

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JONATHAN L. COUTURE,
Appellant
v.

Docket No.: G1-14-103

TOWN OF CHELMSFORD,
Respondent

Appearance for Appellant:

Jonathan Couture
Pro se

Appearance for Respondent:

Brian M. Maser, Esq.
Kopelman and Paige PC
101 Arch Street
Boston, MA 02110

Commissioner:

Cynthia Ittleman¹

DECISION

On May 2, 2014, the Appellant, Jonathan L. Couture (“Appellant”), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (“Commission”), regarding the decision of the Town of Chelmsford (“Respondent”) to bypass him for appointment to the position of permanent, full-time police officer. A prehearing conference was held at the offices of the Commission on June 3, 2014. The Commission conducted a full hearing on July 22, 2014. The hearing was digitally recorded and both parties were provided with a CD of the hearing. The parties submitted proposed decisions. For the reasons stated herein, the appeal is denied.

¹ The Commission acknowledges the assistance of Law Clerk Craig E. Reeder in the drafting of this decision.

FINDINGS OF FACT

Twenty-two (22) exhibits were entered into evidence, including exhibits requested by the Commission at the hearing and produced thereafter. Based upon these exhibits, the testimony of the following witnesses as I find credible:

Called by the Appointing Authority

- James M. Spinney, Deputy Police Chief;
- Todd Ahern, Detective Sergeant;
- James F. Murphy, Chief of Police;

Called by the Appellant

- Jonathan L. Couture, Appellant;

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

1. The Appellant graduated from high school in 1999 and has taken approximately 30 credit hours of college courses. He currently resides in Chelmsford and has been employed by the Town of Bolton as a police officer since December 2010. The Appellant's supervisor gave the Respondent a favorable review of the Appellant, whose performance he rates as above average. The Appellant has certifications as an EMT and Taser Instructor. (Exhs. 7 and 8; Testimony of Appellant)
2. Prior to working in Bolton, the Appellant worked at University of Massachusetts at Lowell from 2000 to 2003, first as a security officer and then as a dispatcher. He worked at Salem State University as a police officer from 2006 to 2008. He returned to work at the University of Massachusetts at Lowell as a police officer

- from 2008 to 2010. He also previously worked at Trinity Ambulance as an EMT for two or three years, worked at Patriot Ambulance, and worked as a police officer in Ogunquit, Maine one summer. The Appellant also worked as a dispatcher at the Boxborough Police Department for two years.² Where such information was available, the Appellant's prior employers rated his performance as average or above average and said he was dependable and cooperative, that he had no problems with drugs or alcohol or problems outside of work. (Exhs. 7, 8 and 9; Testimony of Appellant)
3. The Appellant took the police officer civil service exam on June 15, 2013 and received a score of 99. (Stipulated Fact)
 4. On November 22, 2013, the Chelmsford Police Department ("CPD") submitted a requisition to the state's Human Resources Division ("HRD") seeking to fill one (1) open position for permanent full-time police officer. In response thereto, HRD issued Certification number 01414. (Exh. 12; Testimony of Spinney).

Chelmsford Police Department's Hiring Process

5. The CPD's hiring process begins when the Chief of Police, who is the Appointing Authority, submits a requisition to HRD for a Certification of candidates. When the certification is issued, candidates on the Certification are notified by HRD to go to the CPD to sign the Certification to indicate their willingness to accept the position if hired. Thereafter, the CPD contacts the candidates who signed the Certification, starting with the highest ranking candidate, asking them to complete

² The record does not provide dates of all of the Appellant's prior employment.

