

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

DOUGLAS McDADE

Appellant

v.

Case No.: G1-15-14

**DEPARTMENT OF
CORRECTION,**

Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Department of Correction to bypass Mr. McDade for appointment as a Correction Officer I is affirmed and Mr. McDade's appeal under Docket No. G1-15-14 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on May 28, 2015.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chairman

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:

Douglas McDade (Appellant)

Joseph Santoro (for Respondent)

Edward McGrath, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Douglas McDade,

Appellant

v.

Docket Nos. **CS-15-84; G1-15-14** (Civil
Service Commission)

Dept. of Correction,

Respondent

Dated:

Appearance for Respondent:

Joseph S. Santoro

Labor Relations Advisor

Dept. of Correction

P.O. Box 946, Industries Drive

Norfolk, MA 02056

Appearance for Appellant:

Douglas McDade, *pro se*

Administrative Magistrate:

Sarah H. Luick, Esq.

Summary of Tentative Decision

The Dept. of Correction had reasonable cause to bypass Douglas McDade for the position of Correction Officer I based on conduct that led to his termination as a Correction Officer I with the Plymouth County Sheriff's Department, and based on Mr. McDade's failure to provide his full prior employment record in his job application and to address that failure accurately. I recommend affirming the decision of the Dept. of Correction to bypass his appointment.

TENTATIVE DECISION

Pursuant to G.L. c. 30, § 2(b), the Appellant, Douglas McDade, timely appealed to the Civil Service Commission (CSC), the decision of the Dept. of Correction (DOC), bypassing him for an original appointment to the position of Correction Officer (CO) I. A pre-hearing conference was held before the CSC on February 3, 2015, and a hearing was held March 6, 2015,

at the offices of the Division of Administrative Law Appeals (DALA) at One Congress Street, 11th Floor, Boston, MA 02114.

At the DALA hearing, various documents were admitted into evidence. (Exs. 1 – 11.) The hearing was digitally recorded. DOC presented the testimony of James O’Gara, DOC Personnel Analyst III. Mr. McDade testified on his own behalf. DOC filed a pre-hearing memorandum. (Ex. A.) Both parties made post-hearing arguments.

FINDINGS OF FACT

Based on the documents entered into evidence, the testimony presented, and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. Douglas McDade, born in 1979, is a Carver resident, married with a six year old and another child who was soon to be born at the time of the hearing. After graduating from Middleboro High School, he served in the US Marine Corps between June 1998 and December 2002 and received an honorable discharge. While in the military, he attended a Military Police Academy and Marine Security Guard School. (Ex. 6. Testimony of McDade.)
2. Between August 2004 and September 2005, Mr. McDade worked for the Christmas Tree Shops in a loss prevention position, and was responsible for monitoring the entrance and exit of motor vehicles and to watch “for criminal acts and rule infractions.” He left this position to take a different job. (Ex. 6. Testimony of McDade.)
3. Mr. McDade worked for the Plymouth County Sheriff’s Department as a CO I starting in October 2006. He performed full correction officer duties of providing care, custody, and monitoring of the activities of inmates, including routinely conducting searches for contraband and doing inmate counts. He had no formal discipline on his record during his six years in this position. A fellow CO who had started work at the Sheriff’s Department when Mr.

McDade did and who is now a Lieutenant, found Mr. McDade to be a worker who was “dependable and handled stress well, and “always did his job and was squared away.” (Exs. 6 & 8. Testimony of McDade.)

