

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RICHARD MACHNIK,
Appellant,

v.

G1-12-83

DEPARTMENT OF CORRECTION,
Respondent.

Appearance for Appellant:

Pro Se
Richard Machnik

Appearance for Respondent:

Earl Wilson, Esq.
Department of Correction
Industries Drive: P.O. Box 946
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION

On March 5, 2012, the Appellant, Richard Machnik (Mr. Machnik), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Massachusetts Department of Correction (DOC) to bypass him for original appointment as a permanent, full-time Correction Officer I (CO I). A pre-hearing conference was held on April 24, 2012 at the offices of the Commission. A full hearing was held at the same location on November 30, 2012. The hearing was digitally recorded.

Since DOC was reasonably justified in bypassing the Appellant based on his disciplinary record while previously employed at DOC, the Appellant's appeal is dismissed.

FINDINGS OF FACT:

Twenty (20) exhibits were entered into evidence at the hearing. Based on those exhibits, the stipulated facts, and the testimony of:

Called by DOC:

- James O’Gara, Jr., Personnel Officer II, DOC;

Called by the Appellant:

- Richard Machnik, Appellant;

I make the following findings of fact:

1. Mr. Machnik is forty-one (41) years old. He is married with two (2) children and lives in Taunton, Massachusetts. He graduated from Taunton High School and has been self-employed in the construction industry for several years. (Testimony of Mr. Machnik)
2. Mr. Machnik was previously employed as a CO I by DOC from 1991 to 1999. (Testimony of Mr. Machnik)
3. On July 15, 1998, while employed at DOC, Mr. Machnik received a written warning for failing to provide medical documentation related to his use of sick time. (Exhibit 15)
4. On August 21, 1998, Mr. Machnik was suspended for one (1) day for excessive tardiness. (Exhibit 14)
5. On December 1, 1998, Mr. Machnik was suspended for three (3) days for failing to provide medical documentation related to his use of sick time. (Exhibit 13)
6. On December 19, 1998, Mr. Machnik was suspended for five (5) days for failing to provide medical documentation related to his use of sick time. (Exhibit 12)
7. On May 3, 1999, Mr. Machnik received a written reprimand for excessive tardiness. (Exhibit 10)

8. On September 3, 1999, Mr. Machnik was suspended for ten (10) days for continued unsatisfactory attendance and unauthorized absences. (Exhibit 9)
9. On September 23, 1999, Mr. Machnik filed an appeal with the Commission, contesting his ten (10)-day suspension. (Exhibit 18)
10. On October 4, 1999, Mr. Machnik resigned from his position as a CO I at DOC. (Exhibit 3)
11. On July 13, 2000, DOC, in lieu of going forward with a full hearing before the Commission regarding the 10-day suspension, opted to settle the matter and pay Mr. Machnik for four (4) days' pay in exchange for Mr. Machnik withdrawing his appeal with the Commission. (Exhibit 11)
12. On September 28, 2000 and June 10, 2001, Mr. Machnik filed written requests with DOC seeking to be reinstated to his position as a CO I. On both occasions, DOC denied Mr. Machnik's request, citing his prior disciplinary record. (Exhibits 4, 5 6 and 7)
13. On March 21, 2009, Mr. Machnik took and passed a civil service examination for CO I. He received a score of 97. As a result, his name appeared on an eligible list of candidates for CO I. (Stipulated Facts)
14. As part of a 2011 hiring cycle, DOC requisitioned a certification from the state's Human Resources Division (HRD) from which they eventually appointed seventy-five (75) CO Is. Mr. Machnik was ranked 172nd on the certification. Of the seventy-five (75) candidates appointed, twenty-three (23) were ranked below Mr. Machnik. (Stipulated Facts)
15. After successfully completing the Physical Abilities Test (PAT) and the interview process, Mr. Machnik was subject to a background investigation. (Testimony of Mr. O'Gara)

