

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

JAMES ROSICKY,  
Appellant

v.

G1-12-229

TOWN OF BROOKLINE,  
Respondent

Appearance for Appellant:

James Rosicky

Appearance for Respondent:

Patricia Correa, Esq.  
Office of Town Counsel  
333 Washington St  
Brookline, MA 02445

Commissioner:

Cynthia A. Ittleman, Esq.<sup>1</sup>

**DECISION**

On August 9, 2012, the Appellant, James Rosicky (“Mr. Rosicky”), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (“Commission”), contesting the decision of the Town of Brookline (“Brookline”) to bypass him for original appointment to the position of permanent, full-time Firefighter. A pre-hearing conference was held at the offices of the Commission on September 4, 2012 and a full hearing was held at the same location on October 18, 2012. The hearing was digitally recorded and both parties were provided with a CD of the hearing. The parties submitted proposed decisions.

---

<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Kari-Ann E. Greene in preparing this decision.

## **FINDINGS OF FACT:**

Thirty-one (31) exhibits<sup>2</sup> were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

*Called by the Appointing Authority:*

- Andrew Brown, Lead Psychiatrist, Boston Police Department;
- Julia Reade, Staff Psychiatrist, Beth Israel Deaconess Hospital;
- Sandra DeBow, Human Resource Director, Town of Brookline;

*Called by the Appellant:*

- James Rosicky, Appellant;

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

1. Mr. Rosicky is a thirty-five (35) year old man who resides in Brookline, MA. (Stipulated Facts)
2. Mr. Rosicky graduated from Brookline High School in 1997. (Testimony of Mr. Rosicky; Exhibit 1)
3. In December 2010, Mr. Rosicky's name appeared 14<sup>th</sup> on Certification No. 22904 from which Brookline ultimately appointed nine (9) firefighters, two (2) of whom were ranked below Mr. Rosicky. (Stipulated Facts)
4. Mr. Rosicky completed the Recruit Application for Brookline's Fire Department; completed interviews with the Fire Chief, Fire Captain, and Human Resources Director, Sandra DeBow ("Ms. DeBow"); and underwent a background investigation by the Brookline Police Department. (Exhibits 1-3; Testimony of Ms. DeBow)

---

<sup>2</sup> It is noted that Respondent incorrectly numbered the exhibits so that Exhibit 29 is Respondent's Exhibit 30, Exhibit 30 is Respondent's Exhibit 31, and Exhibit 31 is Respondent's Exhibit 32.

5. By memorandum to Police Chief O’Leary from Detective (“Det.”) Jeffrey Emmerso dated June 21, 2012, Det. Emmerso reported on his background investigation. Det. Emmerso reported that Mr. Rosicky had positive references. Further, Det. Emmerso reported that the Appellant had a three (3)<sup>3</sup>-page driving record. He also reported that Mr. Rosicky’s Board of Probation record indicated seven (7) entries, including: 6/22/09, Disorderly Conduct, case dismissed; 10/16/99, several charges: assault and battery with dangerous weapon, possession of fireworks, resisting arrest, and assault, which cases were dismissed; 5/30/97, malicious destruction of property and procuring alcohol for minors, which cases were dismissed. Also, the investigation reflected internal Police Department records showing, for example, that the 1997 incident stated that Mr. Rosicky overturned a flower pot, pushed over a U.S. mail box, and carried a bottle of vodka in his pocket. The investigation further found that in the arrest in 2000, Police reported Mr. Rosicky threw beer bottles from a roof at the officers, that Mr. Rosicky slammed the roof door on an officer’s hand, and that Mr. Rosicky actively resisted arrest. The investigation further stated that Mr. Rosicky’s motorcycle had been towed because the insurance for it had been revoked or it was not registered. (Exhibit 2)
6. Brookline extended a conditional offer of employment to Mr. Rosicky for the position of permanent, full-time firefighter, contingent upon his successful completion of the medical and psychological components of the hiring process. (Stipulated Facts)
7. Mr. Rosicky passed the medical examination. (Testimony of Ms. DeBow)
8. Mr. Rosicky was scheduled for the psychological assessment. (Stipulation; Exhibits 14 – 17, 22, 24, and 26)

---

<sup>3</sup> Brookline references the Appellant’s four (4)-page driving record which, as submitted here, is three (3) pages long.

