

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

REBEKAH ST. AMAND,
Appellant

v.

G1-13-193

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Tena Kerns, Esq.
Law Offices of Tena Kerns, Esq.
P.O. Box 2081
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Appearance for Respondent:

Jeffrey S. Bolger
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P.O. Box 946, Industries Drive
Norfolk, MA 02056

Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

On August 30, 2013, the Appellant, Rebekah St. Amand (“Ms. St. Amand”), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (“Commission”), contesting the decision of the Department of Correction (“DOC”) to bypass her for original appointment to the position of Correction Officer I (“COI”). A pre-hearing conference was held at the offices of the Commission on September 24, 2013 and a full hearing was held at the same location on November 5, 2013. The hearing was digitally recorded and both parties were provided with a CD of the hearing. The parties submitted proposed decisions, Ms. St. Amand submitted a

¹ The Commission acknowledges the assistance of Law Clerk Julie Muller in preparing this decision.

response to DOC's proposed decision, and DOC submitted a rebuttal to Ms. St. Amand's submission.

Post-hearing, I requested that DOC file its psychological screening plan, as well as any approved changes thereto. DOC filed its plan and a letter indicating that Dr. Och was an approved provider. Ms. St. Amand filed written comments regarding DOC's post-hearing submissions.

For the reasons stated herein, the appeal is granted.

FINDINGS OF FACT:

Twenty-six (26) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by the Appointing Authority:

- James O'Gara, Personnel Analyst III, DOC;
- Richard W. Cross, Ph.D., Independent Psychologist and Consultant, Chandler Psychological Services;
- John M. Madonna, Ed.D., Executive Director, Chandler Psychological Services, Licensed Psychologist;
- Mohammed R. Och, M.D., Psychiatrist, Och Consulting, LLC

Called by the Appellant:

- Rebekah St. Amand, Appellant;
- Michael Dunn, COI, Old Colony Correction Center, DOC;
- David Antosca, COI, Old Colony Correction Center, DOC;
- Jeffrey Shorey, Nursing Supervisor, Old Colony Correction Center, DOC;

and taking administrative notice of all matters filed in the case, including the parties' post-hearing submissions; 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. At the time of this Commission's hearing, Ms. St. Amand was a thirty-year (30) old woman residing in Fairhaven, MA; she was working at the Massachusetts Alcohol and Substance Abuse Center ("MASAC"), a DOC facility. Ms. St. Amand began working at MASAC on July 1, 2013. Prior to working at MASAC, Ms. St. Amand worked with UMASS Correctional Health at the Old Colony Correction Center from September 2004 until July 2013.² (Testimony of Ms. St. Amand)
2. Ms. St. Amand took and passed the civil service examination for the position of COI on March 24, 2012, with a score of ninety-one (91). (Stipulated Facts)
3. On February 12, 2013, DOC requested a Certification from HRD to hire COIs. Thereafter, HRD sent Certification No. 00415 to DOC. Ms. St. Amand's name appeared two hundred and thirty-eighth (238th) on Certification No. 00415, from which DOC ultimately appointed one hundred and twenty-two (122) COIs, sixty-three (63) of whom were ranked below Ms. St. Amand. (Stipulated Facts)
4. On February 28, 2013, Ms. St. Amand filled out a DOC Application for Employment. Although Ms. St. Amand attended Bristol Community College for two (2) years, she did not report her attendance under the education portion of the application. Ms. St. Amand explained that because she didn't receive a degree from Bristol Community College, she did not think she should include it. Additionally, under employment history, Ms. St. Amand only reported the job she was working in at the time since she has been working there for a long time, even though she worked at a restaurant in high school for approximately four (4) years. She explained that she did not consider her job at the

² Ms. St. Amand's mother is currently employed as the Deputy Superintendent at the DOC Pondville Correctional Center.

restaurant to be a “real” job, so she did not include it on her application. (Exhibit 10; Testimony of Ms. St. Amand)