4. On October 17, 2012, Mr. McDade had completed his 11:00 PM to 7:00 AM regular shift and returned home. He then took his daughter to school and went to his gym. Wearing shorts, Mr. McDade left the gym and drove to a Middleboro Hannaford’s store to get some groceries and other items. He was tired, and his plan was to do this shopping and then go home to sleep before the start of his shift at 11:00 PM. He carried a shopping basket as he went through the store. He began placing items in his shopping basket including a package of razors costing \$33.49. As he shopped more, he realized that he would be putting more onto the credit card he was going to use than he felt comfortable doing. He still had more shopping to do so he put the package of razors into one of his short’s pockets. He had his wallet and his cell phone in the other pocket. He was going to include the razors in his purchase if the amount of the other groceries wasn’t too much. He reached the store check-out and went through the purchasing process without ever removing the package of razors from his pocket. He proceeded out the store and to his car in the store parking lot. At this time, he was approached by a store employee asking that he come back into the store. Mr. McDade was escorted to a side room in the store, and asked to empty his pockets. When Mr. McDade said that he had not intended to steal the razors but had forgotten the package was in his pocket, the store employee said to wait for the police to tell his story. (Testimony of McDade.)

5. Middleboro Police Officer Stephen Nelson responded at the Hannaford store about 12:30 PM. The Hannaford Store employee informed Officer Nelson that Mr.

McDade was seen shoplifting the razors on the store's surveillance film. Officer Nelson spoke alone to Mr. McDade. Mr. McDade answered Officer Nelson's questions giving his name and stating he was a Plymouth County Sheriff CO. Mr. McDade showed his Sheriff's Department badge. Officer Nelson asked him, "Why he would be doing such a stupid thing being a correction officer." Mr. McDade responded that he had never stolen anything, and that he had lacked enough funds to cover the cost of the razors. Due to Hannaford's policy of prosecuting shoplifters, Officer Nelson informed Mr. McDade that he would be summonsed to court for shoplifting merchandise with a value under \$250. Mr. McDade also signed an agreement that he would not return to this Hannaford store property for a year. (Exs. 8, 9 & 10. Testimony of McDade.)

6. Mr. McDade did not inform his Plymouth County Sheriff's Department supervisor or superiors, or report to them in writing the encounter with the police at the Hannaford store. He appeared for his regularly scheduled 11:00 PM shift that evening. He had decided that he would report this incident in person to his head supervisor who was scheduled to be at work at 8:00 AM. When Mr. McDade was offered to work the next shift, he began working it from 7:00 AM to 3:00 PM. He did not leave his shift in order to report the incident, deciding he to wait to report the encounter with police and the criminal charges once this second shift ended. He thought he could wait 24 hours to report this incident, although he was aware of the DOC rule to report such incidents to his superiors. He felt humiliated and embarrassed about the incident and wanted as few people as possible to know about it. (Exs. 8 & 10. Testimony of McDade.)

7. Rules and Regulations of the Plymouth County Sheriff's Department, covering "general employee conduct," prohibit

unlawful or improper conduct off the premises or during non-working hours which affects the employee's relationship to his/her job, fellow employees, supervisors or the Department's services, property, reputation or goodwill in the community.

The rules further require the employee to

report immediately in writing to the Sheriff, via your Department Head, any involvement with law enforcement officials pertaining to any investigation, arrest or court appearance and to promptly and truthfully to any questions or interrogatories.

(Exs. 8 & 10. Testimony of McDade.)

8. At about 10:00 AM while working the second shift on October 18, 2012, Mr. McDade was summonsed by superior officers Captain Jeffrey Sampson and Lieutenant Giove. The Plymouth County Sheriff's Department had learned about the incident from the Middleboro Police Department. With his union representative present, Mr. McDade was questioned by the two superior officers about the incident. Mr. McDade was also ordered to explain what happened in his own report about the incident. Captain Sampson completed a report on this interview. He described Mr. McDade's account as follows:

He stated that he was shopping and initially put the razors in his basket. As he continued shopping he removed the razors and put them in his pocket ... [H]e was unsure if he was going to buy them and didn't want them to get buried in his basket ... [H]e wanted to keep his hands free to continue shopping ... [H]e had the razors in one pocket and ... cell phone and credit card in the other ... [H]e didn't even realize that he still had them in his pocket until he was approached by the loss prevention supervisor upon exiting the store.

Mr. McDade was asked at this interview why he had not reported the incident "right away" to his superiors. Mr. McDade explained:

[H]e came in for his normal shift that night (11-7) and prior to leaving he was going to report it to the Assistant Superintendent. He got asked for overtime for the 7-3 shift and was waiting until his shift ended to report it.

