston Police Department;
- Detective Jerome Bowen, Boston Police Department;

For the Appellant:

- Anthony Allen, Appellant;

I make the following findings of fact:

1. The Appellant is a sixty-four year old male from Boston who previously served as a municipal police officer employed by the Boston Municipal Police Department prior to his position being abolished on December 31, 2006. (See Twenty-Seven Former Boston Municipal Police Officers, Sergeants and Lieutenants v. City of Boston, CSC Case Nos. D1-07-05 – D1-07-31) (2007). (Testimony of Appellant)
2. On July 12, 2007, the Appellant's name appeared at the top of Certification # 70048 for the position of police officer by virtue of his prior employment with the Boston Municipal Police Department. (Exhibit 1, Bypass Letter sent to Sally McNeely by Robin W. Hunt)
3. On August 10, 2006, the Appellant signed his Student Officer Application and submitted it to the Boston Police Department and a background investigation was undertaken by Detective Jerome Bowen. (Exhibit 2, Student Officer Application and Testimony of Robin Hunt)

4. Robin Hunt, Director of the Boston Police Department's Human Resources Division, testified that the result of the background investigation was presented to a Department hiring committee during a "roundtable" discussion, which typically involves the Commander of Recruit Investigations, the Director of Human Resources, a Deputy Superintendent from Internal Affairs, and an attorney from the Legal Advisor's Office. (Testimony of Robin Hunt)
5. Robin Hunt, as the Director of Human Resources, was a member of the roundtable discussion involving the Appellant. All members of the roundtable discussion agreed that the totality of the circumstances surrounding the Appellant's criminal and employment history rendered the Appellant unsuitable to be a Boston Police Officer. (Testimony of Robin Hunt)

Criminal History

6. As part of his investigation into the Appellant's background, Detective Jerome Bowen obtained criminal docket sheets involving the Appellant from Dorchester and Roxbury District Courts. (Testimony of Detective Bowen)
7. On July 21, 2000, the Appellant was arraigned in Roxbury District Court for the charge of *Assault and Battery*. The Appellant was arraigned after a clerk's hearing was held and a complaint issued. On September 11, 2000, the case was *dismissed* in Roxbury District Court for *want of prosecution*. (Testimony of Detective Bowen, Exhibit 3, Roxbury District Court Docket Sheet # 0002CR003519 (2 pages), Criminal Complaint and Police Incident Report # 000279021 (2 pages)).
8. When asked about the incident during his testimony before the Commission, the Appellant stated he could not remember if the victim appeared in court. The Appellant testified that he thought a restraining order was issued against him for this incident because he recalled

receiving a restraining order under the door of his home. Detective Bowen could not find a record of a restraining order issued against the Appellant. (Testimony of the Appellant and Detective Bowen)

9. Detective Bowen indicated that he learned that the victim appeared at a clerk magistrate's hearing and alleged that the Appellant shoved and pushed her. The case was *dismissed for want of prosecution*. Detective Bowen explained that *dismissed for want of prosecution* does not necessarily mean that the incident did not happen. Detective Bowen clarified that *dismissal for want of prosecution* can mean that the victim did not appear or did not want to testify. (Testimony of the Appellant, Detective Bowen and Exhibit 3, Roxbury District Court Docket Sheet # 0002CR003519 (2 pages), Criminal Complaint and Police Incident Report # 000279021 (2 pages).
10. On March 14, 2003, police responded to the Appellant's residence for another report of domestic disturbance with a different victim. According to the victim, the Appellant struck her before she left for work. When she returned that evening, the door locks were changed and she could not get into the house. The report indicated that the victim had stated there was a history of physical abuse during her relationship with the Appellant. The Appellant was summonsed to court on the charges of *Assault and Battery* as a result of this incident.
(Testimony of Detective Bowen)
11. When asked about this incident during his testimony before the Commission, the Appellant indicated that he locked the victim out because he did not want her staying there with her family. He could not explain how he failed to hear the doorbell when the police officers arrived at his residence that evening. (Testimony of the Appellant)