5. CO Walter Peterson conducted a background investigation regarding Ms. St. Amand as part of the DOC hiring process. Ms. St. Amand received positive reviews on the employer interview. Ms. St. Amand’s supervisor from UMASS Correctional Health was interviewed and she stated that Ms. St. Amand worked very well with fellow employees and earned a promotion from Medical Records to Administrative Assistant. She reported that Ms. St. Amand never abused company benefits and used minimal sick time; she recommended that DOC hire Ms. St. Amand to be a COI. Additionally, Ms. St. Amand was never disciplined. Ms. St. Amand’s three (3) professional references were all positive as well. Each of her professional references described her as a mature individual who can handle stressful situations in a calm manner. One of her professional references stated, “the department ‘would be crazy not to hire her’” and described her as a “great problem solver and is always quick to help others finish their job when hers is completed.” Ms. St. Amand’s neighborhood references also provided positive feedback. Both neighbors interviewed never saw Ms. St. Amand with anyone questionable or observed any alcohol or drug usage. They both stated that she is a friendly individual who gets along with all of her neighbors. Both neighbors highly recommended her for the position of COI. The Fairhaven Police Department reported to the DOC that there was no activity recorded related to Ms. St. Amand. The home interview also went well with CO Peterson describing Ms. St. Amand’s home as “very clean and neat, situated in a nice neighborhood.” To conclude the background investigation, CO Peterson listed

under “Positive Employment Aspects,” the following, “Organized, ‘On the ball,’ Helpful to others.” Under “Negative Employment Aspect” nothing was listed. (Exhibit 23)

6. On April 18, 2013, DOC offered Ms. St. Amand a conditional offer of employment as a COI, contingent upon successfully completing a medical examination, a drug screening, and a psychological screening. The letter explained that Ms. St. Amand would “spend about 3 hours completing several forms and psychological tests.” (Exhibit 9)
7. HRD developed a “Model Plan for Psychological Screening of Entry-Level Public Safety Positions.” (“Model Plan”) The Model Plan states, in part,
 - a. “[t]he goal of this psychological screening program is to detect any serious psychological disorders or characteristics that would render a candidate unable to perform with reasonable accommodation the essential functions of the public safety position for which the candidate is being considered” (Exhibit 13, p. 1)(emphasis added)
 - b. “[t]he following combinations of tests are all appropriate for Stage One in conjunction with the clinical psychologist’s clinical interview: MMPI-2 [Minnesota Multiphasic Personality Inventory] and PAI [Personality Assessment Inventory] Or MMPI-2 and 16PF [Personality Factors Questionnaire] or MMPI-2, PAI, and 16PF. Please note that no other tests are allowed during Stage I.” (Id., p. 2)
 - c. a psychologist will examine the results of the tests, review background information provided by the hiring department, and conduct a clinical interview of the candidate. “In making a determination regarding whether or not a candidate passes or fails the psychological screening, the clinician may use only the result of the tests given ... in conjunction with his/her findings during the clinical interview.” (Id.)
 - d. The clinician is required to inform the hiring authority whether there is “clear evidence” that the candidate has a psychological disorder or characteristic that will prevent the candidate from fulfilling the essential functions of the position with reasonable accommodation. If the clinician finds the candidate has a “psychological disorder or characteristic that would prevent him or her from fulfilling the essential functions of the job, the clinician must notify the hiring authority, which must notify the candidate and indicate how to proceed from there. From there, a psychiatrist reviews the available information, interviews the candidate, and writes a report. “The report must describe why the candidate is unqualified for appointment ... Evidence substantiating this opinion must be supplied, and the report must explain specifically why the disorder prevents the candidate from successfully performing with reasonable accommodation” (Id.)(emphasis added)

- e. The psychiatrist can use the Rotter Incomplete Sentences Blank and the Thematic Apperception Test (the only two tests psychiatrists are allowed to use here). (*Id.*, p. 3) If the psychiatrist finds the candidate “unqualified for appointment,” the psychiatrist is required to send a “brief explanation” to the hiring authority. (*Id.*)
 - f. There can be no changes in an HRD-approved plan without HRD’s written approval. (*Id.*, p. 5)
8. At the time of this Commission hearing, Chandler Associates had been performing psychological screenings for DOC for three (3) years. (Testimony of Dr. Madonna)
9. DOC and/or Chandler Associates submitted a psychological screening plan to HRD and HRD approved the plan for psychological screening of correction officer candidates in a letter dated February 14, 2012. DOC relied on this HRD-approved psychological screening plan when it conducted psychological evaluations for COI candidates in the instant case. The approval letter from HRD states, “if the Department of Correction wishes to cease using psychological screening, the appointing authority must first advise the Human Resources Division in writing. However, psychological screening may not be dropped while the appoint authority is in the process of making appointments from a certification.” (Testimony of Dr. Madonna; Exhibit 14) The approval letter approved certain providers, including the providers named here, except for Dr. Och. (Exhibit 14) By letter from HRD to Dr. Madonna dated May 27, 2014, Dr. Och was “ ... approved as a licensed psychiatrist to perform psychological screening in the Commonwealth of Massachusetts at least since October 23, 2012[,]” which is before Ms. St. Amand took the psychological evaluation. (Administrative Notice, submitted by DOC post-hearing in response to my request)(*see* Finding of Fact 13)