9. The state Human Resources Division (“HRD”) Physician’s Guide, Initial-Hire Medical Standards (“Medical Standards”), provides,

“ ... medical protocol for examining physicians for their assessment of candidates who are applying for initial-hire, municipal police officer and firefighter positions. ...” (Medical Standards, p. 1)

The Medical Standards identify Category A medical conditions involving firefighter candidates as those conditions that,

“ ... preclude an individual from performing the essential job functions of a municipal fire fighter in a training or emergency operational environment, or present a significant risk to the safety and health of that individual or others.” (Medical Standards, p. 21)

A Category B medical condition is one that,

“ ... based on its severity or degree, may or may not preclude an individual from performing the essential job functions of a municipal fire fighter in a training or emergency operations environment, or present a significant risk to the safety and health of that individual or others.” (Id.)

With regard to psychiatric<sup>4</sup> medical conditions for fire fighter candidates, section V(6)(p) of the Medical Standards indicates that there are no such Category A conditions. (Id., p. 31)

The Medical Standards state that Category B psychiatric medical conditions “ ... shall include,

- a. a history of any psychiatric condition, behavior disorder, or substance abuse problem not covered in Category A<sup>5</sup>. Such history shall be evaluated based on that individual’s history, current status, prognosis, and ability to respond to the stressors of the job,
- b. any other psychiatric condition that results in an individual not being able to perform as a fire fighter.” (Medical Standards, section V(6)(p), p. 31))

---

<sup>4</sup> Brookline refers to this as the psychological assessment; the Medical Standards refer to this as a psychiatric assessment.

<sup>5</sup> The Medical Standard regarding psychiatric conditions states that there are no Category A conditions, disorders or problems.

10. Brookline's Psychological Screening Plan ("Plan") consists of three (3) phases. During Phase I of the Plan, a candidate is administered two (2) written psychological tests: the Minnesota Multiphasic Personality Inventory – 2 ("MMPI-2") and the Personality Assessment Inventory ("PAI"). The MMPI-2 is a five hundred-sixty-seven (567) item true-false questionnaire designed to identify psychopathology in clinical and non-clinical populations. It is the most widely researched of psychological tests with the most validity studies of all instruments. It is frequently used to validate other tests and is regularly updated. It is scored by Pearson Assessments. The MMPI-2 tests for problems in the domains of anxiety, depression, hypochondriasis, antisocial behavior, addiction, and other problems that come to the attention of psychiatrists. The PAI is a three hundred-forty-four (344) item inventory with eleven (11) clinical, two (2) interpersonal, and four (4) validity scales. It is computer-scored by Psychological Assessment Resources. The PAI tests for some of the same conditions as the MMPI-2, but additionally tests areas that are relevant for pre-employment screening, with particular relevance to public safety employees. The test is developed by taking a population of applicants for public safety positions whose assets, vulnerabilities, weaknesses, and emotional difficulties are well known by virtue of their having undergone a battery of psychological tests and as to which a certain percentage has been deemed poorly suited. This population is then administered the test. An applicant's test results are then scored against the results for this population. (Exhibits 14 and 15)
11. During Phase II of the Plan, a psychiatrist reviews the MMPI-2 and PAI results, as well as the application and background investigation materials, and conducts a clinical interview of the candidate. (Exhibits 14 and 15)

12. During Phase III of the Plan, any candidate who has been identified as raising concerns regarding psychological fitness is given a clinical interview by another psychiatrist, who reviews their application and background materials and issues a second report. Then the first psychiatrist reviews the second psychiatrist's report and indicates whether he or she concurs or not. (Exhibits 14 and 15)

13. Mr. Rosicky completed Phase I of the Plan. The MMPI-2 results indicated that Mr. Rosicky

may have attempted to present an unrealistically favorable picture of his virtue and moral values. As many job applicants do, he apparently felt the need to present an image of strong moral character and to deny human frailties. His approach ... suggests a rather naïve or unsophisticated self-image. His MMPI-2 profile is probably an underestimate of his adjustment problems.

