

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

MICHAEL F. WILSON,
Appellant

v.

G1-13-97

TOWN OF NORTON,
Respondent

Appearance for Appellant:

Michael E. Wilson¹

Appearance for Respondent:

Timothy D. Zessin, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to G.L. c. 31, § 2(b), Michael F. Wilson (Mr. Wilson) has challenged the decision of the Town of Norton (Town) to bypass him for original appointment to the position of Firefighter/Paramedic for the Town's Fire Department. Mr. Wilson filed an appeal with the Civil Service Commission (Commission) on April 14, 2013. A pre-hearing conference was held on April 26, 2013, followed by a full hearing on June 14, 2013, both of which were held at the UMASS School of Law in North Dartmouth. All witnesses, with the exception of Mr. Wilson, were sequestered. The full hearing was digitally recorded and both parties received a CD of the proceeding. Both parties submitted post-hearing briefs in the form of proposed decisions.

¹ At the hearing, the Appellant was represented by his father, who is also named Michael Wilson.

FINDINGS OF FACT

Twenty-four (24) exhibits were entered into evidence at the hearing. Following the hearing, at my request, Mr. Wilson produced two additional documents: Appellant's and his father's cell phone records from July 20, 2012, which have been marked as Exhibits 25 and 26, respectively. I also re-opened the record to give Mr. Wilson the opportunity to submit a certain court document with a judge's signature, which was received and marked as Exhibit 18A. Based on the documents submitted, the testimony of the following witnesses:

Called by the Town:

- Michael Yunits, Norton Town Manager
- Detective Kevin Fuoco, Attleboro Police Department
- Patrolman Ayman Kafel, Attleboro Police Department
- Chief Paul Schleicher, Norton Fire Department

Called by Mr. Wilson:

- Michael Wilson, Appellant;

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

1. Michel E. Wilson is twenty-four (24) years old and is a lifelong resident of Norton. His father has been a Norton firefighter for twenty-four (24) years and currently serves as the Town's Director of Emergency Medical Services. (Testimony of Mr. Wilson)
2. While attending high school, Mr. Wilson was an active member of the Norton Fire Department's "Explorer Post" in which he participated in fire training, emergency medical

training and ride-alongs. From this early age, his career goal was to become a Norton firefighter. (Testimony of Mr. Wilson)

3. Mr. Wilson graduated from Norton High School in 2007. During his senior year of high school, he completed EMT Basic training at Safety Program Consultants in Taunton, MA. In July 2007, Mr. Wilson was certified as an EMT and was hired by Alert Ambulance. He was state-certified as a paramedic in 2011 and still works for Alert Ambulance in that capacity. (Testimony of Mr. Wilson and Exhibit 2)
4. As a paramedic for Alert Ambulance, Mr. Wilson is responsible for responding to emergency care, assessing patient need, administering medications, and transporting patients to a medical facility for further care. (Testimony of Mr. Wilson)
5. In 2012, Mr. Wilson resided with his parents at their home in Norton. (Testimony of Mr. Wilson)
6. Mr. Wilson first injured his left shoulder in approximately 2003 following a motocross incident. Following this incident, Mr. Wilson, who was 14 at the time, was prescribed oxycodone by Steven Flood, M.D., his primary care physician. (Testimony of Mr. Wilson)
7. Since 2003, Mr. Wilson has been prescribed oxycodone on an “off and on basis,” depending on the level of pain in his left shoulder. Although the injury has persisted for approximately ten (10) years, he has not undergone surgery to repair it due to his fear of “going under the knife.” Recently, he started receiving steroid injections to reduce the pain and discomfort. (Testimony of Mr. Wilson)
8. During this period, Mr. Wilson has also been prescribed Suboxone by Salah Reyad, M.D. Suboxone is prescribed to regulate the effect of oxycodone, because after a prolonged period

on oxycodone, the body “learns to need it” and has “withdrawal effects.” Suboxone is taken sublingually and will dissolve if exposed to water. (Testimony of Mr. Wilson)