a Preliminary History Questionnaire (“PHQ”) at the police station.³ After the candidates complete the PHQ, the CPD issues the candidates an application⁴ for them to complete and return to the CPD. When the candidate returns a completed application, it is assigned to an investigator to conduct a background check on the candidate. When the investigation is complete, the investigator prepares a background investigation report, which is given to the Sergeant of the Investigative Division. The investigation report is reviewed by the Sergeant, the Deputy Chief, and a lieutenant. Thereafter, the Sergeant and a lieutenant conduct a preliminary interview of the candidate; the Deputy Chief observes the interview behind a two-way-mirror. Although candidates are asked the same or similar questions, follow-up questions will vary depending on a candidate’s background information and responses to questions. The Sergeant writes a Board of Review Interview Report (“BRIR”) after the preliminary interview. Thereafter, a final interview with the candidate is conducted by the Sergeant and the Deputy Chief. The Deputy Chief then prepares an addendum to the BRIR, which is given to the Chief of Police. The Chief of Police decides whether to hire a candidate after speaking with his staff and reviewing pertinent documents. (Testimony of Spinney; Exhs. 7, 8 and 9)

³ Candidates are given an answer sheet to mark their answers to the PHQ questions. The Respondent generates a PHQ form report based on each candidate’s responses to the PHQ questions. Exhibit 7 is the PHQ report for the Appellant. The Appellant’s answer sheet was not offered into evidence; no question was raised regarding the authenticity of the Appellant’s responses.

⁴ The application is titled, “Chelmsford Police Department Police Candidate Background Investigation Packet” but, for clarity, it is referenced herein as an application.

Certification Number 01414

6. Four (4) candidates,⁵ including the Appellant, signed Certification #01414 indicating their willingness to accept the one available position if hired. Of the four candidates who signed the Certification, the Appellant was ranked fourth. (Exh. 12, Testimony of Spinney).
7. The candidate who was ranked first on Certification #01414 withdrew shortly after signing the certification and the other three (3) candidates started the new hire process by completing the PHQ. (Testimony of Spinney)
8. The Appellant completed the PHQ at the CPD on December 10, 2013. The Appellant, along with the candidate who was now ranked first, were issued application forms, which they filled out and returned to the CPD. (Exh. 7, 16)
9. The candidate who was now ranked second on the Certification completed the PHQ and was issued an application. By letter dated January 3, 2014, this candidate notified the police department that he was withdrawing his candidacy. (Exh. 17; Testimony of Spinney)
10. After the two remaining applicants (the Appellant and the candidate now ranked first) returned their completed applications to the CPD, a detective was assigned to conduct a background investigation on each of the candidates. (Testimony of Spinney)
11. The Appellant's completed application was assigned to Detective Jeff Blodgett, who prepared a background investigation report. (Exh. 8; Testimony of Spinney)

⁵ The Chelmsford Police Department was hiring one (1) officer at that time, which would only require three (3) candidates to sign the certification to satisfy the 2n+1 formula pursuant to Personnel Administrator Rules, Rule .09(1).

12. The purpose of the background investigation report is to verify information that the candidates enter into the application. The investigation includes tasks such as: contacting past employers, checking criminal history, checking driver history, looking at credit reports, and interviewing acquaintances, friends and neighbors. (Testimony of Spinney)
13. Before Detective Blodgett completed the background investigation report for the Appellant, he spoke with the Appellant regarding issues raised in the Appellant's application and/or investigation. (Exh. 8)
14. Detective Blodgett completed the Appellant's background investigation report on February 3, 2014. (Exh. 8)
15. The background investigation report revealed that there were concerns regarding the Appellant's credit history, driver history and work history. (Exh. 8)

Appellant's Background Investigation Report Issues

Credit History

16. The CPD views credit history as a means to evaluate candidates' organizational skills as well as their level of responsibility. (Testimony of Spinney)
17. The CPD has noticed that the job performance of individuals with poor credit scores was lower than those individuals with higher credit scores. (Testimony of Spinney)
18. The Appellant's credit score was lower than what the CPD would consider a good score. (Exh. 5; Testimony of Spinney, Ahern, and Murphy)