Additionally, Mr. Rosicky's PAI results indicated that he is at high risk of receiving a poorly suited rating, high risk for job-related problems, high risk for integrity problems, high risk for anger management problems, and high risk for substance abuse proclivity. (Exhibits 14 and 15; Testimony of Ms. DeBow)

14. Dr. Andrew Brown ("Dr. Brown") was assigned as the psychiatrist of Phase II of the Plan. Dr. Brown has conducted between 250 to 400 pre-screening psychological evaluations. He reviewed Mr. Rosicky's MMPI-2 and PAI results, materials relating to Mr. Rosicky's background check, and other materials supplied to him by Brookline. (Testimony of Dr. Brown; Exhibits 9-17)

15. Dr. Brown conducted a clinical interview of Mr. Rosicky on July 27, 2012. During the interview, Dr. Brown remarked that Mr. Rosicky had received many driving tickets. The Town obtained Mr. Rosicky's driving record in June, 2012, during the Town's background investigation of Mr. Rosicky. The driving record indicates that he had a

number of motor vehicle infractions beginning in 1996 (one (1) year before he graduated high school), and then in 1999, in each year of 2001 – 2007, and in 2009. Mr. Rosicky was found responsible regarding certain infractions and not responsible in regard to others. Mr. Rosicky expressed surprise at the number of infractions and denied to Dr. Brown that he had received many tickets. Dr. Brown asked if Mr. Rosicky had ever had any problem registering or insuring a motorcycle, or whether the motorcycle had ever been towed. Mr. Rosicky indicated that he had never had any such trouble even though his driving record indicated otherwise. (Exhibits 2, 4, 7, and 17; Testimony of Dr. Brown)

16. Dr. Brown went on to inquire about a 2000 incident in which Mr. Rosicky was arrested for using fireworks, throwing bottles at police officers, slamming the door on a police officer to prevent the police from gaining access to a roof, and failing to cooperate with the police. Mr. Rosicky admitted he had been arrested for using fireworks but denied the remaining allegations of that event. (Exhibits 9, 10, and 17; Testimony of Dr. Brown)
17. Dr. Brown continued the interview, asking Mr. Rosicky about a 2009 incident involving police. (Testimony of Dr. Brown) At that incident, Mr. Rosicky's friend had urinated in public in Boston, a police officer had approached his friend, and Mr. Rosicky attempted to intervene. The police officer asked Mr. Rosicky to step away from his friend, Mr. Rosicky did not and stated, "I don't have to go anywhere." At the event, Mr. Rosicky was "disorderly," "tumultuous," "disrespectful," and "belligerent." (Exhibits 6 and 17)
18. Dr. Brown concluded that Mr. Rosicky's history and presentation is consistent with the presence of significant risk with regard to his firefighter candidacy. Specifically, Dr.

Brown concluded in his report that Mr. Rosicky is at high risk for job-relevant problems in:

- a. Substance abuse. Dr. Brown noted that:

The applicant's history is consistent with patterns of behavior that are highly consistent with the presence of alcohol abuse in this applicant. While a series of confrontations with Law Enforcement Officers occurred in association with the applicants (sic) use of alcohol in late adolescence and young adulthood, one such incident occurred relatively recently, when the applicant was over 30 years of age. The incidents described in the applicant's history reveal a pattern of behavior characterized by alcohol use, confrontational and/or belligerent behaviors, and subsequent arrest by Law Enforcement authorities... [I]t is reasonable to conclude that there is substantial support for conclusions rendered in the context of Psychological testing of this applicant, namely, that this applicant is at "High" risk for job-relevant behavioral problems in the domain of "substance abuse proclivity."

- b. Integrity. Dr. Brown further noted that:

[T]he presence of a pattern of inconsistency between the content of the applicant's reports... and the applicant's legal history... is conspicuous and pervasive. The applicant flatly denied the occurrence of at least four separate events that are documented to have occurred, and could offer no plausible explanation to account for the inconsistency after the inconsistency was pointed out to him... The problem in this domain relates not to the presence of a problematic history... but rather to patterns of behavior characterized by the applicants' (sic) unwillingness or inability to give credible reports regarding such history. There is a high risk that this selfsame incapacity or unwillingness would manifest in the context of potential on-the-job communications between the applicant and relevant authority figures.