9. On April 28, 2012, Mr. Wilson took the civil service examination for firefighter and received a score of 98. As a result, his name appeared first on an eligible list of candidates, established on December 1, 2012, for firefighter / paramedic in Norton. (Stipulated Facts)
10. On June 29, 2012, Mr. Wilson filled a prescription for thirty (30), 8 mg pills of Suboxone written by Dr. Reyad. (Exhibit 14)
11. On July 16, 2012, Mr. Wilson filled a prescription written by Dr. Flood for twenty (20), 30 mg tablets of oxycodone. (Testimony of Mr. Wilson and Exhibit 14)
12. Mr. Wilson testified that he fills his oxycodone prescription at the CVS Pharmacy on West Main Street in Norton. Upon filling the prescription, he immediately transfers the pills from the bottle provided by the pharmacy into a smaller Advil-type container. (Testimony of Mr. Wilson)
13. With respect to his prescription for Suboxone, Mr. Wilson transfers the medication to small “baggies” to limit water exposure, which can cause the pills to dissolve. (Testimony of Mr. Wilson)²
14. On Friday, July 20, 2012, Mr. Wilson was arrested by two (2) Attleboro, MA police officers for misdemeanor possession of a Class B controlled substance (Oxycontin and Oxycodone). (Exhibit 6)

² Mr. Wilson testified that he uses a *type* of “baggie” that he receives via mail when he orders guitar picks. According to Mr. Wilson, these “baggies” have pictures of women on them. For reasons discussed in greater detail in the findings that follow, Mr. Wilson was aware that this information could be highly relevant to his instant appeal. Yet, he did not bring to the hearing any receipts for these guitar picks and/or any sample baggies to corroborate his testimony. For this reason, and because, even standing on its own, this portion of his testimony did not ring entirely true to me, I did not credit this portion of his testimony.

15. On January 14, 2013, the Town, as part of its process to hire one permanent full-time firefighter / paramedic, received Certification No. 00361 from the state's Human Resources Division (HRD). Mr. Wilson was the top-ranked candidate on the three-person certification. The next two (2) candidates were tied for second.³ All three individuals on the list indicated their willingness to accept the position. (Stipulated Facts and Exhibit 1)
16. On March 5, 2013, both counts against Mr. Wilson were dismissed and he was assessed \$250 per count in court costs against him. (Exhibits 18 and 18A and Testimony of Mr. Wilson)
17. On March 11, 2013, six (6) days after the charges against him were dismissed, Mr. Wilson completed and submitted an application with the Town for the firefighter / paramedic position. (Exhibit 2)
18. In Section 17 on page 5, applicants are asked "are there currently any felony or drug charges pending against you?" to which Mr. Wilson answered "no". (Exhibit 2)
19. In Section 18 on page 6 of the application, Mr. Wilson stated that he did not currently use, and has not used, possessed, supplied or manufactured any illegal drugs in the past five years. The question to which he was responding confirmed that "when used without a prescription, illegal drugs include ... narcotics (opium, morphine, codeine, heroin, etc.) ..." (Exhibit 2)
20. On this same date, he also signed a release authorizing the Town to check his Criminal Offender Registry Information ("CORI"). (Exhibit 3) Mr. Wilson believed that since the criminal charges against him were dismissed, they would not appear on his CORI report. (Testimony of Mr. Wilson)
21. After completing his application, Mr. Wilson, and the two (2) other candidates were interviewed by Fire Chief Paul Schleicher and members of his command staff, including

³ Although neither party brought this to my attention, one of the candidates tied for second was Joshua J. Wilson, the brother of the Appellant.