19. The Appellant's Equifax credit score falls into the "poor"⁶ ranking, the lowest ranking, because of the number of credit inquiries (27) in his record, indicating that he had "applied for credit multiple times," which is seen by lenders as presenting a very high risk, and because the Appellant has credit cards with a high utilization rate, indicating that the cards carry high balances. The Appellant's score was also affected by having seven (7) "negative accounts," which are defined as "accounts not paid as agreed generally."⁷ In further detail, the Equifax report notes that: 1) in two credit accounts, the Appellant disputed the account in or about 2010 and 2011, in one such instance, the account was "charged off;" 2) two accounts were closed by the creditors (one in 2010 and the other in 2012); and 3) the Appellant was deemed delinquent in two accounts in 2013 (one of which was a car payment). (Exh. 5, pp. 2, 5, 7, 13, 20, 22 and 25; Exh. 16; Testimony of Spinney)
20. In addition, the Appellant's car was repossessed for non-payment several years prior to the Appellant's application to the CPD. (Exhs. 7, 8 and 9)

Driver History⁸

21. The Appellant's RMV history includes:

⁶ Equifax ratings are "excellent," "very good," "fair," and "poor." (Exh. 5)

⁷ Negative Accounts remain on the credit report for seven (7) years. (Exh. 5)

⁸ There are three (3) RMV documents in the record: Exh. 1, the Appellant's driving record sent to the Appellant and dated 4/8/14; Exh. 2, the Appellant's driver history sent to the Respondent and dated 6/20/14, which is similar to Exh. 4 in some regards; Exh. 4, the Appellant's driver history obtained by the Respondent through CJIS and dated 1/9/14, prior to the Appellant's bypass. Police Chief Murphy's bypass letter to the Appellant is dated May 21, 2014. Therefore, the Respondent was not aware of certain documents in Exh. 2 before it issued the May 21 bypass letter to the Appellant. However, Exhibit 2 contains information similar to RMV information provided by Exhibit 1 and/or Exhibit 4, which also contains additional information. Since Exhibit 2 was not produced to the Respondent until after it had bypassed the Appellant, I do not rely on information in it that is not the same or similar to information in Exhibits 1 and/or 4.

1) Two speeding violations - one in January 1998 and one in April 1998, for each of which the Appellant was found responsible; the Appellant did not pay either fine for speeding until he was defaulted each time; (Exh. 4)⁹

2) two surchargeable accidents – one in 2001 and one in 2010;

3) on October 6, 2001 and October 13, 2001, the Appellant was cited for several motor vehicle light displays and related violations, for which he was subsequently found not responsible. At the Appellant's interview with Lt. Dan Ahern and Sgt. Todd Ahern, following the background investigation, the Appellant stated that he went to the police department of the officer who cited him to complain to the officer's superior. The Appellant further stated at this interview that the officer who cited him was not well liked, that no one respected the officer and that the officer was targeting him. The Appellant also told the interviewers that when he spoke to the officer's Lieutenant, that Lieutenant said that the Appellant's complaints about the citing officer were nothing new and that the matter would be taken care of. When the Appellant was questioned about these statements at his interview, he gave varying responses. (Exhs. 1, 2, 4, 8 and 9; Testimony of Spinney, Ahern, and Murphy); and

⁹ Unlike Exh. 4, obtained by the Respondent after the Appellant was bypassed, Exhibit 2 includes a copy of a letter sent by the RMV to the Appellant apparently regarding the second of the two speeding violations in 1998. The letter dated May 14, 1998 states, "You are hereby notified **effective 06/13/98, your license/right to operate a motor vehicle will be suspended**, by automatic application of law, because you have defaulted on the assessment and fines noted below **In order to avoid this pending suspension** you must mail your check/money order for the assessment above, with a copy of this notice, to the following address ... or contact the [RMV] office nearest to you **before the effective date of the suspension noted above**. ... When your license or right to operate has been suspended, you must immediately cease to operate all motor vehicles **If your license/right to operate becomes suspended** as a result of failing to comply with this notice, at the time of your reinstatement you will be required to pay an additional \$50.00 reinstatement fee. ..." (Exh. 2 (emphasis added))

4) in May 2013, the Appellant submitted a bad check to the RMV¹⁰, in response to which the RMV proceeded with an apparent license suspension and revocation process against the Appellant.¹¹ Thereafter, it appears that the Appellant made the appropriate payment and the license revocation process ended. (Exh. 4)

Work History

22. The Appellant received a warning for insubordination when he was employed as a dispatcher at the University of Massachusetts at Lowell's campus police department on June 18, 2003.¹² (Exh. 6)¹³

23. The reason for the warning was that the Appellant initially refused an order to work overtime on the second shift because "an unexpected medical condition arose involving Dispatcher [X] and her pregnancy. Dispatcher [X] was on sick leave and under a doctor's care. She was unavailable to work the shift. Calls were made to attempt to fill the shift, there was no response." (Exh. 6)

24. As noted in the Appointing Authority's background investigation and the University of Massachusetts at Lowell police department memorandum dated

¹⁰ The record does not indicate what the Appellant was paying for when he submitted the bad check to the RMV in 2013.

¹¹ Exhibit 2 states that, "... Because this insufficient check has been tendered to the [RMV], the following actions will be taken against you: Effective 06/13/13, your license/right to operate a motor vehicle **will be revoked by automatic application of law In order to clear the actions the Registry has taken against you and any actions that may be taken, you must either mail a certified check/money order** for the total amount due above, with a copy of this notice, to [the RMV] or pay in person ... **before the effective date above of the revocation noted above.** If you fail to comply with these instructions before the effective date of the revocation, your license/right to operate all motor vehicles ... **will be revoked** You must immediately cease to operate all motor vehicles until your license has been reinstated **If your license becomes revoked** due to this bad payment, you will be required to pay an additional \$100.00 at the time of reinstatement" (Exh. 2 (emphasis added))

¹² Exhibit 6 is a University of Massachusetts at Lowell Police Department Memorandum concerning the Appellant's insubordination which, like certain testimony here, refers to it as a verbal warning, notwithstanding the documentation.

¹³ The Respondent's background investigation report mentions one or two other disciplinary matters when the Appellant was a dispatcher at University of Massachusetts at Lowell, and later, when he was a campus police officer, but documentation and/or other corroboration therefor was lacking. The Respondent does not cite these matters in its reasons for bypassing the Appellant.

June 18, 2003, written by University police Capt. Thomas, the Appellant raised his voice at, and argued with the Shift Commander in front of another Dispatcher after she said that was enough. The Appellant told her it was “bullshit” and that he would not come in for the overtime. When the Appellant continued to argue, saying that it was not fair and that dispatcher X was always getting favored treatment, the Shift Commander warned the Appellant that she would write him up, to which the Appellant said, “go ahead.” At his interview with Lt. Ahearn and Sgt. Ahearn, the Appellant asserted that he had child care issues at the time of this incident but that ultimately he worked the overtime shift. The University report on the matter does not state that he worked the overtime shift. Asked how he would address such a situation now, the Appellant said he would seek a private meeting with the Sergeant and, if that did not work, he would take the matter to the next supervisor in the chain of command. (Exhs. 6 and 8)

25. The Respondent notes no record of discipline for the Appellant at his other former places of employment or his current place of employment. (Exh. 8)

26. The CPD is a paramilitary organization. Consequently, obedience to direct orders by superiors is required. (Testimony of Spinney)

Certification Number 01414 Expires

27. On February 14, 2014, Certification #01414 expired. However, Deputy Chief Spinney was not aware that the Certification expired until a week after its expiration. When he became aware that the Certification expired earlier, the Deputy Chief called HRD to request an extension of the Certification. HRD

denied the request for the extension because it was made after the Certification had expired. (Exh. 12; Testimony of Spinney)

28. Thereafter, Deputy Chief Spinney notified the Appellant that Certification #01414 had expired and that he would not be appointed from that Certification. (Testimony of Spinney)

29. On March 13, 2013, the second ranked candidate notified the CPD that he was withdrawing his name from consideration. The second ranked candidate expressed his desire to work for the State Police and said that a position with the State Police might open. (Exh. 15; Testimony of Spinney)

30. No candidate was appointed from Certification #01414. (Testimony of Spinney)

Certification Number 01678

31. Since the Respondent did not appoint anyone from expired Certification #01414, the Respondent requested another Certification from HRD. From the new Certification, the CPD needed to fill two (2) vacancies because an additional officer was going to leave the police department.¹⁴ HRD issued the new Certification #01678 to CPD on March 14, 2014. There were twelve (12) names that appeared on Certification #01678. The Appellant's name did not appear on Certification #01678 issued on March 14. (Exh. 12; Testimony of Spinney)