10. The DOC approved plan³ mostly mirrors the HRD Model Plan with the following notable exception: regardless of which psychologist listed in the approved plan (including Dr. Cross) evaluates the candidate's test results and interviews the candidate, it names Dr. Madonna as the clinician who makes the finding whether a candidate has a psychological disorder or characteristic that would prevent him/her from fulfilling the essential functions of the position. (Administrative Notice, DOC post-hearing submission at my request) (emphasis added) Also, the DOC approved plan, unlike the HRD Model Plan, also states that "only" Drs. Carl Fulwiler and/or Dr. Eugene Goldwater, certified psychiatrists, will conduct second interviews of a candidate; it does not indicate that Dr. Och may conduct second interviews. (Administrative Notice, submitted by DOC post-hearing in response to my request)

11. The DOC psychological screening process for job candidates is described in DOC regulation 103 CMR 201.06(C), which states,

"All Department recruit candidates shall be psychologically pre-screened as a condition of employment in order to determine whether candidates have psychological or character disorders that would render them unable to perform the required duties of the position in a manner which could compromise public safety (Attachment M). Any diagnosis shall be related to the inability to fulfill the essential job duties. The screening process shall include written tests in conjunction with clinical interviews. . . ."

(Exhibit 25) (emphasis added)

Section 201.06(D) of the DOC psychological screening process states, in total,

"Psychological Exam

Inward Personality Inventory ("IPI")

³ DOC did not produce the approved plan at the hearing but it has indicated in writing that the approved plan used in this case is the same as the plan produced in a pending civil service appeal at this Commission involving a different appellant. (Administrative Notice, DOC post-hearing submission in response to my request) Counsel for Ms. St. Amand received a copy of DOC's post-hearing submissions and submitted comments thereon.

One-on-one interviews by psychologist/clinician, regarding background, personality and mental stability.

Based upon the results of the above exam, further testing may be administered.”

(Exhibit 25)

The Model Plan does not allow for such testing in the first stage of psychological evaluation. (*See* Finding of Fact 10; Administrative Notice)

12. DOC regulations, dated October 2012, include Attachment M “Description of the Psychological Screening Process.” During Stage One, according to Attachment M, DOC administers the Inwald Personality Inventory (“IPI”), the Rotter Incomplete Sentence Blank (“Rotter test”), and the Life History Questionnaire (“LHQ”). DOC did not administer the IPI or the Rotter tests but administered the LHQ. (Exhibit 25) The Model Plan does not allow for these three tests in the first stage of psychological evaluation. (*See* Finding of Fact 10; Administrative Notice)

13. On April 27, 2013, at Worcester State University, Ms. St. Amand took the MMPI-2, 16PF and written narrative tests. These examinations were not among the examinations required by stage one of the DOC regulations, dated October 2012, Attachment M. However, the examinations were in compliance with HRD’s Model Plan. The written narrative test is not included in either DOC regulations or HRD’s Model Plan. It is uncertain what role the written narrative plays in the assessment of candidates. Ms. St. Amand completed the MMPI-2 and the 16PF but did not complete the written narrative test because she was tired, hungry, and wanted to go home. She also thought that she only had three hours to complete the examination, even though the proctor did not

announce that time was up and she stated that she knew she could have requested more time but she did not do so. (Testimony of Ms. St. Amand; Exhibits 9, 13, 25)

14. The MMPI-2 is a written examination composed of five hundred and sixty-six (566) true or false questions. “It is designed to help the examiner learn about [the candidate’s] personality and how it relates to [the candidate’s] personal and social adjustment.”⁴ (Exhibit 25, p. 74)

15. The 16PF is a written examination with approximately two hundred (200) multiple choice questions that uses an answer scale of one through five, asking the candidate if she strongly disagrees to strongly agrees. The 16PF is a “measure of normal personality.” (Testimony of Dr. Cross; Exhibit 16)

16. On May 5, 2013, Ms. St. Amand met with Dr. Richard Cross for her first psychological screening interview. Before the interview, Dr. Cross reviewed Ms. St. Amand’s test results. Dr. Cross stated that the following were Ms. St. Amand’s psychological assets: “Family history & work history in DOC.” Dr. Cross stated the following were Ms. St. Amand’s psychological deficits:

Self identify [sic] as extremely shy. Command presence is low and high nervousness during interview (blushing & racing speech & interruption). High probability of ADHD [Attention Deficit Hyperactivity Disorder] – did not complete narrative – provided contradictory information on college attendance. High affect, but low communication skills – poor analytical skills.