12. On March 31, 2003, police responded to the Appellant's residence for a report of a domestic disturbance involving the same victim that had called the police on March 14, 2003. The report indicated that the Appellant scratched the victim's arm when he tried to reach for the telephone. According to the report, the responding officers did observe a scratch on the victim's arm. The Appellant was summonsed to court for the charge of *Assault and Battery*. The charges were *dismissed for want of prosecution* on July 30, 2003. (Testimony of Detective Bowen and Exhibit 5: Dorchester District Court Criminal Docket Sheet No. 0307CR001748, dated July 30, 2003)
13. In his job application, the Appellant wrote that Criminal Docket # 0307CR001748 was issued against him after an incident that occurred on March 31, 2003. Additionally, the Appellant checked "YES" to question 3 on page 8, when asked whether he had a temporary or permanent Protective Order issued against him pursuant to M.G.L. 209 A §3, 4, 5. (Exhibit 2, Student Officer Application)
14. The Appellant wrote that Criminal Docket # 0307CR001748 was issued and no 209A Order was issued against him. The Appellant also indicated that the case was dismissed and that Criminal Docket # 0307CR001748 was all the information that he could find on this matter and that "any and all before were part of his permanent record." When Detective Bowen investigated further, he learned that there were two incidents that occurred within a one-week time frame involving the same victim. Both of these incidents were resolved on July 30, 2003. (Testimony of Detective Jerome Bowen and Ex. 7, Student Officer Application)
15. When asked about this incident during his testimony before the Commission, the Appellant denied that he had assaulted and battered his girlfriend; however, he admits that he called the police that evening in an effort to remove her from his home. The Appellant also stated that

the victim “confessed” that she had scratched herself. When questioned further about this, the Appellant indicated that the victim “confessed to him” and he was uncertain whether she told the police or the prosecutors that her wound was allegedly self-inflicted. (Testimony of Appellant and Exhibit 9 Videotape of Appellant’s Discretionary Interview)

16. The Boston Police Department viewed the Appellant’s involvement with the courts for domestic assault and battery as disturbing. The Department was alarmed when it learned the Appellant had domestic disturbances with two different victims. Furthermore, the incidents occurred within a 6-year period of time which indicated to the Department that the Appellant was developing a pattern of violence. (Testimony of the Robin Hunt)
17. The background investigation also revealed that, after the police went to the Appellant’s house *twice* within a two week period for domestic disturbances, his firearm license was revoked. The Appellant’s firearm license was not reinstated until August 4, 2003. (Exhibit 8, Firearms Record Letter and Testimony of Robin Hunt)

Employment History

18. The investigation into the Appellant’s background revealed that the Appellant had been a member of the City of Boston Municipal Police Department since 1997. Detective Bowen requested the Appellant’s employment and personnel file from the Boston Municipal Police Department from 1997-2006. (Testimony of Detective Bowen and Exhibit 2, Student Officer Application)
19. On page 11, Question I, of the Student Officer Application, the Appellant checked “YES” when asked whether he had ever been disciplined for fighting verbally and physically with other workers or supervisors at work. (Exhibit 2, Student Officer Application)

20. On page 11, question J, of the Student Officer Application, the Appellant checked “YES” when asked whether he had been disciplined by an employer for any reason. (Exhibit 2)
21. In response to questions I and J on page 11, the Appellant attached a separate page and admitted that he received two oral reprimands, a written reprimand, a one-day suspension and three-day suspension while working as Municipal Police Officer. (Exhibit 2, Student Officer Application)
22. On August 8, 1999, Sgt. Ahern issued an oral warning to the Appellant for being out of uniform while on duty. Later in the day, the Appellant received a written warning for disobeying a direct order. When asked about the reprimands during his testimony before the Commission, the Appellant stated that he was changing in his work station when Sgt. Ahern gave him an oral reprimand. (Exhibits 2 & 10; Testimony of the Appellant)
23. The Appellant revealed that Sgt. Ahern issued a written warning against him on August 30th for washing his personal vehicle in the tow lot. When asked about this incident during a discretionary interview, the Appellant admitted that he used “poor judgment” when he washed his personal vehicle while on duty. (Exhibit 9)
24. On November 30, 1999, Sgt. Flores issued an oral warning to the Appellant for not having the proper patches on his uniform. When asked about this incident during his testimony before the Commission, the Appellant stated that the Sergeant had to write him up because he did not have an opportunity to change over his uniform patches. (Exhibits 2 & 9; Testimony of the Appellant)
25. On October 16, 2002, Appellant received a one-day suspension for returning to work without wearing a uniform. The Appellant revealed in his application that he told a Superior Officer, “that he was a figment of his imagination and wasn’t there,” while he was being ordered