16. James O’Gara is a supervisor within DOC’s Human Resources Department. He has been employed by DOC for approximately six (6) years and his main responsibilities are related to the processing of candidates for civil service positions. (Testimony of Mr. O’Gara)
17. Mr. Machnik’s background investigation was completed by DOC employee Alan Furtado who did not testify before the Commission. (Testimony of Mr. O’Gara)
18. As part of the background investigation, DOC examines an applicant’s employment history. Typically, DOC has a five (5) year look-back period regarding an applicant’s employment history. However, there is no restriction on the look-back period regarding an applicant’s prior employment with a state agency or any public safety-related positions. (Testimony of Mr. O’Gara)
19. Page 8 of DOC’s employment application states: “In the space below list all discipline that you have received from your current and/or previous employers. Also indicate any charge against you for either workplace violence or sexual harassment.” Candidates may then check one of two boxes: 1) “I have never been formally disciplined by an employer”; or 2) “I have been formally disciplined by an employer”. Candidates who check Box 2 are then asked to provide such information as the employer, the date of discipline, etc. On his application, Mr. Machnik checked Box 1, indicating that he had never been formally disciplined by an employer. (Exhibit 20)
20. As part of the background investigation, Mr. Furtado contacted references provided by Mr. Machnik, along with two (2) neighbors and Mr. Machnik’s wife. All of the individuals provided positive feedback about Mr. Machnik. (Exhibit 19)

21. After reviewing Mr. Machnik's employment history at DOC, Mr. Furtado noted in his investigation summary that Mr. Machnik's "DOC history is not good due to sick time suspensions." (Exhibit 19)
22. Mr. O'Gara reviewed the background investigation and forwarded it to DOC's then-Director of Personnel (Alexandra McInnis) who in turn forwarded it to DOC's Assistant Deputy Commissioner of Administration (Karen Hetherson).¹
23. At some point, Mr. O'Gara was informed by Ms. McInnis that Mr. Machnik's prior disciplinary history at DOC made him an unsuitable candidate for appointment and that he should be bypassed. (Testimony of Mr. O'Gara)
24. Mr. O'Gara then prepared a bypass letter for Ms. McInnis's signature, which was received by the Mr. Machnik on January 5, 2012². His timely appeal to the Commission followed. (Exhibit 2 and Stipulated Facts)

LEGAL STANDARD

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other

¹ According to Mr. O'Gara, the Commissioner of the Department of Correction, who is the Appointing Authority, has no role in the review and selection process. Rather, he has delegated that responsibility to the Assistant Deputy Commissioner of Administration and the Director of Personnel. As the Commission recently noted in Ortiz v. Boston Police Department, CSC Case No. G1-12-207 (2012), there is no provision in the civil service law or rules that allows the Appointing Authority to delegate the appointment of civil service employees to others. While the screening and vetting process is appropriately completed by others, it is ultimately the DOC Commissioner who is responsible for authorizing a candidate's appointment to a civil service position and signing off on bypass reasons for non-selected candidates. While it does not affect the outcome of this appeal, DOC, on a going forward basis, should ensure that the Commissioner fulfills this important responsibility.

² As referenced in Manca v. Department of Correction, CSC Case No. G1-12-35 (2012), DOC must, on a going forward basis, provide bypassed applicants with a more detailed description of the reasons for bypass.

things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited.

ANALYSIS

There is no evidence that the decision to bypass Mr. Machnik was marked by political influences or objectives unrelated to merit standards.

Rather, DOC’s decision to bypass Mr. Machnik was based on his disciplinary record while previously employed at DOC from 1991 to 1999. While previously employed at DOC, Mr. Machnik received two (2) written reprimands and four (4) suspensions, all of which were related

to his attendance. While over ten (10) years has passed since Mr. Machnik's prior employment, DOC's decision not to re-hire a former employee with such an extensive disciplinary history is an appropriate exercise of judgment that should not be disturbed by the Commission. This is particularly true when the candidate fails to acknowledge his prior discipline on his application and indicated during this testimony before the Commission that he had forgotten about his disciplinary history. This is not indicative of someone who has seriously reflected on his prior issues with poor attendance and reinforces DOC's well-reasoned decision not to take the risk that such problems would continue if Mr. Machnik were appointed, again, as a correction officer.

Further, Mr. O'Gara credibly testified that while DOC generally looks at an applicant's past five (5) years of employment history, there is no time restriction related to prior employment at a government or public-safety related agency. Mr. Machnik was under the false assumption that DOC never looked back more than ten (10) years, which is not the case.

CONCLUSION

For all of the reasons cited above, Mr. Machnik's appeal under Docket No. G1-12-83 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell, and Stein, Commissioners) on January 10, 2013.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Richard Machnik (Appellant)

Earl Wilson, Esq. (for Respondent)