32. Two (2) candidates signed certification #01678. The first ranked candidate withdrew her name just after signing the certification. (Testimony of Spinney)

33. The other candidate that signed Certification #01678, who was ranked second, completed the PHQ and the application. A background history report was

¹⁴ Although the CPD requested a certification to fill two (2) vacancies, the evidence presented to the Commission was that the CPD hired one (1) candidate at the time of the hearing.

completed for this candidate but there were concerns about this candidate, who subsequently withdrew his candidacy. (Testimony of Spinney)

Appellant's Preliminary Interview

34. Although the Appellant's name did not appear on Certification #01678, Deputy Chief Spinney knew that the Appellant's name was high on the previous Certification and he believed that the Appellant's name would appear high on a subsequent Certification, he scheduled the Appellant's preliminary Board of Review interview with Sergeant Todd Ahern and Lieutenant Dan Ahern on March 17, 2014. (Exh. 9; Testimony of Spinney and Ahern)
35. Pursuant to standard practice, Deputy Chief Spinney did not take part in the Appellant's preliminary interview but observed it from behind a two-way-mirror. (Exh. 22; Testimony of Spinney)
36. After the Appellant's preliminary interview, Sergeant Ahern prepared a lengthy and detailed BRIR. The BRIR indicated that there were concerns regarding the Appellant relating to his employment, driver and credit histories, and that the Appellant's interview performance was troublesome because his responses to questions in these regards were at times vague, not credible, and inconsistent and/or they deflected responsibility for his actions.¹⁵ (Exh. 9; Testimony of Spinney and Ahern)
37. The Appellant's preliminary interview lasted more than two (2) hours, which was exceptionally long. (Testimony of Ahern)

¹⁵ See *supra* p. 5-6.

38. The interviewer had to ask the Appellant multiple times to get responses to a number of the interview questions. (Exh. 13; Testimony of Spinney, Ahern, and Murphy)
39. Police Chief Murphy reviewed the BRIR, the Appellant's background information, and a recording of the Appellant's preliminary interview. (Testimony of Murphy and Spinney)
40. After reviewing the Appellant's reports and preliminary interview, Police Chief Murphy consulted with Deputy Chief Spinney regarding concerns that he (Chief Murphy) had about the Appellant's interview performance and his credit, driver and work histories. (Testimony of Spinney and Murphy)
41. No candidate who signed Certification #01678 was appointed at this point in time. (Testimony of Spinney)

More Names Requested for Certification #01678

42. On March 28, 2014, the Respondent asked HRD for additional names from Certification #01678 and HRD issued additional names to the Respondent on that day. The Appellant's name appeared first among the added names and he signed the Certification to indicate his willingness to accept the position if hired. (Exh. 12; Testimony of Spinney)
43. Having already completed the application and preliminary interview, the Appellant had his final interview with Deputy Chief Spinney and Lieutenant Ahern in April 2014. (Testimony of Spinney; Exh. 9)

44. During the final interview, Deputy Chief Spinney expressed his concerns to the Appellant regarding the Appellant's work, driver and credit histories and his initial interview performance. (Testimony of Spinney)
45. Following the Appellant's final interview, Deputy Chief Spinney added to the BRIR that he reviewed the BRIR and had observed the Appellant's preliminary interview and he concurred with the findings in the BRIR. Deputy Chief Spinney also added his observations of the final interview to the BRIR in two (2) additional, single-spaced pages. Specifically, Deputy Chief Spinney wrote that he told the Appellant he had concerns, *inter alia*, about the insubordination matter at the University of Massachusetts at Lowell, which he acknowledged occurred a decade earlier, and that he was more concerned about matters such as the Appellant's default payments at the RMV, driving history and car repossession. (Exhs. 9 (pp. 13-14) and 22; Testimony of Spinney)
46. Deputy Chief Spinney concluded,
- “ ... After speaking with Jonathan Couture and reviewing his entire background investigation packet I continue to have serious concerns with regards to his suitability as an employee of the Chelmsford Police Department. Couture showed poor decision making and direct insubordination when he openly argued with his supervisor while employed at the Univ. Lowell Police Department. Couture's explanation of his terrible driving record, and multiple license suspensions and revocations was vague, and he was reluctant to take ultimate responsibility for the problems. With regard to the vehicle repossession incident Mr. Couture's explanation is again evasive as he puts responsibility of the incident on other people, even when he acknowledges that the vehicle was primarily for his use. Although Mr. Couture's current employer, Bolton Police Department have had positive comments regarding his performance I have difficulty moving past the irresponsibility issues that are demonstrated with his driving record, license suspensions/revocation, and past credit problems. It is my opinion that these problem areas create serious suitability issues

for Mr. Couture that precludes him from moving forward as a candidate for the Patrol Officer position for the Chelmsford Police Department. ...”

(Exhs. 9 (pp. 13-14)(sic)

47. After Police Chief Murphy’s consideration of the information related to the Appellant, the Appellant was bypassed by candidate A, who was ranked lower than the Appellant (Testimony of Spinney and Murphy)
48. The Appellant was initially notified on April 29, 2014 that he was being bypassed. (Stipulation of Fact)
49. By letter dated May 21, 2014, Police Chief Murphy notified the Appellant of the reasons he was bypassed. The letter stated that the Appellant was bypassed because: “(1) [his] driving history contains several license suspensions and citations, (2) [a] verbal warning received for insubordination from [a] previous employer, (3) [he has a] poor financial credit history, and (4) [he had a] poor performance during oral interview.” The Police Chief added that the officers who interviewed the Appellant found his statements vague, evasive and/or otherwise not credible, that the Appellant did not accept responsibility for his actions, that the Appellant’s actions reflected poor judgment, and it was not clear that the Appellant had learned from his mistake as a University of Massachusetts at Lowell campus police dispatcher. The letter added that the selected candidate, who was ranked below the Appellant on Certification #01678 (Mr. A), was selected as his background investigation and interview presented no “serious issues or concerns.” (Exh. 3; Testimony of Spinney and Murphy)

Mr. A's Application Process

50. Mr. A was attending the University of Massachusetts at Lowell full time at the time of his application. He had also attended and graduated from the Lowell Police Academy in June 2013. He has always lived in Chelmsford with his family. (Ex. 10) His background investigation was completed on May 4, 2014. After a preliminary interview, Mr. A's BRIR was completed on May 13, 2014. (Exhs. 10 and 11)

51. In the background investigation report regarding Mr. A, Detective Hawkins wrote, "I cannot find any reason that would prevent [Mr. A] from becoming an officer with the Chelmsford Police Department." (Exh. 10); (Testimony of Spinney)

52. In Mr. A's BRIR, there were no negative indications regarding his employment history or credit history. Mr. A was forthcoming at the initial interview, although he appeared to be nervous. Mr. A had a surchargeable car accident in his driving history a couple of years earlier but he received no citation for it, nor were there other citations in his driving history. (Exhs. 11, 18, 19 and 21; Testimony of Spinney)

Administrative Notice

53. On May 2, 2014, the Appellant filed the instant bypass appeal.

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. 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).

Analysis

The Respondent has established, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant. The Respondent puts forth multiple reasons for the Appellant’s bypass in its letter to him stating that his driving history contains license suspensions and citations, that he received a warning for insubordination from the University of Massachusetts at Lowell’s campus police, a previous employer, that he had a poor financial credit history, and the Appellant performed poorly during the

oral interview. (Exh. 3). These reasons provide reasonable justification for bypassing him.

The Appellant averred that his license was not suspended or revoked. However, the Appellant's driving record shows that he paid the RMV with a bad check in 2013. In addition, there are two additional payment defaults in the Appellant's RMV history for failing to pay speeding tickets in 1998. This shows that the Appellant's organization skills and his ability to take responsibility for his actions are lacking. Being organized and taking responsibility for one's conduct are important for police officers.

The Appellant also received a warning for insubordination when he was employed as a dispatcher by the University of Massachusetts at Lowell's campus police department. The Appellant received the warning after he told his Shift Commander that he would not work overtime despite the order to do so. The Shift Commander told the Appellant that he needed to work overtime because another dispatcher was on sick leave and under a doctor's care. In response to the request, the Appellant argued with, and raised his voice to the Shift Commander, yelling "bullshit" in front of another dispatcher. The incident occurred in 2003 and there does not appear to have been any further acts of insubordination since that time. However, the CPD is a paramilitary organization. This means that there is a chain of command which has to be respected. The Appellant's actions at the University of Massachusetts at Lowell were a valid reason for concern by the Respondent.

The Appellant's financial history further calls into question the Appellant's organization skills, as well as his ability to take responsibility for his actions. The Appellant's credit score and credit history are both problematic. Equifax ranks the

Appellant's credit worthiness as "poor." Furthermore, the Equifax report indicates that the Appellant has seven (7) negative accounts from late payments which remain on the record for seven (7) years and that there were twenty-seven (27) credit inquiries to check the Appellant's credit history in the last two (2) years. Although the Appellant testified that he recently bought a house, which may have affected his credit score, there are other indicators, such as the number of credit inquiries and high utilization of credit cards that are affecting the Appellant's credit score and history. In addition, the Appellant's automobile was repossessed because of delinquent payments. Since police officers are held to a higher standard and a poor credit score may call into question a candidate's organizational skills and ability to take responsibility for his actions, the Respondent could give appropriate consideration to the Appellant's troubling credit history.

Interviews are subjective in nature. However, it appears that the Respondent consistently applied its process. In addition, the Appellant was given repeated opportunities to respond to questions concerning matters that the employer deemed to be of serious concern and yet he failed to allay those concerns, providing, alternatively, vague, inconsistent or deflective responses, or responses that were simply not credible. The Appellant's preliminary interview lasted over two hours, which was significantly longer than the other candidate's interviews owing to the difficulty the Respondent's interviewers faced in attempting to elicit informative responses from the Appellant. For example, in regard to the insubordination incident when the Appellant was a dispatcher for the University of Massachusetts at Lowell's campus police department, the Appellant stated that the reason for his insubordination was that other dispatchers received preferential treatment and were not forced to work overtime. Further, rather than taking

responsibility for his actions, the Appellant stated that the other dispatcher had attendance problems in the past. In addition, in response to questions regarding the several vehicle lights citations he received, and for which he was found not responsible, the Appellant stated that he went to the citing officer's police department, where he complained about the citations to the officer's Lieutenant. The Appellant further told the Appointing Authority at his interview that the officer who cited him was not well liked, that no one respected the officer and that the officer was targeting him. The Appellant also told the interviewers that when he spoke to the officer's Lieutenant, that Lieutenant said that the Appellant's complaints about the citing officer were nothing new and that the matter would be taken care of. When the Appellant was questioned about these statements at his interview, he changed his responses. Although the Appellant was subsequently found not responsible for these citations, the Appellant sought to blame the issuing officer.

A preponderance of the evidence also shows that Mr. A, the candidate who bypassed the Appellant, did not present the concerns that the Appellant's candidacy did. Specifically, there was no indication that Mr. A had significant problems regarding his work history, driver history or credit history. Mr. A's credit history is short and contains no inferences regarding negative accounts, a poor credit score, a high number of credit inquiries, or high utilization of credit cards. As to Mr. A's driver history, there is only one entry related to one surchargeable accident. Mr. A's employment history is free of any indications of discipline. During Mr. A's oral interview, although he appeared nervous, he took responsibility for his actions and was forthcoming in his responses. Therefore, the Respondent has established, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant.

Conclusion

For the reasons stated herein, the appeal filed under Docket No. G1-14-103 is hereby *denied*.

Civil Service Commission

Cynthia A. Ittleman, Esq., Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on January 8, 2015.

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 to:

Jonathan L. Couture (Appellant)

Brian M. Maser, Esq. (for Respondent)

John Marra, General Counsel (for HRD)