Mr. McDade was asked at this interview if he was having “any problems with money, drug dependency or gambling issues.” He denied he was having any such problems. He was also asked if he had ever had this occur before and he told them no. The interview ended. (Ex. 10. Testimony of McDade.)

9. Mr. McDade submitted his report about the incident on October 18, 2012. He explained that he ended his shift at 7:00 AM on October 17, 2012, went home, took his daughter to school, and then went to his gym. Although he felt tired and “a little rushed to return home and get sleep,” he went to the Hannaford store in Middleboro for some groceries. He explained that he carried a shopping basket as he went through the store, and put a package of razors in the basket along with “several different items.” He decided he “might not purchase the razors depending on how many more items ... [he] was going to get.” He explained that he put the package of razors in his pocket “to keep hands free to grab other items and to keep the razors separate and not to get buried by other items because it was possible ... [he] was not going to purchase them that day.” Mr. McDade explained that “due [to] lack of sleep and being a little rushed ... [he] completely forgot they were in ... [his] pocket and to put them back.” He acknowledged being “approached by loss prevention to come back into the store” without being given a reason why. Mr. McDade explained that he was asked to empty his pockets by the Hannaford store employee, and then “realized I still had the razors.” He tried to tell the Hannaford store employee why they were in his pocket, but the employee told him he did not believe him and not to discuss this further. Mr. McDade described:

[T]he police showed up and I explained ... what happened. The officer informed me I would receive a summons in the mail with a court date.

Mr. McDade did not include in his report that he informed the police officer he was a CO

with the Plymouth County Sheriff's Department. He noted that he had no money or gambling or drug problems. He explained his delay in not immediately reporting the incident:

I had intentions of reporting this incident today. I did not report this on my shift last night due to this being an embarrassing and humiliating incident and wanted to keep it between as least amount of people as possible. I wanted to report it directly to the assistant superintendent after my shift. I then picked up an overtime shift and thought it best at that time to wait for the completion of that shift. I was then called in by Captain Samson before I had the chance to report it to the assistant superintendent.

(Ex. 10. Testimony of McDade.)

10. Effective November 6, 2012, Mr. McDade was terminated. The Plymouth County Sheriff's Department cited Mr. McDade's violation of the Sheriff's Department regulations requiring immediate reporting in writing to superiors of "any involvement with law enforcement officials," and his failure to respond "fully, promptly and truthfully" to the information concerning the Hannaford incident. The Sheriff's Department concluded, in light of the charge of shoplifting;

[Y]ou falsely stated that you placed the razors in your pocket while shopping for other items, to keep them separate, since you were unsure whether you had enough money to purchase them.

Mr. McDade was found to have engaged in "a serious failure to uphold the oath of your office." (Ex. 10. Testimony of McDade.)

11. Mr. McDade grieved the termination decision, but the termination was upheld. He appeared in District Court for a Magistrate's hearing on November 14, 2012. His case was dismissed by the Clerk Magistrate. (Exs. 8 & 9. Testimony of McDade.)

12. Mr. McDade was employed from July 2013 to December 2013 as a laborer for BBL Builders, a roofing and carpentry company. When the company needed

carpenters, he was let go. Mr. Barros, his employer, found Mr. McDade to always show up on time with good attendance. Mr. McDade had no formal discipline while working at BBL Builders. Mr. Barros found Mr. McDade “had a good attitude and got along well with the rest of the crew members.” (Exs. 6 & 8. Testimony of McDade.)

13. Mr. McDade worked for Lima Express Company between November 2013 and January 2014. He worked on Saturdays as a driver delivering packages. Lima Express contracted with Federal Express to deliver packages using Federal Express motor vehicles with the Lima Express drivers in Federal Express uniforms. Mr. McDade’s pay on any Saturday varied depending on the number of packages he delivered. He received training to do this work from both Lima Express and Federal Express. His boss was Gus Lima. Mr. Lima found Mr. McDade to be a “responsible” worker, and he never disciplined Mr. McDade. He was a seasonal employee only, but if the need arose again he would hire Mr. McDade. (Exs. 6 & 8. Testimony of McDade.)