Captain Keene, Captain Campbell, Deputy Chief Myles, Captain Schleicher, and Captain Simmons.⁴ (Testimony of Chief Schleicher)

22. Chief Schleicher and members of the interview panel were impressed with Mr. Wilson's professionalism and performance during the interview. They unanimously agreed to recommend Mr. Wilson to the Appointing Authority, Town Manager Michael Yunits. (Testimony of Chief Schleicher)

23. Chief Schleicher met with Town Manager Yunits and informed him of his recommendation. (Testimony of Chief Schleicher)

24. Upon receiving Chief Schleicher's recommendation, Mr. Yunits asked an authorized Town representative to obtain Mr. Wilson's CORI report. The CORI report was delivered to his office while Chief Schleicher was still present. (Testimony of Mr. Yunits) The CORI report showed two "pending" misdemeanor charges at Attleboro District Court, both for possession of a Class B substance following an arrest by the Attleboro Police Department. (Exhibit 5 and Testimony of Chief Schleicher and Mr. Yunits)

25. Upon receipt of the report, Mr. Yunits asked the Town's Police Chief to obtain additional information from the Attleboro Police Department regarding these charges. (Testimony of Mr. Yunits)

26. On or about March 19, 2013, the Town's Police Chief provided the Town Manager (who in turn shared it with the Fire Chief) with several documents concerning the Town's investigation into Mr. Wilson's arrest, including: 1) Incident Report dated 7/20/2012 with Probable Cause Statement (Exhibit 6); 2) CAD Incident Report from the 7/20/2012 incident

⁴ Mr. Wilson's father is typically a member of the interview panel, but had recused himself because of his son(s)' candidac(ies).

(Exhibit 7); and 3) Master Person Report concerning Mr. Wilson's arrest history with the Attleboro Police Department. (Exhibit 8)

27. The Incident Report recounted two (2) Attleboro Police Officers' first-hand observations that led to their arrest of Mr. Wilson. Specifically, the report stated in part that:

“On July 20, 2012 at approximately 3:00 PM Officer Kevin Fuoco and Officer AymanKafel were on patrol in an unmarked patrol vehicle on Bishop Street near the City of Attleboro Finnberg Recreational Fields. Officers were assigned as part of the problem oriented policing unit and were in plain clothes with their police badges prominently displayed on their chests on chains hung around their necks.

As officers were passing by the parking area that is on Bishop Street across from Steeple Chase Circle the officers observed a blue Buick Sedan bearing MA Registration [redacted] parked in the parking lot. Officers observed that the vehicle was parked close to the fence that separates the parking area from the woods with the front end of the vehicle facing away from Bishop Street. Officers observed that the manner in which the vehicle was parked appeared suspicious. The vehicle was not in a parking space and was angled toward the fence line.

Officers (sic) Fuoco positioned the police vehicle behind the blue Buick and approached the passenger side of the vehicle to speak with the operator. Officer Fuoco was concerned that based upon the manner in which the vehicle was parked that there may be some type of issue, possibly medical, with the operator. As the officer approached the drivers side the officer observed a white male, later identified as Michael WILSON, seated in the drivers seat and leaning forward toward the steering wheel. Officer Fuoco observed that WILSON had a large lottery scratch ticket face down in his lap and was holding what appeared to be a rolled up bill of currency towards his face. Officer Fuoco observed WILSON unroll the bill and move it towards the side of his body as he looked out the passenger side window towards the passenger side window ... Officer Fuoco observed that WILSON was holding a small plastic container that appeared in his other hand. Officer Fuoco also observed a small piece of metal in WILSON'S lap that appeared to be a segment of a hose clamp. Officer Kafel approached the vehicle at this point.

Based upon the officer's observations the officer believed that WILSON was engaging in the use of illegal narcotics or drugs ... Officer Fuoco asked WILSON what he was doing and WILSON stated that he was taking his medication. Officer Fuoco asked WILSON what he was doing with the bill he had rolled up and WILSON responded that he takes the medications nasally. Officer Fuoco

asked WILSON if the medications were prescribed and WILSON stated that they were but could not produce any prescription. Officer Fuoco asked WILSON if he was prescribed to take the medications nasally and WILSON stated that he was not. At that point Officer Fuoco directed WILSON to step from the vehicle.

WILSON complied and stepped out of the vehicle. As WILSON was exiting the vehicle Officer Fuoco removed the small plastic container from his hand. Officer Fuoco believed this item to possibly contain contraband and the officer was in fear that WILSON may attempt to destroy it before the officer could examine it. Officer Fuoco looked inside the container and found that it contained a small plastic bag with purple imprints of a female on the outside of it. The officer recognized this as the type of packaging used for street narcotic or drugs based on the officers (sic) training and experience. Officer Fuoco removed the plastic bag from the plastic container and found that it contained a variety of round pills [list of eight pills omitted.] ... WILSON contended that these were prescribed medication but could not produce any prescription for them. Officer Fuoco asked about the packaging and WILSON stated that he "just put them in that bag." WILSON told Officer Kafel the bag was from shoe laces that he had purchased. It should be noted that the bag was obviously too small to package any type of shoe lace. WILSON further stated that he does not bring his prescription with him because he fears being robbed. WILSON stated that the pills were all Percocet's (sic).

Based upon the officer's observation and the fact that WILSON could not produce a valid prescription, Officer Fuoco placed WILSON under arrest for possession of a class b substance in accordance with Chapter 94C Section 34. WILSON was handcuffed with both hands behind his back, double locked, and properly adjusted. WILSON was then searched and placed into the rear of the officers assigned cruiser. Officer Fuoco and Officer Kafel performed an inventory search and completed a tow form. The vehicle was then towed by Jason's Towing.

WILSON was booked by Sgt. Kevin Blackwell and Officer Kevin Fuoco. WILSON was advised of his Miranda Rights and his right to use the telephone by Officer Fuoco. WILSON made one telephone call from the booking desk. WILSON admitted to officers that he had in fact purchased some of the pills "on the street" at the booking desk. Officer Fuoco discovered that the two (2) round orange pills with EX 40 printed on it were in fact Oxycontin and the rest of the pills were oxycodone hydrochloride. WILSON was subsequently charged with two (2) counts of Chapter 94C Section 34 – possession of a class b substance. WILSON was fingerprinted by Officer Thomas Wellman and then secured into cell M-4 where he had access to a telephone.

Officer Fuoco photographed the pills, the lottery ticket, the pill container, the plastic bag, and metal hose clamp segment as evidence. At the scene Officer Fuoco also photographed the vehicle as it was observed by officers. Said photographs are attached to this report. All seized contraband was sealed into

evidence bags by Officer Fuoco and Officer Kafel. Said items were then secured into temporary evidence by Officer Fuoco and Sgt. Timothy Cook Jr.

(Exhibit 6)

28. Upon review of the information contained in the documents provided by the Attleboro Police Department, Chief Schleicher called Mr. Wilson concerning the arrest and asked to meet with him. (Testimony of Chief Schleicher)

29. Soon thereafter, Mr. Wilson reported to the fire station to meet with Chief Schleicher. At the meeting, he presented the Chief with a copy of the record showing the recent dismissal of the two drug possession charges against him. Chief Schleicher responded that criminal charges are dismissed for various reasons and that a dismissal does not necessarily mean that he did not engage in the conduct described in the police report. Chief Schleicher did not ask for, nor did Mr. Wilson provide, any additional information such as his prescriptions.

(Testimony of Chief Schleicher and Mr. Wilson)

30. Chief Schleicher advised Mr. Yunits of Mr. Wilson's response. The Town then conducted a background investigation, including a CORI check, into one of the second-highest ranked candidates on the certification. The candidate had no criminal history and thus Town offered him the position, which he accepted.⁵

31. Via letter dated March 26, 2013, Mr. Yunits advised Mr. Wilson that he had decided to bypass him for original appointment to the position of Firefighter Paramedic based on "information that was received during the investigative stage of the hiring process ..."

(Exhibit 13)

⁵ Although I do not have a copy of the Form 14 submitted to HRD, my notes from the pre-hearing conference indicate that an individual other than Mr. Wilson's brother was selected for appointment.

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. 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. Cambridge at 304.

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).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv.

Comm'n, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

Analysis

In Beverly, a candidate for police officer was bypassed for appointment because he was terminated from his previous employer for serious misconduct – the unauthorized access of the voicemail accounts of other employees. A three-person majority of the Commission concluded that the City “failed to prove that [the candidate] illegally accessed voicemails of employees the reason given for his bypass, and accordingly did not support the reason by the necessary preponderance of the evidence.”

That decision was subsequently vacated by the Superior Court. Agreeing with the Superior Court, the Appeals Court stated, “Instead of focusing on whether the city had carried its burden of demonstrating a ‘reasonable justification’ the commission focused on whether the city had proven that [the candidate] in fact engaged in the misconduct. We believe the commission erred as a matter of law in placing such an added evidentiary burden on the city. In simple terms, neither [the candidate] nor the commission has presented a convincing argument that the Legislature intended to force an appointing authority to hire a job applicant for such a sensitive position unless it is able to prove to the commission’s satisfaction that the applicant in fact engaged in the serious alleged misconduct for which he was fired.”

Further, the Commission has previously 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. Labriola v. Town of Stoneham, 25 MCSR 36, 38 (2012), citing Thames v. Boston Police Dep't, 17 MCSR 125, 127 (2004); Soares v. Brockton Police Dep't, 14 MCSR 109, 110 (2001); Brooks v. Boston Police Dep't, 12 MCSR 19, 20 (1999); Frangie v. Boston Police Dep't, 7 MCSR 252, 253 (1994)). This is especially true when the applicant is seeking appointment to a public safety position," such as a firefighter. Campbell v. Boston Fire Dep't, 22 MCSR 489 (2009). However, in relying on a candidate's arrest record, the appointing authority is obligated to produce sufficient substantiation of the facts underlying those charges. Lee v. Boston Police Dep't, 22 MCSR 239 (2009). Additionally, in order for an appointing authority to rely on a record of prior criminal conduct as the grounds for bypassing a candidate, there must be a sufficient nexus between the prior misconduct and the candidate's current ability to perform the duties of the position to which he seeks appointment. The amount of time that has passed since the misconduct occurred, the nature of the offense, and evidence of the candidate's subsequent record are factors that should be taken into account on a case-by-case basis. See e.g., Langston v. Cambridge Police Dep't, 7 MCSR 178, 179 (1994); Dowd v. Lowell Fire Dep't, 14 MCSR 31, 32 (2001); Ellis v. Dedham, 17 MCSR 30, 31 (2004).

Applied here, the Town is allowed to consider Mr. Wilson's recent arrest for possession of a Class B substance, a serious charge with a nexus to the duties and responsibilities of firefighter / paramedic, even though those charges were dismissed six (6) days prior to Mr. Wilson

completing an application for employment. Further, I can not require the Town to prove that Mr. Wilson engaged in the alleged criminal behavior to justify its bypass decision. Rather, my role here was to review the “legitimacy” and “reasonableness” of the Town’s decision and to determine if the Town conducted an impartial and “reasonably thorough” review in reaching that decision.

As a preliminary matter, there is no evidence that the decision to bypass Mr. Wilson and appoint someone ranked below him was based on political considerations, favoritism or bias. In fact, Mr. Wilson, who was bypassed, is the son of the Town’s EMS Director, who appears to have a good working relationship with the Fire Chief and Town Manager. Further, prior to reviewing Mr. Wilson’s CORI report, the Fire Chief had recommended Mr. Wilson’s appointment to the Town Manager and I infer that, but for what was found on the CORI report, Mr. Wilson would have been appointed.

The Town’s review of Mr. Wilson’s candidacy consisted of: 1) reviewing his written application; 2) an interview conducted by members of the Fire Department’s command staff; 3) reviewing his CORI report; 4) reviewing the various police documents related to his arrest and the filing of charges against him; and 5) a brief follow-up conversation between the Fire Chief and Mr. Wilson.

Six (6) days after the criminal charges against him were dismissed, Mr. Wilson completed an application for employment, correctly stating that there were no felony or drug charges pending against him. He also answered “no” when asked if he had used or possessed illegal drugs in the past five (5) years.

Less than two (2) weeks later, the Town legally obtained a copy of Mr. Wilson’s CORI report showing pending charges against him for possession of a Class B substance. Rather than rely

solely on the CORI report, the Town opted to take the additional step of obtaining various police documents, including the report of the arresting officers. Both the Town Manager and the Fire Chief reviewed the arrest report which included detailed, percipient statements from the arresting officers, including:

- the officers' conclusion that Mr. Wilson was engaging in the use of illegal narcotics or drugs;
- the officers' statement that Mr. Wilson was unable to verify that the medications in his possession were prescribed;
- the officers' statement that Mr. Wilson told the officers he took the drugs nasally;
- the officers' statement that Mr. Wilson *admitted* to them that he purchased some of the pills "on the street".

The Fire Chief was surprised by this troubling information and irritated that this was the first time he was hearing of it. While he did not specifically tell him the reason for the meeting, the Fire Chief called Mr. Wilson and asked him to come to the Fire Department to discuss his application. I infer that Mr. Wilson was well aware of the reason for the meeting, particularly considering that he knew enough to bring with him a court document showing that the criminal charges had been dismissed. By all accounts, their meeting was brief. The Fire Chief expressed his irritation that Mr. Wilson had not informed him of the criminal charges and Mr. Wilson presented the Fire Chief with evidence that the charges had been dismissed. The Fire Chief, noting that Mr. Wilson had paid \$500 in court costs, discounted the import of the dismissal and the brief meeting was over. The Fire Chief proceeded to recommend the second-ranked candidate who did not have any CORI-related issues and Mr. Wilson was bypassed for appointment.

The Town argues that its reason for bypassing Mr. Wilson was reasonable and legitimate and that its review was impartial and thorough, including the review of the damning percipient statement of the arresting police officers. Further, the Town points to the fact that, although never specifically asked, Mr. Wilson did not, at the time, produce a copy of his prescriptions or any other information to rebut the statement of the arresting officers.

Mr. Wilson argues that, had the Town conducted a more thorough review, including speaking with the arresting officers and giving him a more formal opportunity to rebut the statements contained in the arrest report, it would have been clear that many of the police officers' statements against him were simply false; that the charges against him were baseless; and thus, there was no reasonable or legitimate reason to bypass him. It was against this backdrop that I instructed the Town to subpoena the two arresting officers to appear at the full hearing.

Both of the arresting officers (who were sequestered) and Mr. Wilson testified at the full hearing. They all provided direct testimony; were subject to cross examination; and answered tough questions – from me.

With a few exceptions, the officers' testimony largely mirrored their written reports. Importantly, they both testified that they heard Mr. Wilson state that he bought some of the drugs “on the street.” Although not in their written report, both officers also testified that Mr. Wilson initially agreed to become a “confidential informant” in relation to whom he procured the drugs from. Standing alone, I found their testimony credible.

Mr. Wilson, during his testimony, offered a starkly different account of what occurred during the afternoon of July 20, 2012.

According to Mr. Wilson, he was scheduled to work from 9:00 A.M. to 5:00 P.M. at Alert Ambulance. After experiencing shoulder pain on or around 2:30 P.M., he “called out” and began

driving to his parents' home in Norton in his very old Buick Sedan. As often happens, the car stalled out on this day and he coasted into the recreation parking lot, thus explaining what the officers believed was the odd position of the car. Shortly thereafter, Mr. Wilson attempted to contact his father on his cell phone to get assistance with the car. Mr. Wilson stated that he was unable to contact his father and he remained in the car with the windows rolled up. According to Mr. Wilson, at some point, he heard a knock on the passenger door window from someone who identified himself as an Attleboro police officer (whom he identified as Officer Fuoco at the hearing). According to Mr. Wilson, there were no drugs in plain view and he was not ingesting any medication at the time – orally or nasally. Further, according to Mr. Wilson, he has never taken medication nasally and he never stated that he did to either of the police officers.