- c. Problematic behaviors relating to impulse control and judgment in Mr. Rosicky.

Dr. Brown additionally noted that:

The records reflect a history of belligerence, confrontational behavior, and aggressive behavior towards Law Enforcement Officers. The records suggest that these behaviors characteristically occurred in the context of alcohol abuse. (Exhibit 17)

19. Dr. Brown further concluded that, “ ... some – although by no means all - of the history explored with the applicant is, by itself, relatively inconsequential from a psychiatric standpoint .... The problem in this domain relates not to the presence of a problematic history – although, as noted, above, the history is in other respects highly problematic – but rather to patterns of behavior ....” (Exhibit 17)
20. After receiving Dr. Brown’s report, Ms. DeBow spoke with Brookline’s Fire Chief Paul Ford (“Chief Ford”) regarding Dr. Brown’s findings and whether Mr. Rosicky could be accommodated. They decided that Mr. Rosicky could not be accommodated because in hiring firefighters, Brookline looks for the ability to give accurate reports, integrity, and the ability to exercise good judgment under stress. (Testimony of Ms. DeBow)
21. In August 2012, Ms. DeBow sent Mr. Rosicky a “Phase III” letter, or a bypass letter, instead of a “Phase II” letter, or a letter informing him of a scheduled second opinion evaluation with Dr. Julia Reade (“Dr. Reade”). (Testimony of Ms. DeBow and Exhibit 18)
22. Mr. Rosicky immediately filed an appeal with Brookline’s Human Resources Department. (Testimonies of Ms. DeBow and Mr. Rosicky)
23. Ms. DeBow returned the bypass appeal form to Mr. Rosicky, indicating that such forms must be filed with the Commission. (Exhibit 19 and Testimony of Ms. DeBow)
24. Ms. DeBow realized she had mistakenly sent Mr. Rosicky a Phase III letter, and so, on August 22, 2012, she sent him a Phase II letter, informing him of an August 28, 2012 appointment with Dr. Reade for a second evaluation. (Exhibit 21; Testimony of Ms. DeBow)
25. Dr. Reade interviewed Mr. Rosicky on August 28, 2012. (Testimony of Dr. Reade)

26. Dr. Reade observed the same pattern as Dr. Brown in discussing Mr. Rosicky's criminal history and driving record in the interview. Dr. Reade also noted concerns about Mr. Rosicky's alcohol consumption. She reported that when he was questioned about the incident in 2000 where he threw a bottle at the police, Mr. Rosicky told her that he had been drinking a lot and had a hazy recollection of the incident, denying responsibility for his conduct. With regard to the 2009 police report, Mr. Rosicky blamed the incident on the conduct of the police. He could not remember how much he drank, though he acknowledged it had been a lot. In this vein, Dr. Reade wrote,

“... It is unclear to what degree his current use of alcohol is problematic, given his defensiveness in two psychiatric interviews and on the MMPI, but I am concerned about this, given his history of three arrests for incidents that were clearly alcohol-fueled, and his self-report that he had last been intoxicated only two weeks prior to his meeting with me. This suggests an ongoing and unacknowledged problem with alcohol... .”

(Exhibits 6, 9, 11, and 24; Testimony of Dr. Reade)

27. Dr. Reade recommended against hiring Mr. Rosicky, concluding,

“... His evasiveness with respect to his drinking history, arrests and driving infractions is of... concern, because it indicates little acknowledgment of or insight into a serious pattern of problematic behavior. His clinical presentation with me was consistent with the psychological testing and his interview with Dr. Brown, and he demonstrated difficulty accepting responsibility for even minor infractions, an evasive style, and a tendency to blame others/extensive circumstances for his difficulties....”

(Exhibit 24)

28. On September 7, 2012, Dr. Reade sent Brookline her report regarding her findings and conclusions, noting that she found Mr. Rosicky psychologically unsuitable for appointment as a firefighter. (Exhibits 24 and 31; Testimony of Dr. Reade)

29. Consistent with Brookline's Psychological Plan, Ms. DeBow sent Dr. Brown the report prepared by Dr. Reade and asked him whether he concurred with the opinion. (Exhibit 24 and Testimony of Ms. DeBow)

30. Dr. Brown informed Brookline that he concurred with Dr. Reade's opinion. (Exhibits 26 and 31; Testimony of Dr. Brown and Ms. DeBow)

31. On September 12, 2012, Ms. DeBow sent Mr. Rosicky a bypass letter for failing to meet the psychological criteria for appointment as a firefighter. The letter specifically stated that the bypass was based on the opinions of Dr. Brown and Dr. Reade, which stated that Mr. Rosicky was psychologically unqualified. (Exhibits 25 and 31; Testimony of Ms. DeBow)

32. Mr. Rosicky filed an appeal with the Commission on August 9, 2012.<sup>6</sup>

## DISCUSSION

### *Applicable Law*

Upon an appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 241 (2006). Reasonable justification is established when such an action is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law." Comm'rs of Civil Serv. v. Mun. Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. See City of Beverly v. Civil Serv. Comm'n, 78 Mass.App.Ct. 182, 189 (2010). "In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority." Id. at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct.

---

<sup>6</sup> Mr. Rosicky's appeal was technically premature because filed the appeal when the Town incorrectly told him, prematurely, that he had been bypassed before having the second psychiatric review. Following the second psychiatric review, the Town bypassed Mr. Rosicky and his appeal was considered by the Commission.

726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous decision of the appointing authority, but rather decides whether 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.” *Id.* at 824 (quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983)).

In deciding an appeal, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was reasonable justification” shown. Beverly at 188. An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone as a new... officer than in disciplining an existing tenured one.” *See* City of Attleboro v. Mass. Civil Serv. Comm’n, C.A. BRCV2011-00734 (MacDonald, J.), citing Beverly at 191. The Commission is charged with ensuring that the system operates on “[b]asic merit principles.” Mass. Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, at 259 (2001). “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *Id.* (citing Sch. Comm’n of Salem v. Civil Serv. Comm’n, 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm’r of Health & Hosps. of Bos. v. Civil Serv. Comm’n, 23 Mass.App.Ct. 410, 413 (1987)).

The Commission is also mindful of the standard of conduct expected of officers of the law. “An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion.” McIsaac v. Civil Serv. Comm’n, 38 Mass. App. Ct. 473, 474 (1995).

“[P]olice officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.” Attorney General v. McHatton, 428 Mass. 790, 793 (1999).

*The Parties' Positions*

Brookline argues that its decision to bypass Mr. Rosicky was reasonably justified. Mr. Rosicky was given two psychological evaluations, both of which found him to shirk responsibility, and fail to take accountability, for his past actions. Mr. Rosicky had a several page driving record, but maintained that he had a very good driving record. Mr. Rosicky was arrested for throwing a bottle at the police, but claimed he never threw the bottle and alternately claimed that he was intoxicated, but only because his friend had been drinking. Regarding his 2009 disorderly conduct arrest, the Appellant said he was trying to help a friend when he (Mr. Rosicky) made various statements to police but police reports state that the Appellant was “belligerent and confrontational”, and, despite repeated warnings to stop it, the Appellant’s conduct continued, leading to his arrest. (Exhibit 2) Based on this evidence, the Town concludes that Mr. Rosicky fails to take responsibility for his poor choices. Therefore, Brookline avers, the psychiatric test and evaluation reports justify its bypass of Mr. Rosicky.

Mr. Rosicky argues that he should not have been bypassed. He claims that he performed and surpassed all the requirements set forth by Brookline. Mr. Rosicky strongly disputes the background investigation and results, asserting that criminal charges against him were not valid and they were dismissed. He also strongly disagrees with the psychological reports of Dr. Brown and Dr. Reade and their characterizations of his history and prognosis and states that he should be considered favorably as a firefighter candidate.