The interview lasted for twenty-five (25) minutes. (Testimony of Dr. Madonna; Exhibits 17 and 27) Dr. Madonna’s report of Dr. Cross’ interview of Ms. St. Amand refers to these as “potential strengths” and “potential deficits.” (Exhibit 14)

⁴ Ms. St. Amand submitted articles at the hearing calling into question the validity of the MMPI as well as employment personality examinations in general. In response, DOC submitted articles post-hearing noting the wide acceptance of the MMPI as a tool in hiring practices. Since these tests are contained in the HRD Model Plan and may be used by municipalities regarding law enforcement candidates, their acceptance appears to be sufficiently established.

17. Dr. Cross stated that he had particular areas of concern regarding Ms. St. Amand's MMPI-2 results. Chandler Associates looks at five (5) specific factors that are accepted as good predictors for early success in correction officer work. The five (5) factors are openness to evaluation, social facility, addiction potential, stress tolerance, and overall adjustment. Ms. St. Amand's results indicated she had "indeterminate" profiles for each of these factors. Dr. Cross explained that this is not unusual for candidates to have "indeterminate" profiles but Ms. St. Amand's case was unusual because the "indeterminate" profiles stem from an elevated TRIN score. TRIN stands for True Response Inconsistency. Candidates who scored high on the TRIN scale got confused during the examination. It does not indicate that they were trying to be deceitful. Dr. Cross further stated that two other scores raised concerns. Specifically, Ms. St. Amand had elevated scores in the Social Introversion scale as well as the Social Discomfort scale. Dr. Cross stated that this pattern is unusual for a COI applicant. (Testimony of Dr. Cross; Exhibit 15)

18. The results of the 16PF⁵ test that Ms. St. Amand took indicate, *inter alia*,

"[i]n addition to her shyness, this individual exhibits slightly below average ego strength, affecting her ability to defer her needs when appropriate and to modulate the expression of her personality as the occasion demands. She may at times lack the psychological resources to compensate for her shyness, so its relevance to the reason for referral should be considered carefully."
(Exhibit 16, p. 2)

... her more than adequate self-control may bolster any lapses in her defenses. She does not seem to be a particularly apprehensive or guilt-prone individual. No problems with tension are immediately apparent. ...

Id.

⁵ The MMPI-2 and 16PF test results are apparently prepared by a Dr. James N. Butcher for the University of Minnesota and/or its affiliates, not by the HRD-approved DOC providers. (Exhibits 15 and 16, respectively) Exhibit 15 contains mostly numerical analyses and very little narrative, whereas Exhibit 16 is comprised mostly of a narrative analysis.

... She is so indirect and guarded in her communicative style, and she can be so tight with information, that people can come to feel manipulated by her. ... The same trait, however, can make her a shrewd negotiator. ...

Id., p. 3.

... She is a somber person who takes things quite seriously. At times, this reflects a sense of maturity, enabling her to play a stabilizing role in various situations. At other times, her attitude may seem pessimistic to others, dampening their enthusiasm.

Id.

... She is no more sensitive and thin-skinned than most people, and no more tough-minded either. ... She seems to be as practical as most people, taking realistic consequences into account when formulating her plans. ...

Id., p. 4.

19. According to Dr. Cross, low ego strength indicates that if an event occurs unscripted, a person would react more viscerally than cognitively and could make mistakes of judgment. Dr. Cross stated that the 16PF results showing a shy, serious, and private person, combined with the MMPI-2 results displaying high scores on social discomfort and social introversion, indicates a person who, when confronted, will have a difficult time responding appropriately. (Testimony of Dr. Cross; Exhibits 15, 16)
20. From his impression of her during the interview, Dr. Cross thought Ms. St. Amand had a low command presence. Dr. Cross also thought that there is a high probability Ms. St. Amand has ADHD because she presumed she did not have to finish the written narrative, she interrupted him mid-sentence, she was confused on the MMPI-2 (as allegedly evidenced by her high TRIN score), and she was blushing and exhibited racing speech during the interview. Dr. Cross did not perform any tests to determine whether Ms. St. Amand has ADHD. (Testimony of Dr. Cross)
21. Based on the test results and his impressions from the interview, Dr. Cross did not recommend Ms. St. Amand to become a COI. (Testimony of Dr. Cross; Exhibit 17)

22. Dr. Cross wrote his interview impressions and gave them to Dr. Madonna. Dr. Madonna reviews all of the information on candidates compiled by other psychologists at Chandler Associates in which the appointed psychologist does not recommend that a candidate be hired and he writes the final report. Dr. Cross did not write the final report regarding the test results and interview of Ms. St. Amand. (Testimony of Dr. Cross and Dr. Madonna; Exhibits 8 and 17) Neither HRD's Model Plan, the DOC regulations, nor the DOC approved plan indicate that a clinician other than the one who conducted an interview may write this report. (Exhibits 13 and 25; Administrative Notice)

23. In writing the one and one-half page report, Dr. Madonna's role was to review Dr. Cross's conclusions and to double check the test results. Dr. Madonna's report quotes from Dr. Cross's interview notes as well the 16PF test results. Dr. Madonna's report states in part,

This applicant at this time **does not qualify** for the position of corrections officer for the Department of Correction. Test and interview data strongly suggests(sic) that this applicant lacks the interpersonal resilience to interact effectively with inmates and coworkers in a manner which would insure effective accomplishment of the mission, her safety, that of inmates, as well as co-workers.
(Exhibit 8, p. 2)(emphasis in original)

The report is dated May 15, 2012. (Testimony of Dr. Madonna; Exhibit 8)

24. Dr. Madonna, in a letter dated May 13, 2013, informed Karen Hetherson, DOC's then Assistant Deputy Director, that Ms. St. Amand "does not possess the psychological qualifications for the position of corrections officer for the Department of Correction."⁶
(Testimony of Dr. Madonna; Exhibit 7)

⁶ The reason Dr. Madonna stated that he sent the letter two days prior to the date of the report is that he sends a preliminary report to DOC that is dated earlier than the final report, based on the evaluation of the initial psychologist. (Testimony of Dr. Madonna)

25. In a letter dated June 19, 2013, Ms. St. Amand was informed she was deemed not qualified to be a COI based on the results of her written psychological screening and her interview with a psychologist and that this made her ineligible to proceed in the hiring process. The letter explained that Ms. St. Amand could appeal the decision to Chandler Associates by requesting an evaluation by a psychiatrist by July 2, 2013 and to contact Mr. O’Gara if she intended to so appeal. (Exhibit 6) The Model Plan and the DOC approved plan include the interview by a psychiatrist as a second level screening. (Exhibit 13; Administrative Notice)

26. In a letter dated June 24, 2013, Ms. St. Amand informed Mr. O’Gara of her intention to take a “reexamination” and she requested a copy of the original evaluation done on April 27, 2013. (Exhibit 5)

27. In a letter dated July 1, 2013, Ms. St. Amand was informed that she was bypassed for the position of COI and not considered for the June 2013 Academy because she “failed psychological testing.” The letter was signed by Erin Gotovich, Acting Director of HR Operations at the DOC. (Exhibit 4)

28. Notwithstanding the July 1st bypass letter, Dr. Och performed Ms. St. Amand’s second clinical interview around July 3, 2013. He received the earlier test results, the interview information from Dr. Cross, and Dr. Madonna’s report. Dr. Och’s interview of Ms. St. Amand lasted approximately thirty (30) to forty-five (45) minutes. Dr. Och is a psychiatrist, certified in clinical and forensic psychiatry, who provides professional services to Chandler Associates. (Testimony of Dr. Och and Ms. St. Amand)

29. Dr. Och’s two and one-half page report states, in relevant part,

... [Ms. St. Amand] was soft spoken, but communicated very well. It was evident that she was nervous and shy. She had excessive body and arm movements and

squirmed a lot. She was blushed at the beginning and attributed that to the hot weather and indicated her car had no air conditioning and she [sic] I addressed with her some of her findings during the testing which led to her being deemed not qualified particularly, potential for having ADHD and being highly prone to neuroticism. She did acknowledge that she squirms a lot but denied any difficulties with attention and concentration or organization skills as one would expect to find with ADHD. . . . She agreed that she could be shy and anxious, but denied a lot of the characteristics of obsessive compulsive or highly neurotic disposition, except to say that if someone moves things off her desks [sic] when she is working on them, she gets upset and bothered by that. . . . (Exhibit 3)

Dr. Och's report states further, in part,

... Based on my review of the reports and testing from Chandler Psychological Services and my interview, I concur with the conclusion that Ms. St. Amand at this time does not qualify for the position as a correctional officer for the Department of Corrections based on the same reasoning cited in Dr. Madonna's report dated on May 13, 2013 considering that my interview and review of her work experience and presentation at interview found the same concerns that the testing and previous interview had revealed. Nothing in my interview and review of her work experience found data to make the findings cited as being any different than in Dr. Madonna's findings summarized in his summary conclusion. . . . (Exhibit 3)

30. In a letter dated August 5, 2013, Ms. St. Amand was informed that she was found to be unqualified for the position of COI following her interview with Dr. Och. The letter was signed by Ms. Gotovich. (Stipulated Facts; Exhibit 2).