around. When asked to further explain this incident during his testimony before the Commission, the Appellant admitted that he exchanged words with his Supervisor.

(Testimony of Appellant)

26. Lastly, the Appellant stated that on March 3, 2005, he received a three-day suspension when he issued parking tickets while stationed at the Water and Sewer Parking Lot. When asked about this incident during his testimony before the Commission, the Appellant stated that he argued with a Superior Officer because he was doing his job. He indicated that he was instructed to list the tickets he issued. The Appellant contended that he was suspended because he issued tickets to a Superior Officer's friend. (Testimony of the Appellant)

27. On a separate page attached to the Application, the Appellant indicates that he was not selected for the Boston Police Department because of his "background." When asked to elaborate at the Civil Service Commission hearing as to what he meant when he wrote "background", the Appellant testified that it was because of his criminal history. (Exhibit 2; Testimony of Appellant)

28. Based on the background investigation and the totality of circumstances involving the Appellant's criminal history, the Boston Police Department found the Appellant to be unsuitable to be a police officer. (Testimony of Robin Hunt)

29. The Appellant was officially bypassed for appointment as a Boston police officer and was PAR .09 removed from certification number 260616 on February 1, 2007. (Exhibit 9, Package Submitted by HRD)

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 a 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, 332 (1983). See Commissioners of Civil Service 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.

Mr. Allen is a long-time resident of Boston and a 10-year employee of the City of Boston. He worked as a municipal police officer in the City of Boston for the Boston Municipal Police Department for approximately five years prior to the abolishment of his position. He is a likeable, well-mannered man with a sincere desire to serve the Boston Police Department as a police officer. Unfortunately for the Appellant, however, his background provides the City of Boston with reasonable justification for bypassing him for employment as a police officer with the Boston Police Department.

During the investigation into the Appellant's background, the Department discovered that the Appellant was charged three times for *Domestic Assault and Battery*. While all the cases were *dismissed for want of prosecution*, they did involve two, different victims. The Commission has long held that an applicant's arrest record, even where there is no conviction, is entitled to some weight by the appointing authority in making its decision.

A police officer, as a public figure sworn to uphold the laws of the Commonwealth, is expected to adhere to certain standards of conduct. In this case, the applicant's record shows a history of poor judgment, a pattern of violence, and criminal behavior. The charges brought against the Appellant for *Domestic Assault and Battery* illustrate unacceptable behavior, to say the least. Within a two- week span, the police responded to the Appellant's house for domestic disturbances. However, what is also alarming was that the Appellant was charged by two, separate victims for *Assault and Battery*.

Further, the Appellant's employment history was also troubling. Within a two-year period of time the Appellant received an oral reprimand, written reprimands, a one-day suspension and three-day suspension for various infractions. The Appellant admitted in a hearing at the Civil Service Commission and during a discretionary interview with the Boston Police Department,

that he used poor judgment when washing his own personal vehicle while on duty and for being insubordinate to a Superior Officer.

After considering all of the testimony and evidence in the record, I conclude that the BPD established just cause, by a preponderance of the credible evidence, 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. G1-07-278 is hereby

dismissed.

Civil Service Commission

Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman-YES; Guerin, Commissioner – YES; Henderson, Commissioner – NO; Marquis, Commissioner – YES; and Taylor, Commissioner - YES) on January 31, 2008.

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. 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 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:

Joseph G. Donnellan, Esq. (for Appellant)
Sheila Gallagher, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)