14. Mr. McDade has worked for Best Buy in Brockton as a loss prevention employee from June 2014 to the present. Mr. McDade’s supervisor found him to be “an ok employee but doesn’t stand out.” He found he “does good work ... [although] doesn’t always show up on time,” explaining that Mr. McDade “changes his hours on his own and when he is scheduled to come in for training, he shows up late as he feels it doesn’t pertain to him.” The supervisor noted that Mr. McDade had been given a written status of being tardy, but he had no formal discipline. The supervisor noted that Mr. McDade was working twenty to thirty hours a week due to his family’s needs. (Exs. 6 & 8. Testimony of McDade.)

15. Mr. McDade took the civil service examination to become a DOC CO I on

March 8, 2014. DOC requisitioned a certified list of candidates for the position of CO I and a list was established. On August 5, 2014, Requisition #02212 was issued. Mr. McDade ranked 32 on the list, one of 15 with that rank. Mr. McDade and the others on the list were sent a postcard to respond with their willingness to accept a CO I appointment. Mr. McDade responded yes and began the hiring process along with many other candidates. At the end of the full hiring process, 97 CO I appointments were made. Typically, when DOC seeks to hire for this position, there can be as many as 100-150 hired for eighteen facilities. DOC engages with each candidate and makes decisions on whether or not a candidate will continue in the hiring process at various times. Involved is securing background information from the candidates reaching any CORI and Registry of Motor Vehicle record. There is a physical abilities test done if the candidate receives a physician's note allowing the person to undergo the test. If that test is passed then the candidate has an interview in front of a panel of three DOC skilled officers who ask each candidate standard questions. If that phase of the hiring process is passed, then the next phase is to have a DOC officer, a trained investigator, do a background check. Mr. McDade reached the level of a background investigation check. By that time, he had completed his job application and had his other background documents completed and reviewed. (Exs. 4 & 7. Testimony of O'Gara & McDade.)

16. When the candidate completes the application, (s)he is warned:

False or materially inaccurate information on the application will be cause for disqualification for employment or dismissal at any time during employment.

Mr. McDade listed on the application under "Employment Desired" that he had worked as a CO October 2006 to November 2012 in the Plymouth County Sheriff's Department,

that he wanted to be a DOC CO I, and was able to start the job right away. He listed his education, military experience and personal information. He listed his work history back to his 2004 employment with the Christmas Tree Shop, but he did not list his work for Lima Express Company as a driver delivering Federal Express packages. He listed his other employment with Best Buy, BBL Builders, and the Plymouth County Sheriff's Department. He acknowledged having been terminated from his job as a CO with the Plymouth County Sheriff's Department due to having "outside contact with police" listing the date of October 18, 2012. He completed the application on August 17, 2014. (Ex. 6. Testimony of McDade.)

17. DOC Lieutenant John Haskell performed a background investigation on Mr. McDade in September 2014. He had experience doing such investigations. He contacted the employers Mr. McDade listed in his application. He spoke to Mr. McDade's supervisor at the time at Best Buy, Mr. Barros of BBL Builders, and with the Plymouth County Sheriff's Department Deputy Director of Human Resources Mark Gabriel. When Lt. Haskell conducted a home visit as part of the investigation process, he asked Mr. McDade about gaps of time when he held no employment. During one gap, Mr. McDade told him about working for Federal Express as a seasonal employee. He told Lt. Haskell that he had recently been contacted by his past supervisor, Gus Lima, and asked to return to do more of this work for Federal Express. Mr. McDade provided Lt. Haskell with Gus's telephone number. Mr. McDade did not provide any reason for not including this work in his application other than noting it was seasonal work, and he did not explain that he actually was employed by Lima Express Company. When Lt. Haskell spoke to Mr. Lima, he learned that Mr. McDade had not worked for Federal Express but for Lima Express. Mr. Lima explained that his company contracts with Federal Express to do package deliveries. Lt. Haskell found Mr. McDade deceitful and less than truthful in failing to

include this employment in the application and for improperly describing it as work for Federal Express. (Ex. 8. Testimony of O’Gara.)