31. Ms. St. Amand filed the instant appeal on August 30, 2013. (Administrative Notice)

DISCUSSION

Applicable Civil Service 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). Basic merit principles is defined, in part, as,

(a) recruiting, selecting and advancing of employee on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees; (d) retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected; (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.”
(G.L. c. 31, §1)

“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)).

Although not applicable to DOC, G.L. c. 31, § 61A requires municipal appointing authorities considering certain police and firefighter candidates for employment to apply certain medical (including psychological) standards established by HRD. G.L. c. 31, §61A provides in pertinent part,

The administrator, with the secretary of public safety and the commissioner of public health shall establish initial health and physical fitness standards which shall be applicable to all police officers and firefighters when they are appointed to permanent, temporary, intermittent, or reserve positions in cities and towns or other governmental units. Such standards shall be established by regulations promulgated by the administrator after consultation with representatives of police and firefighter unions, and the Massachusetts Municipal Association. . . .

The statute makes it clear that police officers and fire fighters cannot begin to perform their duties of their position until they have successfully taken an initial medical and physical fitness examination and have met the initial medical standards. HRD promulgated HRD Medical

Standards for police and fire fighter candidates pursuant to G.L. c. 31, §61A with the Legislature ratifying. See Carleton v. Commonwealth, 447 Mass. 791, 808. The HRD Medical Standards for psychological screening require municipal appointing authorities to identify disorders, conditions, or certain substance problems, some of which are automatic disqualifiers, others of which may disqualify a candidate if it prevents him or her from performing the essential functions of the job, for which no reasonable accommodation is available.⁷ In Boston Police Department v. Kavaleski, 463 Mass. 680 (2012), the Supreme Judicial Court found that, “[h]er [the psychologist’s] sole task was to determine whether Kavaleski had a psychiatric condition that would prevent her from performing, even with reasonable accommodation, the essential functions of the job.” 463 Mass., 694-95 (emphasis added). Although G.L. c. 31, § 61A does not apply to corrections officer candidates, G.L. c. 31, § 5(d) grants HRD considerable authority, for example, “[t]o evaluate the qualifications of applicants for civil service positions.” However, there appears to be no objective standard established by regulation or caselaw for assessing the psychological evaluation of correction officer candidates.

Analysis

DOC states that Ms. St. Amand failed the psychological evaluation based on her test scores and interviews with a psychologist and, subsequently, a confirming psychiatrist. Specifically, DOC asserts that the testing and interviews determined that she was “not qualified for the position of Correction Officer I at this time.” Exhibit 2. To this end, DOC relied on a psychological screening plan approved by HRD in February 2012. HRD’s letter approving DOC’s psychological evaluation plan does not cite any statutory or regulatory authority in this regard, nor does the Model Plan cite any statutory authority. That said, G.L. c. 31, § 5(d) grants

⁷ The Medical Standards do not refer to HRD’s Model Plan, nor does the Model Plan refer to the Medical Standards.

HRD considerable authority to evaluate the qualifications of applicants for civil service positions, which could reasonably be interpreted to include assessing the psychological qualifications of correction officer candidates since the job of a correction officer involves regular exposure to especially stressful conditions. In approving DOC's psychological screening plan, HRD authorized DOC to apply an approved version of the Model Plan, which Model Plan is similar to the one HRD developed for police and firefighter candidates. Since the statute (G.L. c. 31, § 61A) under which the Model Plan was developed does not apply to DOC, application of the Model Plan to DOC is unsupported by the objective standards provided by the Medical Standards promulgated pursuant to G.L. c. 31, 61A and the Supreme Judicial Court's ruling in Boston Police Department v. Kavaleski, 463 Mass. 680 (2012). In the absence of such objective standards, it is important, at a minimum, that DOC's psychological screening of candidates is internally consistent and consistently applied. Otherwise, such screening is contrary to basic merit principles.

DOC avers that it bypassed the Appellant because her psychological evaluation showed, *inter alia*, that she has a high probability of ADHD without testing her therefor, low ego strength, she self-identified as extremely shy, and she has low communication and analytic skills. While Ms. St. Amand failed to answer some of the written narrative questions and provided insufficient reasons for failing to complete that part of her evaluation, the statements on which DOC relies to assert that she is not psychologically qualified have not been adequately shown to preclude her from performing the essential functions of a correction officer, especially in view of other statements in Ms. St. Amand's psychological evaluation and her highly positive references and background report.

DOC's evaluation process, leading to its conclusion that Ms. St. Amand was not qualified to be a correction officer, was flawed in a number of ways. First, DOC's approved plan conflicts with its regulations (dated October 2012, which is many months after HRD approved DOC's plan) with regard to the type of initial tests to be administered to candidates. In addition, the goals of the DOC approved plan and DOC's regulations are inconsistent. Specifically, the DOC approved plan states that the goal of the psychological evaluation is to detect "any serious psychological disorders or characteristics that would render a candidate unable to perform with reasonable accommodation the essential functions of the public safety position for which the candidate is being considered." DOC Approved Plan (emphasis added). However, the DOC regulation concerning psychological evaluation of candidates states that its purpose is to determine, "whether candidates have psychological or character disorders that would render them unable to perform the required duties of the position in a manner which could comprise public safety" Ex. 25 (emphasis added). Next, it appears that DOC did not administer to Ms. St. Amand the IPI and Rotter tests referenced in its regulation with regard to psychological screening. Instead, it administered the MMPI-2, the 16PF, and the LHQ to Ms. St. Amand. The initial administration of the MMPI-2 and the 16PF complies with HRD's Model Plan and DOC's approved plan. However, no other tests are allowed during the initial stage of a psychological evaluation. Id. Further, Dr. Madonna wrote the psychologist report, as opposed to Dr. Cross, who conducted Ms. St. Amand's initial interview and reviewed her test results. Although this conforms to the DOC approved plan, which states that it is Dr. Madonna who makes the psychological finding whether a candidate has a "psychological disorder or characteristic" that would prevent him or her from performing the essential functions of the position, it removes the decision from the psychologist who conducted the interview and,

therefore, directly observed and evaluated the candidate's responses and behavior during the interview. In addition, neither Dr. Cross, Dr. Madonna, nor Dr. Och adequately supported their statements, nor indicated how their statements showed that Ms. St. Amand could not perform the essential functions of a correction officer. Nor did the Doctors explain whether a reasonable accommodation was possible. Dr. Och's report states, in sum, that Ms. St. Amand was shy and anxious and that, based on the reports and testing from Chandler Associates and his own interview of Ms. St. Amand, he agreed with the conclusion (reached by Dr. Madonna, who did not interview Ms. St. Amand) that Ms. St. Amand does not qualify for the position of correction officer at this time. Exhibit 3. Moreover, although Dr. Och may have been an approved psychiatrist when he evaluated Ms. St. Amand, the DOC approved plan specifically provides that "only" Drs. Carl Fulwiler and/or Dr. Eugene Goldwater, as board-certified psychiatrists, will conduct the psychiatrist's interview and evaluation of the candidate. DOC approved plan, p. 5. Finally, although DOC arranged for a second interview of Ms. St. Amand, as required by its approved plan, it had already sent her a bypass letter, giving the appearance that it had made up its mind about her candidacy and that the second interview was futile.⁸

Conclusion

Accordingly, for the reasons stated above, DOC has not provided reasonable justification for its decision to bypass Ms. St. Amand for appointment as a Correction Officer I based on her psychological screening. The decision to bypass Ms. St. Amand is hereby overturned and her appeal under Docket No. G1-13-193 is hereby *allowed*.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the state's Human Resources Division (HRD) or DOC in its delegated capacity shall

⁸ The second interview was to have been, and should be automatic, pursuant to the DOC plan.

- Place the name of Rebekah St. Amand at the top of any current or future Certification for the position of Correction Officer I until she is appointed or bypassed.
- If Ms. St. Amand is appointed as a Correction Officer I, she shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 00415. This retroactive civil service seniority date is not intended to provide Ms. St. Amand with any additional pay or benefits including creditable service toward retirement.

Civil Service Commission

Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on September 4, 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:

Tena Kerns, Esq. (for Appellant)
Jeffrey Bolger (for Appointing Authority)
John Marra, Esq. (HRD)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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REBEKAH ST. AMAND,
Appellant

vi.

G1-13-193

DEPARTMENT OF CORRECTION,
Respondent

CONCURRING OPINION OF CHRISTOPHER BOWMAN

I concur with the conclusion of Commissioner Ittleman to allow Ms. St. Amand's bypass appeal, but for somewhat different reasons.

The decision relies on two broad reasons for allowing the bypass appeal: alleged procedural flaws; and substantive reasons related to the actual psychological evaluation.

With one exception, I do not believe there were any material procedural errors here and, in the one instance where there was, it did not prejudice Ms. St. Amand. DOC appropriately relied on an HRD-approved plan to conduct the psychological evaluation here. I do not believe there is any material conflict between DOC's regulations regarding such evaluations and the HRD-approved plan, which referenced more current, and widely accepted, written examinations.

I also am not troubled (at all) that Dr. Madonna signed off on the report completed by the first-level screener, Dr. Cross. Both of these mental health professionals meet the qualifications outlined in the HRD plan and, as the testimony reflects, that first-level review did indeed rely on the first-hand observations of Dr. Cross, who conducted the interview. Similarly, I find nothing problematic with Dr. Och's role as the second-level reviewer here. He is a board-certified

psychiatrist and thus meets the qualifications to perform this function, for which he provided detailed testimony before the Commission.

I do share Commissioner Ittleman's concern regarding DOC's decision to require candidates to file an "appeal" if they wish to receive a second-level review after receiving an unfavorable decision from the first-level reviewer. A second-level review in such cases is required by the HRD plan and DOC should facilitate that review automatically – and not through a contrived appeal process that is not permitted. Here, however, it is undisputed that Ms. St. Amand did indeed receive a second-level review and, thus, she was not prejudiced by this procedural error.

That turns to the more substantive issue of whether the results of the psychological evaluation were sufficient to rescind Ms. St. Amand's conditional offer of employment, which I believe is a relatively close call.

One of the many requirements of a Correction Officer is the ability to "make decisions and act quickly in emergency and dangerous situations." (Exhibit 11). The written portion of the psychological evaluation showed that Ms. St. Amand may have difficulty in making decisions in stressful or unstructured situations. Prior to his oral interview with Ms. St. Amand, Dr. Cross discovered that, as part of the psychological examination process, an inherently stressful undertaking, Ms. St. Amand failed to complete portions of a written questionnaire regarding her medical history and alcohol use. When asked by Dr. Cross about the failure to complete these critical parts of the questionnaire, Ms. St. Amand stated that she mistakenly thought she had answered all of the questions. She later testified before the Commission that she didn't complete those portions because she was tired and hungry.

As part of his interview with Ms. St. Amand, Dr. Cross observed, among other things, that Ms. St. Amand was unusually nervous, had racing speech and interrupted him several times while he

was asking questions. In general, he observed that Ms. St. Amand's emotions seemed to block her ability to give an answer. While not cited by the mental health professionals, the record also shows that Ms. St. Amand, as part of her application process, failed to follow straight forward instructions when she did not list the two (2) years she attended college in the education section or the four (4) years she was employed at a restaurant in the employment section.

As a result of Dr. Cross's concerns about whether Ms. St. Amand could perform the duties and responsibilities of a Correction Officer, Ms. St. Amand was eventually interviewed by the second-level reviewer, Dr. Och. Dr. Och's observations of Ms. St. Amand were markedly different from those of Dr. Cross in certain respects. Specifically, Dr. Och found that Ms. St. Amand had good communication skills and had no problems answering his questions.

None of the mental health professionals involved in the review process, including Dr. Cross and Dr. Och, were able to identify any instances in Ms. St. Amand's prior work or personal history where Ms. St. Amand was unable to make decisions in stressful situations. Rather, the only evidence in the record, including interviews with prior supervisors, appears to show the opposite.

Based on Dr. Och's own (positive) observations of Ms. St. Amand during the second level review, the absence (outside of the application process here) of any history of being unable to make decisions in stressful situations, I concur with decision to allow the appeal.

I feel compelled, however, to note that, based on my review of the record, including a review of the testimony of all three (3) mental health professionals involved here, there is no evidence that any of these individuals had a personal bias or animus toward Ms. St. Amand. Rather, in my opinion, they conducted a thorough, fair and impartial psychological review which was limited

to determining whether Ms. St. Amand showed any psychological disorders or characteristics that prevented her from performing the stressful duties of a Massachusetts correction officer.

/s/ Christopher Bowman