## *Analysis*

The Town's bypass of Mr. Rosicky is based entirely on the psychiatric reports. The psychiatric reports reference his background investigation, which information the Town had at the time it made a conditional offer of employment to Mr. Rosicky. Specifically, the psychiatric reports reference repeated instances in which Mr. Rosicky exhibited misconduct as a high school student and for at least several years thereafter, and in an incident in 2009, for which he took limited personal responsibility and/or denied. The reports state that Mr. Rosicky is a high risk of certain behaviors, such as alcohol abuse, questionable judgment and aggression. However, neither Dr. Brown<sup>7</sup> nor Dr. Reade concluded that the information on which they relied indicates that Mr. Rosicky has a condition that precludes him from performing as a firefighter, as required by the HRD Medical Standards.

After this case was heard at the Commission, the Supreme Judicial Court ruled in Boston Police Department v Kavaleski, 463 Mass. 680 (2012) that the Medical Standards require an appointing authority's psychiatric evaluation to identify a psychiatric condition that would prevent the candidate from performing the essential functions of the job. The Court also determined that the role of the psychiatrist conducting a pre-employment evaluation for police officers in civil service communities is ... "narrowly circumscribed. [His] sole task [is] to determine whether [the candidate] [has] a psychiatric condition that [prevents him] from performing, even with reasonable accommodation, the essential functions of the job." Police Dep't of Boston v. Kavaleski, 463 Mass. 680 (2012). The Court further determined that the Commission is entitled to discredit a psychiatrist's assessment of a candidate even if the

---

<sup>7</sup> Dr. Brown's written report conveys a professional opinion, uninfluenced by any apparent bias. However, the weight of Dr. Brown's opinion was reduced by his testimony, during which he appeared to have difficulty making eye-contact with the hearing officer. Dr. Reade's written report also conveys a professional opinion, uninfluenced by any apparent bias. Her testimony supported her report.

candidate offers no expert testimony of his own, although the Commission must provide a basis for the rejection in the record. Kavaleski citing Daniels v. Board of Registration in Medicine, 418 Mass. 380, 392 (1994) quoting Commonwealth v. DeMinico, 408 Mass. 230, 235 (1990) (“[t]he law should not, and does not, give the opinions of experts on either side of ... [a]n issue the benefit of conclusiveness, even if there are not contrary opinions introduced at the trial”). The ruling in the instant case is based on the wording of the applicable Medical Standard, on which the Kavaleski court relied.

Since Brookline had the background investigation<sup>8</sup> report on which Dr. Reade and Dr. Brown relied and which the doctors found problematic, it is not clear why Brookline made the conditional offer to Mr. Rosicky but that is for the Town to address. Since Brookline bypassed the Appellant based on the psychiatric reports that failed to identify a condition that would preclude him from performing the tasks of a firefighter, the Town has failed to establish, by a preponderance of the evidence, that its actions in bypassing him were reasonably justified.

### CONCLUSION

For the reasons stated herein, Brookline failed to establish reasonable justification to bypass Mr. Rosicky. Therefore, Mr. Rosicky’s appeal filed under Docket No. G1-12-229 is hereby ***allowed*** and the Commission, pursuant to Chapter 310 of the Acts of 1993, ***orders*** the Human Resources Division, or the Town of Brookline in its delegated capacity, to take the following actions:

- Place the name of James Rosicky at the top of any current or future certifications for the position of firefighter with the Brookline Fire Department until he is appointed or bypassed;
- If Mr. Rosicky is selected for appointment, he shall receive a retroactive seniority date for civil service purposes only the same as those appointed from Certification No. 202904.

---

<sup>8</sup> The investigator’s report indicates that Mr. Rosicky made statements contrary to information contained in police records, as well as other records.

This retroactive seniority date is not intended to provide Mr. Rosicky with any additional and/or retroactive compensation or benefits including creditable service toward retirement.

Civil Service Commission

---

Cynthia A. Ittleman, Esq., Commissioner

By vote of the Civil Service Commission (Bowman, Chairman [AYE]; Ittleman [AYE], Marquis [NO], McDowell [AYE] and Stein [AYE], Commissioners) on January 9, 2014.

A true record. Attest:

---

Commissioner

Either party may file a motion for reconsideration within ten (10) 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 (30) 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 this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

James Rosicky (Appellant)  
Patricia Correa, Esq. (for Respondent)  
John Marra, Esq. (HRD)