18. In terms of investigating the termination from the CO job with the Plymouth County Sheriff’s Department, Lt. Haskell obtained background documents from the Sheriff’s Department that included Middleboro Police Officer Nelson’s report, the criminal charges, Captain Sampson’s report, the report Mr. McDade produced for the Sheriff’s Department, and the termination letter the Sheriff’s Department issued to Mr. McDade. Lt. Haskell produced a report on his investigation of Mr. McDade on October 3, 2014. (Ex. 8. Testimony of O’Gara.)

19. Lt. Haskell’s background report on Mr. McDade was next reviewed by the DOC staff responsible for the hiring process, in particular, by Personnel Analyst III James O’Gara, in charge of running this hiring process. Mr. O’Gara reviewed Lt. Haskell’s investigation report along with Mr. McDade’s application. (Ex. 8. Testimony of O’Gara.)

20. Mr. O’Gara was troubled by Mr. McDade’s termination from the Plymouth County Sheriff’s Department and by the underlying behavior that led to the termination. Mr. O’Gara relied on the investigation report and the documents about this event. Mr. O’Gara was concerned about Mr. McDade’s failure to report the shoplifting charge and the encounter with Officer Nelson in a timely manner as he was required to do by rules of conduct governing his work as a Plymouth County Sheriff’s Department CO. Mr. O’Gara knew that DOC COs are held to similar rules and regulations about immediately needing to report in writing such events to their superiors. Mr. O’Gara was troubled by Mr. McDade’s failure to reveal his employment with Lima Express in his application and for failing to acknowledge this was not employment by Federal Express. Mr. O’Gara was troubled by Mr. McDade offering no other reason for leaving this work off his application besides saying it was seasonal work. (Ex. 8. Testimony of O’Gara.)

21. As he is required to do as the next step in the hiring process, Mr. O’Gara reached the decision that Mr. McDade should not be hired. Mr. O’Gara’s next step in the process was to meet with his direct supervisor, Erin Gotovich, the Acting Director of DOC’s Human Resources Operations. He provided Ms. Gotovich with the documents he used to evaluate Mr. McDade’s candidacy. Although they both discussed Mr. McDade’s candidacy, Ms. Gotovich made her own evaluation, and decided Mr. McDade should not be hired and should be formally bypassed for appointment to the position of DOC CO I. A Civil Service Non-Selection form was completed and signed by both Ms. Gotovich and by DOC Deputy Commissioner of the Administrative Services Division Paul DiPaolo who agreed with the bypass decision. (Ex. 3. Testimony of O’Gara.) The form that they both signed contained the following reasons for the bypass:

10/6/14 Failed Background Investigation based on prior work history at Plymouth County Sheriff’s Department that ended in a termination. Employment history documents reviewed from Plymouth County Sheriff’s Department included a termination letter ... to candidate dated November 6, 2012, a letter dated October 29, 2012 to Grievance Administrator denying candidate’s grievance, and the candidate’s Intelligence Report dated October 18, 2012. Candidate was less than truthful during investigation process. He told the background investigator he worked for Fed Ex. The investigation revealed that the candidate did not work for Fed Ex but for Lima Express, Inc. Applicant omitted his employment history at Lima Express on application.

(Ex. 3.)

22. As a result of these determinations, by letter of December 22, 2014, Mr. McDade was informed of the decision that he would not be appointed a DOC CO I. Deputy Commissioner DiPaolo signed the letter. The reasons given for the failure to be appointed were the same as found in the Civil Service Non-Selection form previously signed by Ms. Gotovich and Mr. DiPaolo. Mr. McDade was provided with his right to appeal the decision to the CSC in the letter, and he filed a timely appeal. (Exs. 1 & 2.)