Mr. Wilson testified that he was subsequently asked to exit the vehicle at which time he was searched by Officer Fuoco. When Officer Fuoco found the small Advil-like bottle containing pills enclosed in small plastic baggies in his pocket, Officer Fuoco asked Mr. Wilson if he had a prescription for the drugs and Mr. Wilson stated that he *did indeed* have a prescription. Mr. Wilson testified that after trying, unsuccessfully, to reach his father a second time, this time to seek his assistance in obtaining his prescription, he was then arrested. Subsequent to the hearing, Mr. Wilson produced a copy of his cell phone records showing that he called his father's cell phone at 2:53, 2:54 and 2:55 PM on July 20, 2012.

Mr. Wilson testified that he *never* agreed to be a confidential informant, despite warnings from Officer Fuoco that if he didn't cooperate, he (Officer Fuoco) would contact the state agency responsible for issuing his paramedic certification. According to Mr. Wilson, he was told to return to the police station the following Wednesday and speak with a detective, which he did. Mr. Wilson stated that when he returned, the detective asked him to provide the name of the

individual who supplied the drugs, at which point Mr. Wilson reiterated that he had a prescription for the drugs in question.

Finally, Mr. Wilson testified that the two *orange* pills, photographed and identified by the police officers as Oxycontin (for which Mr. Wilson had no prescription) were never in his possession. He challenged the two police officers' testimony that they were able to verify that these pills were indeed Oxycontin via an online search of the website www.drugs.com. He submitted documents (Exhibit 23) to show that Oxycontin has the letters OP on it and testified that his own search on www.drugs.com shows no pills having the marker "EX40", which was used in the police report to describe two orange pills.⁶

Standing alone, portions of Mr. Wilson's testimony were highly plausible. Even when weighed against the testimony of the two police officers, portions of Mr. Wilson's testimony, at a minimum, cast serious doubt on what actually occurred on the afternoon of July 20th. Other parts of his testimony, however, were less convincing and caused me to question his veracity. For example, when asked if he was certain that he never agreed to be a confidential informant, Mr. Wilson at one point equivocated and said words to the effect that he was willing to do whatever they wanted because he felt pressured about the possibility of losing his paramedic certification. He also failed to give me a plausible explanation regarding why he remained sitting inside an allegedly inoperable vehicle, with its windows rolled up, in the middle of the Summer. I also considered that Mr. Wilson, even after being called back to speak with the Fire Chief, failed to provide the Chief with any information (i.e. – his prescriptions) other than the court's dismissal, to convince the Chief that this was, at least as Mr. Wilson describes it, a grave injustice against him. Finally, despite implicitly alleging that two police officers falsely attributed incriminating

⁶ In his post-hearing brief, Mr. Wilson asked that I conduct my own inquiry on the drugs.com website. I did. An inquiry for EX40 or EX 40 for any shape or color yielded no exact result, consistent with Mr. Wilson's testimony.

statements to him and potentially planted evidence (the two orange pills), Mr. Wilson has apparently filed no complaints against these officers.

In summary, Mr. Wilson's overall testimony, which I heard as part of a de novo hearing, has not caused me to discredit the testimony of the two sworn police officers and/or the report they submitted. Even if it had, however, the preponderance of evidence would still show that the Town, at the time, conducted a reasonably thorough review of the allegation and ultimately made a reasonable and legitimate judgment call not to appoint Mr. Wilson to a highly sensitive position of firefighter / paramedic, a position where he would have access to various medications. While I am cognizant of Mr. Wilson's current status as a private sector paramedic, what is before me is not whether he should be *retained* in that private sector job, but, rather, whether, he should be *appointed* to this public sector position. Given the precedent-setting judicial decisions regarding the "substantial deference" due to Appointing Authorities when making appointments and because of the findings and conclusions above, the Town was reasonably justified in bypassing Mr. Wilson.

Conclusion

The Town's decision to bypass Mr. Wilson is affirmed and Mr. Wilson's appeal under Docket No. G1-13-97 is hereby *denied*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell, and Stein, Commissioners) on September 19, 2013.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten 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-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:

Timothy D. Zessin, Esq. (for Appointing Authority)

Michael F. Wilson (for Appellant)

John Marra, Esq. (HRD)