23. About 54 candidates who ranked below Mr. McDade on the certified list were appointed a DOC CO I. (Ex. 4. Testimony of O’Gara.)

Conclusion and Recommendation

DOC pursued a proper and fair hiring process in evaluating Mr. McDade for the position of CO I. No evidence demonstrated that he was in any way misled or treated unfairly during the hiring process, including within the background investigation done by Lt. Haskell. No evidence showed that Mr. McDade was targeted about failing to list prior employment in his application, or that no other candidates were asked about gaps in their work histories. The record shows that DOC used reliable documents and evaluations secured within the hiring process to decide to bypass Mr. McDade. I relied on Mr. O’Gara’s credible and forthcoming account of the hiring process. DOC has shown that it had reasonable justification not to hire Mr. McDade and to hire candidates who were ranked below him on the certified list.

G.L. c. 31, § 1 defines basic merit principles in pertinent part as follows:

(a) recruiting, selecting ... employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; ... (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.

When an Appointing Authority bypasses an otherwise eligible candidate it must provide both a reasonable justification for doing so, as well as proof that such a justification could be applied fairly to all candidates. *Brackett v. Civil Service Commission*, 447 Mass. 233, 241 (2001); *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). In hearing bypass appeals, the Civil Service Commission must determine whether the Appointing Authority

has “sustained its burden of proof that there was reasonable justification for the action taken.” *Cambridge v. Civil Serv. Commission*, 43 Mass. App. Ct. at 304. Reasonable justification requires that the Appointing Authority based its actions on adequate reasons, supported by creditable evidence, guided by common sense, and weighed by an unprejudiced mind. *See Wakefield v. First District Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928); *Civil Serv. Commission v. Municipal Court of Boston*, 359 Mass. 214 (1971). In sustaining its burden of proof, the Appointing Authority must prove its justification by a preponderance of the evidence. G.L. c. 31, § 2(b).

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates. The Civil Service Commission cannot substitute its views and preferences for those of the Appointing Authority. The Civil Service Commission’s role is to “protect against overtones of political control ... and assure neutrally applied public policy.” *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 303. So long as the Appointing Authority provides a sound and sufficient reason for the bypass and applies its policies equally, the Civil Service Commission should not intervene.

It is not for the Civil Service Commission to disagree with DOC’s assessment of Mr. McDade’s prior discipline and his failure to adequately disclose his work history on his application as egregious enough to disqualify him from appointment. There would need to be evidence of arbitrary action in disqualifying Mr. McDade, and no such evidence has been shown. Rather, Mr. O’Gara credibly explained how after an experienced DOC Investigator produced his background report on Mr. McDade, a discussion occurs between himself and the Human Resources Director to decide whether or not there are solid grounds to disqualify the candidate,

who by this time has also had the opportunity to explain his application information to the Investigator. This is a process that is followed for each job candidate for CO I.

Mr. McDade relies on good recommendations from his references, his six years of good work for the Plymouth County Sheriff's Department, and that he never intended to shoplift anything. He argues his background, training, and work experience demonstrates his ability to perform well in the job of a DOC CO I. Mr. McDade argues that just focusing on the negatives in his work history is unfair and provides an unbalanced view of his candidacy.

These arguments do not overcome the reasonable justifications DOC has to disqualify Mr. McDade from appointment as a result of what the background investigation and his application information uncovered. He faced criminal charges after an encounter with a police officer and failed to timely report that to the Sheriff's Department as required. That occurred about two years prior to the bypass decision. The rule he failed to satisfy is similar to a rule he would be held to as a DOC CO I. In regard to calling his seasonal package delivery work as work for Federal Express and not for Lima Express, if that was the main reason for the bypass, it would be insufficient. He wore a Federal Express uniform and drove a Federal Express truck. His troublesome act was to leave this work experience off his application in light of the clear instructions he received in the application not to do that.

For these reasons, I conclude the Civil Service Commission should affirm the DOC decision to bypass Mr. McDade for appointment to a CO I position.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Sarah H. Luick, Esq.
Administrative Magistrate

Dated: