

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

DANIEL G. MORIARTY,
Appellant

v.

G1-05-442

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

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Framingham, MA 01701

Appointing Authority's Attorney:

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Commissioner:

John J. Guerin, Jr.¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Daniel G. Moriarty, (hereinafter "Appellant") is appealing the decision of the state's Human Resources Division (hereinafter "HRD") to accept the reasons of the Respondent, the Boston Police Department (hereinafter "BPD") as Appointing Authority, bypassing him on November 30, 2005 for original appointment to the position of police officer on the grounds that he was deemed to be psychologically unfit for appointment to the position. The appeal was

¹ John J. Guerin, Jr., a Commissioner at the time of the full hearing, served as the hearing officer. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this decision, including the referenced credibility assessments, which were made by Mr. Guerin.

timely filed. A full hearing was held over two days on September 28, 2007 and December 4, 2007 at the offices of the Civil Service Commission (hereinafter “Commission”). Five (5) audiotapes were made of the hearing, as well as a written transcription. The written transcript was deemed to be the official record of the proceedings. Both parties submitted Proposed Decisions as instructed.

FINDINGS OF FACT:

Based upon the documents jointly entered by the parties into evidence (Exhibits 1 – 23) and the testimony of:

For the Appointing Authority:

- Dr. Julia M. Reade (hereinafter “Dr. Reade”)

For the Appellant

- Daniel G. Moriary, Appellant;
- Lieutenant Frederick M. Winslow (hereinafter “Lt. Winslow”), Boston College Police Department;
- Dr. James C. Beck (hereinafter “Dr. Beck”)

I make the following findings of fact, the first eleven (11) being stipulated facts):

1. The Appellant took and passed the municipal police officer civil service examination.
(Stipulated Fact)
2. The BPD reached the Appellant’s name on Certification No. 250537, and extended to him a conditional offer of employment for the position of permanent full-time police officer. (Stipulated Fact)
3. The offer of employment was contingent upon successful completion of the medical and psychological screening components of the hiring process. (Stipulated Fact)

4. The Appellant met with the BPD's Recruitment Investigations Unit (hereinafter "RIU") and provided them with his Student Officer Application, a completed "Personal Letter of Reference Forms" (Exhibit 9), among other human resources data forms. (Stipulated Fact)
5. The BPD had previously submitted a psychological screening plan to HRD which was approved by HRD in July 2004. (Stipulated Fact and Exhibit 18)
6. The Appellant completed the Minnesota Multiphasic Personality Inventory – 2 (hereafter "MMPI – 2") and the Personality Assessment Inventory (hereafter "PAI") on July 22, 2005. (Stipulated Fact)
7. On September 8, 2005, Consultant Psychiatrist Dr. Reade interviewed the Appellant and found him unqualified for appointment as a police officer. (Stipulated Fact)
8. In a letter dated October 31, 2005, the BPD notified HRD that the Appellant failed to meet the psychological criteria for appointment as a police officer and would be bypassed. The BPD stated that it was relying upon Dr. Reade's second opinion report, a concurrence by Dr. Marcia Scott (hereinafter "Dr. Scott"). (Stipulated Fact and Exhibit 4)
9. On March 14, 2006, HRD accepted the BPD's reasons for bypassing the Appellant. (Stipulated Fact and Exhibit 13)
10. The Appellant filed a timely appeal. (Stipulated Fact)
11. The Appellant has been employed as a Boston College police officer for the Boston College Police Department (hereinafter "BCPD") since May 2001. (Testimony of Appellant and Exhibit 22)

12. Before he was a Boston College police officer, the Appellant worked as a Boston College police dispatcher. (Testimony of Appellant)
13. In order to become a Boston College police officer, the Appellant successfully underwent a screening process that was very similar to, if not exactly the same as, the screening for appointment to the BPD. (Id.)
14. The BCPD is an armed, full-service police department. Its officers have police powers throughout Middlesex and Suffolk Counties and performs many of the tasks performed by municipal police officers. The Appellant has used this authority to effect off-campus arrests within the City of Boston. He has investigated and responded to assaults, narcotics offenses, domestic abuse, sexual assaults, and firearm offenses. He regularly rides with Boston police officers in a marked Boston police cruiser to respond to both college and non-college related off-campus police calls in the City of Boston. (Testimony of Appellant and Lt. Winslow)
15. The Appellant completed full-time standard municipal police academy training, wears a traditional police uniform, and operates a fully marked police cruiser. In addition to having graduated from the municipal police academy, the Appellant is trained and certified by the FAA to carry a firearm while on board an aircraft and certified in police mountain bike patrol. He has also undergone training by the Bureau of Alcohol, Tobacco, and Firearms on how to trace firearms and identify suspects carrying concealed weapons. The Appellant serves on the BCPD's Special Response Team where he is responsible for crowd control. He carries police equipment such as a radio, baton, handcuffs, oleo-resin capsicum (OC) spray, and a firearm. In the line

of duty, he has drawn his firearm and used OC spray to protect himself. (Testimony of Appellant)

16. Lt. Winslow described the campus community as an open one with no gates or restrictions to its access. He explained that Boston College has approximately 14,000 students and 2,000 employees. The jurisdiction welcomes some 5,000 – 6, 000 visitors on a daily basis. That number swells when there are special events such as major college sporting events, concerts or other special gatherings. He characterized the community and its visitors as being “very diverse” and the general age group comprising young adults as being “challenging” for the BCPD to deal with. (Testimony of Lt. Winslow)

17. Both the Appellant and Lt. Winslow testified at the Commission hearing that they believe that BC police officers respond to the same types of calls and face some of the same challenges and stresses as Boston police officers. The Appellant noted that BPD District 14 borders the Boston College campus in Brighton and Lt. Winslow indicated that BCPD officers regularly interact with other police agencies. (Testimony of Lt. Winslow and Appellant)

18. Lt. Winslow described the Appellant’s performance as a Boston College Police Officer as “stellar.” He stated that the Appellant has successfully handled numerous dangerous and high stress police incidents. (Testimony of Lt. Winslow and Appellant)

19. I find Lt. Winslow’s testimony professional and credible. The fact that he described only a professional relationship with the Appellant indicated that he had no motive to be overly positive when evaluating the Appellant’s performance, nor did the

Lieutenant appear to have any negative issues with the Appellant. I find that his neutrality as a supervisor made his testimony all the more reliable. (Testimony of Lt. Winslow)

20. The Appellant testified at the Commission hearing that he has testified in numerous court proceedings and was once commended for his courtroom testimony. (Testimony of Appellant and Exhibit 23)
21. The Appellant submitted positive references from two supervisors and a fellow officer to the BPD as part of his application. (Exhibit 9)
22. On June 8, 2005, the Appellant's name appeared on Certification #250537 for the position of Boston Police Officer. On July 5, 2005, the Appellant signed and submitted his Student Officer Application to the Boston Police Department. (Exhibit 2)
23. After the conditional offer of employment was granted to the Appellant, he underwent the psychological screening.
24. The first step in that screening was the administration of testing. (Exhibit 18)
25. The psychological screening of potential candidates is a critical part of any police department's screening process. The BPD developed a psychological screening plan for all police officer candidates that was approved by HRD and has been in use since July 2004. (Testimony of Dr. Reade)
26. The goal of the BPD's psychological screening process is "to identify candidates who may exhibit any evidence of a mental disorder as described in the Regulations for Initial Medical and Physical Fitness Standards Tests for Municipal Public Safety Personnel (hereinafter "HRD Regulations"), promulgated by the Human Resources

Division” pursuant to the authority of G.L. c. 31, § 61A. (Exhibit 18 and Administrative Notice)

27. The HRD Regulations establish two categories of psychiatric medical conditions labeled as Category A and Category B. A “Category A Medical Condition” is a “condition that would preclude an individual from performing the essential functions of a municipal police officer or present a significant risk to the safety and health of that individual and others.” Category A “psychiatric” medical conditions include “disorders of behavior, anxiety disorders, disorders of thought, disorders of mood, disorders of personality.” There is no evidence in the record of this appeal to indicate that the Appellant’s bypass was based on a Category A Medical Condition. (Administrative Notice)

28. A “Category B Medical Condition” is a “condition that, based on its severity or degree, may or may not preclude an individual from performing the essential functions of a municipal police officer or present a significant risk to the safety and health of that individual or others.” Category B “psychiatric” medical conditions include “a history of any psychiatric condition, behavior disorder, or substance abuse problem not covered in Category A. Such history shall be evaluated based on that individual’s history, current status, prognosis, and ability to respond to the stressors of the job” and “any other psychiatric condition that results in an individual not being able to perform as a police officer.” It appears that the Appellant’s bypass was based on this category of psychiatric medical conditions. (Id.)

29. As part of the BPD psychological screening process, every candidate who is given a conditional offer of employment must take the MMPI-2 and PAI exams. The

candidate must then meet with a 1st Level Psychiatrist. If the candidate is given an unfavorable 1st Opinion, he or she is referred to Dr. Reade for a 2nd Level Screening review. (Stipulated Facts and Exhibit 18).

30. On July 22, 2005, the Appellant was assessed the MMPI-2 and subsequently a Law Enforcement Interpretive Report was generated by computer. (Exhibit 21)
31. On July 22, 2005, the Appellant was administered the PAI exam and, subsequently, a PAI Law Enforcement, Corrections and Public Safety Selection Report was generated by computer. (Exhibit 20)
32. On August 15, 2005, the Appellant met with Dr. Scott, a Psychiatrist retained by the BPD, who conducted a first level psychiatric examination. (Exhibit 17)
33. Before the interview, Dr. Scott reviewed the Appellant's background documents and his MMPI-2 and PAI test scores/results. In her report, she noted that the Appellant's "references from Boston College Police Department are excellent noting helpfulness and reliability." (Id.)
34. Dr. Scott's subsequent report also indicated that the Appellant's MMPI-2 test "read as unrealistically virtuous" and the "PAI presents him as having high risk for integrity problems and moderate psych, job, anger, and alcohol and SA (substance abuse) risk. The interpersonal profile was warm control." (Id.)
35. Dr. Scott's report regarding her evaluation of the Appellant indicated that the Appellant shook her hand politely and, with difficulty, looked directly at her. He spent most of the interview twisting his hands and squirming even before she could ask a question. He smiled rarely, about as much before as after the doctor began to

press him about his thinking. Even initially, she noted that he had a “twisted anxious smile.” (Id.)

36. Dr. Scott asked the Appellant about his educational history. The Appellant told her that he went to Catholic High School in Braintree and started college at the University of Massachusetts, but dropped out about halfway through. When asked why he dropped out, he told Dr. Scott he didn’t know why. After many tries to illicit a response from the Appellant, he finally indicated, “maybe I liked hanging out with my girlfriend more than going to school.” When asked how other people managed a girlfriend and school, the Appellant “smiled a very little smile.” (Id.)

37. Dr. Scott also noted that that Appellant “was on time, well groomed in suit and tie but he was visibly anxious, twisting and turning from the first introduction. Despite this he is friendly and patient. His speech was clear but sparse, his affect blunted, his mood low. He seemed preoccupied but answered questions readily. He denied the low mood and obvious anxiety.” (Id.)

38. Dr Scott further noted that, “References say he ‘keeps to himself.’ Asked about that he said, ‘I work the last half’ and added that people ask him why he wants to be a police officer, tell him he’s ‘shy.’ He went on, ‘I like it, I like being out there, I prefer to work.’ He talked briefly about dealing with people, students, drunks. His mood lifted a bit and it was clear that on the job he feels surer of who he is.” (Id.)

39. I find no evidence in the record of this proceeding that indicates that the Appellant’s references told any inquirer that the Appellant “keeps to himself.” In Dr. Beck’s report of his evaluation of the Appellant, which will be discussed later in this decision, he also states that, “In the references that I reviewed and quoted from above

I did not find any statement by anyone that said [the Appellant] keeps to himself.”

(Administrative Notice and Exhibit 15)

40. Dr. Scott noted that sometime before 2000, the Appellant had unpaid tickets in Massachusetts which led to a license suspension. Afterwards, he was stopped for driving with a suspended license in Maine in 2000. The legal problems that arose as a result of that ticket continued until 2004. When asked to explain how a ticket became such a big problem, he initially said, “I was in school, I wasn’t making much.” When pressured by the doctor, he said, “Maybe I was immature, I thought it would go away.” While talking about the subject, Dr. Scott noted that the Appellant “alternated between terrible discomfort and dismissive statements”, even after the doctor noted that his license was suspended while he worked at Enterprise Rental Car and he was operating motor vehicles as a part of his job.” (Id.)

41. In his testimony, the Appellant admitted that he drove on a suspended license while he worked for Enterprise Rental Car. His license was also suspended for a time while he worked for the BCPD. (Testimony of Appellant)

42. Dr. Scott subsequently pressed the Appellant to “explain his thinking, rather than his intentions.” When she pressured him, “he became more and more nervous but could never reflect on how he had felt at the time, how he had made his judgments, or how he judged it now. He seemed absent at times during the discussion, not anxious, not angry, but unable to think clearly enough to answer. At one time, he seemed almost unable to swallow.” (Id.)

43. Dr. Scott concluded that, “Mr. Moriarty feels supported by his work role but he is very anxious even when mildly stressed. As tension increases he becomes frankly

confused. The history indicates that over long period (sic) of time he has dealt with things that make him anxious with denial and dysfunctional judgments. His history reflects a possible period of significant depression when he dropped out of school. At this time he seems moderately depressed with slow thinking, high anxiety and inability to think clearly under stress. For these reasons I believe Mr. Moriarty is unable to manage the stresses or make the judgments required of an armed police officer.” (Id.)

44. On September 8, 2005, the Appellant was interviewed by Dr. Reade for a Second Opinion Psychiatric Review. (Exhibit 7)
45. Dr. Reade is a Board Certified psychiatrist who has consulted for the BPD since 1997, conducting Second Level Psychiatric Interviews for police officer recruits. She is Board Certified in General Psychiatry and Forensic Psychiatry and has extensive experience in Law and Psychiatry as well as Occupational Psychiatry. (Testimony of Dr. Reade and Exhibit 11)
46. Dr. Reade has conducted between 200-300 Second Level Psychiatric Screenings for the BPD. She has also consulted for other police departments in Massachusetts, including Cambridge, Lawrence, Cohasset and Hamilton. Dr. Reade testified for the Respondent in this matter and I accepted her testimony as that of an expert. (Testimony of Dr. Reade)
47. Before interviewing each candidate, Dr. Reade always reviews the report from the investigating detective and all of the background materials, including the recruit investigation file, personnel data questionnaire, his MMPI-2 test and his PAI test

scores and results. She also reviews the references from an individual's work and his personal references. (Id.)

48. Dr. Reade testified that she typically spends an hour with the candidate and the evidence indicates that was the case with her interview of the Appellant. She stated that she understands that "no one is there because they want to be." She also realizes that "everybody is nervous and they are worried because the stakes are very high and a lot of recruits have never met with a psychiatrist before..." Dr. Reade opined that everyone comes in with some level of nervousness and that she looks at how the person handles the stress of that situation – whether the candidate is able to keep command and manage the interaction in a way that gives her confidence in his or her ability to handle stressful situations. (Id.)

49. Dr. Reade testified that she explains to each candidate that, even though she has been hired by the City of Boston and even though she is reviewing what Dr. Scott has sent to her, she is obligated to be as objective and as careful as possible and that even though the recruit is coming to see her for a second opinion, "it (her conclusion) is not in the bag and that everybody gets a fresh look." (Id.)

50. Dr. Reade has overruled Dr. Scott, the First Level screener, approximately 10-20% of the time and has deemed recruits as psychologically fit to be Boston police officers. Dr. Reade and Dr. Scott are separate entities who have separate practices. (Id.)

51. Dr. Reade used the MMPI-2 and the PAI results to help guide her interview with the Appellant. Dr. Reade testified that she did not base her recommendation to bypass the Appellant solely on his MMPI-2 and PAI test results. (Id.)

52. Dr. Reade testified that the clinical evaluation is an important step in the Department's screening process. There are issues that arise in the test and/or in the candidate's background that the doctor would like to ask the candidate about. The doctor wants to gain an understanding as to why the candidate answered questions in a particular way on the test or, relative to the candidate's background, why the candidate made particular choices in their life. The purpose of this questioning is to gain an understanding of what the context of the trait or behavior at issue is. (Id.)
53. According to Dr. Reade, the Appellant's computer generated MMPI-2 Report indicated that he was "unwilling or unable 'to disclose personal information . . . Many reasons may be found for this pattern of uncooperativeness: conscious distortion of the answers to present himself in a favorable light, lack of psychological sophistication, or rigid neurotic assessment.' In addition to rigidity, the Appellant was noted to be 'unusually sensitive to criticism.'" (Exhibits 7 and 21, Testimony of Dr. Reade)
54. Dr. Reade testified that one of the "red flags" found in the Appellant's MMPI-2 test results was that the Appellant was extremely defensive – to the point where he almost invalidated the test. Dr. Reade further testified that there are many reasons why someone might respond as defensively as the Appellant did. The possibilities include: (1) not cooperating with the test, (2) consciously distorting answers in order to make one's self look better, or, (3) a lack of "psychological mindedness" – which, as Dr. Reade explained in layman's terms, is an inability or unwillingness "to think about anything that lives inside of your head as a thought or a feeling or something that precedes and action or a behavior or a choice." Someone who is not

psychologically minded, according to her testimony, comes across as a very concrete person. (Testimony of Dr. Reade)

55. Dr. Reade concluded that the Appellant's PAI test results "indicated a moderate risk of receiving a 'poorly suited' job rating; high likelihood of integrity problems; moderate risk of job-related problems, anger management, alcohol and substance abuse problems. Compared to a 'normed' sample of post-probationary public safety officers, [the Appellant] showed above-average elevations in the domains of feelings of persecution, antisocial behaviors, stimulus-seeking and elements of depression." (Exhibits 7 & 20 and Testimony of Dr. Reade)

56. Dr. Reade testified that the Appellant's PAI also indicates an above-average elevation in the domain of anti-social behavior. The domain includes measures of impulsivity, risk taking, thrill seeking, stimulus seeking, and trouble with authority—trouble following rules. Dr. Reade was concerned with the elevation in this domain. She acknowledged that anyone who goes into police work, at some level, finds "the chase exciting or some part of it engrossing and engaging." However, there are other people who become so "juiced up by the thrill and the excitement" that they have difficulties on the job. These people (1) have trouble with the routine and ordinary parts of the job as a police officer; (2) they tend to be more irritable and impulsive and don't necessarily make good reasoned judgments in the heat of the moment; and (3) when they are bored, they are vulnerable to making things more exciting and conflict ridden than they really should be or they may put themselves or other people in danger in ways that are ill advised. (Testimony of Dr. Reade)

57. Dr. Reade recounted her interview with the Appellant, which took place on September 8, 2005 and which was memorialized in a written opinion dated October 15, 2005. She indicated that the Appellant was “on time and sat quietly in the waiting room. He was neatly dressed and well groomed. He was tense, extremely anxious throughout, and it took a great deal of effort to elicit any information from him. His affect was flat and his mood depressed. [He] gave short concrete answers to my questions and was consistently unforthcoming. He came across as socially awkward and exquisitely uncomfortable. At the end of the interview, he rushed from the room with his eyes averted.” (Exhibit 7)
58. The Appellant admitted in his testimony to the Commission that he gave short and concrete answers to Dr. Reade during his evaluation. He felt that the interview was a “hostile environment” where the doctor was looking to “find something wrong” with him. (Testimony of Appellant)
59. Dr. Reade spoke with the Appellant about the circumstances of being turned down by the Los Angeles Police Department for “untruthfulness” because he failed to disclose that he had stolen from a former employer. When asked to elaborate on the circumstances of the theft, Dr. Reade noted that he replied tersely and was unforthcoming. The Appellant said, “I took a pair of pants because of peer pressure. Everyone else was doing it. It was a stupid mistake.” Dr. Reade goes on to note that the Appellant was similarly unforthcoming about his complicated family life (His parents raised three troubled foster children in addition to himself and two biological siblings.). Furthermore, he “could not address his desultory school performance, except to observe that ‘Classes weren’t interesting to me.’” He appeared confused

when asked specific questions about his dates of attendance. Dr. Reade also noted that his work history was “similarly checkered” in that, in addition to shoplifting from a former employer, he was fired from another job. Also, while he worked for a car rental agency, he drove on a suspended license. (Exhibit 7)

60. Dr. Reade asked the Appellant what he liked about his job as a Boston College police officer. He stated that he likes “the adrenaline rush of some calls... I just like going to good calls – breaking up fights, suspicious type people ... instead of, like, asking someone to turn his music down ... I’d rather look for someone with a weapon, or someone breaking into a car.” (Id.)

61. The Appellant’s response was quite striking to the doctor because, in his MMPI-2 results, there is an area of concern that he might be prone to attention seeking behavior. The Appellant’s own assessment of what he likes about policing was congruent with the test results. The doctor became further concerned about his ability to tolerate boredom, to deal with routine things, and his ability to *not* create excitement during times of boredom. (Testimony of Dr. Reade)

62. According to her written opinion, the Appellant told Dr. Reade that he “deals with stressful emotional states by avoiding the anxiety-provoking topic and trying not to talk about his feelings.” Dr. Reade testified at the Commission hearing that this response was concerning to her because of its “one-dimensional nature” and because the doctor felt that this way of dealing with stress was a “pretty flimsy defense.” She stated that, although it is a normal response for humans to try not to think about stressful situations, “if that is all that is in your bag of tricks is trying to not think about something, that does not make you a very flexible or very sturdy person in

terms of your ability to manage stress with a variety of tools.” (Testimony of Dr. Reade and Exhibit 7)

63. Dr. Reade's opinion of the Appellant was subsequently recorded in her summary report, which stated, in part, “Mr. Moriarty has a long history of irresponsible behavior, difficulty taking responsibility for his behavior or decisions, a need for excitement, difficulty thinking clearly when under pressure, and problems coping with stress ... In my opinion, Mr. Moriarty would have difficulty managing the stresses inherent in police work, and would have problems exercising good judgment when under pressure. For these reasons, Mr. Moriarty is currently found NOT ACCEPTABLE for the police department.” (Exhibit 7)
64. Dr. Reade testified under cross examination that she did consider the Appellant’s positive work references and successful job performance as a Boston College police officer although there is no indication of this in her report. I find that Dr. Reade’s written opinion was almost exclusively negative and constituted more of a review of Dr. Scott’s interview and the Appellant’s MMPI-2 and PAI test results than her own observations. (Testimony of Dr. Reade and Exhibit 7)
65. Further, Dr. Reade seemed focused on the premise that the demographics of the City of Boston and those of the various Boston College campuses were so vastly different as to make police service in each venue incomparable. She stated that she was aware that BCPD officers attend an academy, are sworn, are armed, are subject to a similar screening process and perform similar duties as BPD officers but she believes that the demographics of the City of Boston are simply “larger, more complex and more stressful” than those of the college jurisdiction. She characterized the BCPD as “a

50-person police force in a college community with mostly privileged, rule following adolescents.” She testified that she arrived at that opinion mostly via anecdotal evidence and conversations with BPD and other police personnel. (Testimony of Dr. Reade)

66. Dr. Reade stressed that the Appellant does not suffer from a “diagnosable” psychiatric or psychological affliction. However, after weighing all variables of behavior, she found the Appellant to be unfit for duty as a Boston police officer despite his success as a Boston College police officer. Dr. Reade testified that, despite descriptions of restrained and responsible performance on the part of the Appellant at Boston College, he showed a propensity to exhibit negative traits “over a period of time.” She further testified that “good performance in one place does not necessarily translate to another place.” (*Id.*)

67. I find that Dr. Reade’s subjective opinions on the difference between serving as a police officer at Boston College as opposed to the City of Boston unduly clouded her evaluation of the Appellant and were inappropriately introduced to the process. Three (3) solid, professional references and the reliable, credible testimony of Lt. Winslow strongly indicated that the stress and challenges of serving the Boston College community are nearly identical to those experienced by Boston police officers or, in Lt. Winslow’s words, “any police agency in the Commonwealth.” (Testimony of Dr. Reade, Testimony of Lt. Winslow, Exhibit 9)

68. Further, it is plain that the Appellant has thrived in this environment and has performed stressful, challenging and dangerous duties as an armed police officer responsibly and professionally for over six (6) years at the time of this hearing. I note

that, despite being surrounded by what Dr. Reade describes as “mostly privileged, rule following adolescents”, the Appellant convincingly testified that he had confronted armed suspects, been assaulted various times by way of pushing, kicking, punching and been bitten by an individual who claimed to have AIDS. It is true, as Dr. Reade pointed out, that the BPD is forty times larger than the BCPD and the population of the City of Boston is greater than that of the college. The demographics are clearly dissimilar. However, convincing testimony and documentary evidence support the conclusion that the college is far from a bucolic academic setting with little need for police service and that its officers experience the same stress, challenge and unpredictable circumstances as any officer in the Commonwealth, including Boston. Further, it should be again noted that BCPD officers are required to undergo substantially the same screening and training process, including psychological screening, to which BPD officers are subjected. (Testimony of Dr. Reade, Testimony of the Appellant, Testimony of Lt. Winslow, Exhibit 9)

69. Testimony by both Lt. Winslow and the Appellant answered to Dr. Reade’s concerns about the Appellant being reserved in his feelings; i.e. dealing with stress in a “one-dimensional” nature, and the Appellant’s perceived susceptibility to “thrill-seeking.” When asked how open police officers are with their spouses or significant others regarding what may occur on the job, Lt. Winslow credibly testified that, “Typically, we would tell them what they can stand to hear. I probably wouldn’t tell my wife everything that took place. If I go home and I am bandaged up, I will probably tell her the minimum of what she needed to know about the situation and not get into great detail.” The Appellant, for his part, had stated to Dr. Beck that he was trained at

the police academy to “not bring work home with you.” I find that testimony to be consistent with Lt. Winslow’s. (Testimony of Lt. Winslow, Testimony of the Appellant)

70. Regarding the interpretation of the Appellant’s test screening results to indicate that he is susceptible to thrill-seeking or enjoying an adrenaline rush from complex calls for police service, Lt. Winslow credibly testified that, in his 21 years on the job, he has known such officers. He was emphatic, however, that the Appellant was not one of those kinds of officers. He stated that, “Well, you referred to prior as did I ever see anyone who would be like a hotdog or a cowboy type police officer. And Dan Moriarty is neither of those.” (Testimony of Lt. Winslow)
71. In a letter dated October 31, 2005, the BPD notified HRD that the Appellant failed to meet the psychological criteria for appointment as a police officer and that it was bypassing him for the position of police officer. Specifically, the BPD stated that it was relying upon Dr. Reade’s second opinion report. (Exhibit 4)
72. In a letter dated November 30, 2005 from Robin W. Hunt, the Boston Police Department Human Resources Director, the Appellant was informed, among other things, that the "results of your psychological screening indicate that you cannot adequately perform the essential functions of the public safety position for which you have applied and a reasonable accommodation is not possible. Therefore you will not be appointed as a police officer at this time." (Exhibit 5)
73. Dr. Beck is a psychiatrist hired by the Appellant and who provided a report, submitted as evidence into the record of this matter, of an evaluation he made of the Appellant. (Exhibit 15)

74. Dr. Beck is a licensed psychologist and board certified psychiatrist who is a graduate of Harvard and Yale. He has taught at the Harvard Medical School for over thirty (30) years. Dr. Beck has conducted and conducts police "fitness for duty" interviews for the City of Cambridge and a number of municipalities throughout the Commonwealth. Dr. Beck has approximately forty (40) years of experience in the field of psychiatry and has published approximately forty (40) scholarly writings. (Testimony of Dr. Beck and Exhibit 12)
75. In the 1970s, Dr. Beck served as a consultant to the state's Human Resources Division (then the Department of Personnel Administration) and participated in earlier versions of the HRD's regulations with respect to psychological evaluations. His credentials are impeccable and I accepted his testimony as that of an expert. (Testimony of Dr. Beck)
76. In September 2007, at the Appellant's request and expense, Dr. Beck interviewed and performed a psychological evaluation of the Appellant. He was paid \$2,400 for evaluating the Appellant at his office and writing a narrative report. Dr. Beck testified on behalf of the Appellant and charged his customary hourly rate of \$450 per hour for his testimony. Forty to fifty percent (40-50%) of Dr. Beck's current income is garnered from testifying as an expert witness. I find nothing about his financial arrangements with the Appellant to be inappropriate and did not find that Dr. Beck's testimony was, in any way, tainted by his financial interest in this matter. Despite being compensated by the Appellant for his services, Dr. Beck was credible and candid in testifying that, "It is not in anybody's best interest, either the police

department's or the applicant's, to push somebody forward that is not going to be able to do the work." (Id.)

77. In addition to interviewing the Appellant, Dr. Beck reviewed his Recruit Application materials, the results of his MMPI-2 and the PAI, as well as the reports of Dr. Scott and Dr. Reade. Dr. Beck testified that the MMPI-2 and PAI are only screening instruments which may raise "red flags" or suggest areas of concern to be further investigated by interviewing the candidate and, most importantly, reviewing the candidate's background and history. Dr. Beck characterized a candidate's background and history as "critical data" which would show any evidence of a psychological disqualification. (Testimony of Dr. Beck and Exhibit 15)

78. Dr. Beck testified that the Appellant was seen by a Dr. Winn, for a psychological evaluation. The Appellant underwent evaluation with Dr. Winn after his evaluation by the Boston Police but prior to being seen by Dr. Beck. Dr. Beck received a report from the Appellant written by Dr. Winn. The report was illegible, so Dr. Beck asked the Appellant to transcribe it for him. Dr. Winn's report was essentially factual – "there was nothing in the report as it was written that I did not already know that had been developed by the Boston Police Department in the background. It was largely background information." Dr. Beck further testified, and the documentary evidence reflects, that he did not incorporate any of Dr. Winn's findings into his own evaluation. (Testimony of Dr. Beck)

79. Dr. Beck does not screen people with the MMPI-2 and, although he does agree that the MMPI-2 is one of the best *researched* pre-employment screening tools, he feels that the test is not useful anymore. When asked by Attorney Chisholm, under cross

examination, why he does not use the MMPI-2 “as part of any tools that you use in your practice”, Dr. Beck replied that he “used it and . . . gave it up because it kicked back answers in a couple of cases that were so clearly wrong that [he] decided that it was not useful anymore.” Further, Dr. Beck opined that the MMPI-2 testing was last “normed” in 1994 and that “is a long time ago now. I mean the world has changed a lot in the last thirteen (13) years. And even how valid those old norms are, even for screening purposes, I think, is an open question.” (Id.)

80. In order to determine whether a candidate is psychologically fit to be a police officer, Dr. Beck examines the candidate, not only for evidence of a mental disorder, but also for character or personality traits which are incompatible with police work. Dr. Beck opined that, when all else in a person’s history is fine and the psychiatric testing is not, it presents a “contradiction” that is “troubling” to him. (Id.)

81. Dr. Beck testified that psychiatric testing is only screening and not “an exact science.” Dr. Reade’s testimony concurred with this opinion. Dr. Beck explained further as to why testing, such as the PAI and MMPI-2 instruments, were insufficient as stand-alone measurements:

“The testing by itself can give you statistical correlations, can tell you that it is maybe statistically more likely that somebody with a particular test score will do well or will do badly; but what it can’t tell you is which of the people who have those scores will do well and which will do badly. I mean a particular score, it may be that of ten people who have that score, eight will do well and two will do badly. But the two is more than the baseline where out of ten candidates only one will do badly. So you get some statistical bounce, but what you don’t get is the ability to say which of those ten people or which of the ones that scored badly are the ones that have got things the matter with them.

And you need an interview for that. But more important, you need the past history. You need to – I mean testing by itself can only raise a red

flag. And if there is something wrong with somebody that is going to make it that they are not going to be a good police officer, you would expect to see evidence of that in their history.”

(Testimony of Dr. Beck and Dr. Reade)

82. Under direct examination, Dr. Beck was asked how important past history was in evaluating a candidate’s fitness to be a police officer. Dr. Beck answered the following:

“I think that is the critical data. I mean these are adults and they have life histories. And if they have got something, especially the ones, and it is most of the ones that I have seen, especially the ones that have been police cadets or have been working as police officers and have got a track record. If there is something the matter with those people that is going to negatively affect their ability to be a police officer, you are going to see evidence of it. I mean it isn’t something that just – it is not smoking mirrors and it is not magic. I mean it is life. I mean life is what tests people. And if there is evidence that they have done badly, you will find it. And these are – this a good screening job that the police department does, these are very thorough, the personnel reports I get.”

(Testimony of Dr. Beck)

83. When asked if he was referring to the background investigation reports when he alluded to the BPD’s “good screening job”, Dr. Beck stated the following:

“Yes. Yes, absolutely. Well, all of the things. I mean the fact that they go out and they interview the people that they work for, they interview the personal people, they go to their home and check out their landlord and the neighbors, they do their credit report, they do their criminal justice history. I mean all of the ways that – and they ask them questions. But all of the ways that people are going to get into trouble, they investigate. So that if someone has had a lot of speeding tickets or has a bad credit rating or has had trouble in their personal relationships or drinks too much or whatever, they do a pretty good job of finding that out.” (*Id.*)

84. When asked if psychological testing was “so finely tuned that you could say that you could say that an applicant was suitable for employment as a police officer in one

department and not another”, Dr. Beck emphatically answered, “Oh, no. Oh, no.

Absolutely not. And that goes far beyond anything remotely that we are able to do.”

(Id.)

85. In Dr. Beck’s September 24, 2007 written report of his evaluation of the Appellant, his overall opinion was the following:

“I have found no evidence of any mental or emotional disorder in Mr. Moriarty. Nor have I found any evidence of character traits or of current behavior that would raise a question about his fitness for duty as a police officer. From his history I think it is responsible to conclude that he was immature and not always responsible when he was younger. By contrast his recent history suggests he has matured into a responsible adult. He has a good work record as a police officer. He is in a committed relationship, and his credit record is excellent.

In sum, I find no reason to conclude that this man is psychologically unfit to serve as a Boston Police officer after serving successfully as a Boston College police officer for the past six years. To my eye, he appears to be an excellent candidate.”

(Exhibit 15)

86. At the conclusion of his direct examination at the Commission hearing, Dr. Beck emphatically stated that the Appellant was “sound” and will make an excellent police officer. When asked what Dr. Beck’s criteria for a good police officer is, he indicated that someone needs to be “an adult person that is somebody with a good history that demonstrates capacity to work and capacity to love.” This is the way Freud defined maturity and Dr. Beck felt that this was a pretty good definition. (Testimony of Dr. Beck)

87. Dr. Beck further testified that the “best prediction of what is going to happen tomorrow is what happened yesterday. And when you’ve got four or five, whatever it is, six years of yesterdays, you can be pretty confident that, unless something has

changed, it is going to be the same.” He went on to refute Dr. Reade’s findings that the Appellant was subject to depression, nervousness, an inability to handle stress, being reserved or unforthcoming and possessing a flat affect, saying that the record is inconsistent with those findings. Dr. Beck said he found the Appellant to be “matter of fact” but that his affect was not flat. (Id.)

88. In his summary comments, included in the written report of his evaluation of the Appellant, Dr. Beck expressed his clinical opinions on the role of psychological screening tests and then offered these final thoughts:

“There is no right to be a police officer, but it is not in the interest of police departments to screen out well functioning, motivated candidates because they have a bad interview and a questionable test result. The fact that a candidate makes a poor impression on one interviewer is secondary information that must be evaluated in the context of their overall life functioning. The interview is a two person situation, and it is always possible that the interviewee is responding to something in the situation, e.g. knowing that rejection is likely, or to something about the interviewer that we can not evaluate.

In summary, I differ not just with the conclusions of Doctors Reade and Scott, but with their view of what evidence should be the basis for their opinions. Their reports are remarkable for their failure to note and address the six year history of successful police work. There is an over reliance on psychological tests, especially when the test report is generated by a computer. The use of psychological tests in the individual case requires an individual psychologist to review the test performance and to write a thorough report interpreting the test results. Second, there is an over reliance on their own impressions based on their interviews of the candidate. Again, life performance, not interview performance is the primary basis on which to assess future performance. Troubling about these interviews of this candidate is that the strengths are barely mentioned in the assessment interviews. Balanced psychological assessment requires a consideration of strengths as well as weaknesses.”

(Exhibit 15)

89. The Appellant presented to the Commission as well-groomed and neatly attired in a suit and tie. During the two days of hearing this matter, I found him to show little if any emotion and he generally assumed a strict seating posture while keeping his eyes averted downward from the proceedings. He appeared nervous, but not unnaturally or unusually so. The Appellant appeared a bit more anxious during Dr. Reade's testimony as it was detailed, frank, personal in nature and understandably stressful for any subject of that testimony to hear. (Testimony, demeanor of Appellant)
90. The Appellant maintained a professional demeanor when testifying on his own behalf. Consistent with the interview reports of Drs. Scott, Reade and Beck, his answers were short and crisp, but I also found them generally to be clear and unhesitant. Further, his somewhat terse testimonial style was also consistent with his assertion that he views any interview as interrogative in nature and, hence, hostile. The Appellant testified that his police training compels him to give "short answers to answer the question. You don't provide them with any more info than they need." (Testimony, demeanor of Appellant)
91. I find that the Appellant considers court testimony, psychological interviews and Civil Service proceedings as being hostile environments, i.e. any situation whereupon he is subject to interrogation. This is evidenced by general documentary and testimonial evidence and was made clear to this hearing officer when I asked the Appellant eleven (11) questions at the conclusion of this hearing and he responded with no more than three (3) word answers to eight (8) of those questions. The final question to the Appellant was as follows:

HEARING OFFICER: “Do you feel as though this is a hostile environment? Do you feel better now that it is almost over?”

APPELLANT: “Yes, yes.”

(Id.)

92. I found it worthy of note that the Appellant made his best overall eye contact during cross-examination. He seemed very confident and unhesitant during this period of testimony except for one episode when he did become somewhat confused regarding whether he had met with Dr. Winn, whom it was reported that he had hired on his own. While he didn’t recall having ever met with a Dr. Winn, I ascribe his answer to fatigue (the lengthy hearing was coming to a conclusion) rather than any effort of deception. There was no reason for him to deny the meeting with Dr. Winn. Doing so would not have enhanced his position at the Commission nor were any of Dr. Winn’s findings, according to the credible testimony of Dr. Beck, ever used in Dr. Beck’s own evaluation of the Appellant. (Id.)

93. I found the Appellant’s performance under cross-examination remarkable because he appeared to me to be at his best and most animated under what he had testified to consider as a “hostile type interaction.” (Id.)

94. I found the Appellant to be professional, courteous and respectful of the proceedings. I found his testimony to be candid, responsive and sincere. I find that his short answers were consistent with his police training which he described in his testimony. The Appellant, while not out-going or gregarious, certainly possessed the ability to smile appropriately and engage in comfortable small talk when the occasion presented itself. I found that his tendency to assume a more sober demeanor when the proceedings were on record was simply a reflection of his professional, law

enforcement persona. His testimony was accepted as credible and competent.

(Testimony, demeanor of Appellant)

CONCLUSION:

Appointing Authorities are granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. 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. Mun. Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, 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 v. Civil Service Comm’n, 43 Mass. App. Ct., 300, 304.

In determining whether the Appointing Authority had reasonable justification to take the action of bypassing the Appellant, the Commission must consider the fundamental purpose of the Civil Service System which is “to protect against overtones of political control, objectives unrelated to merit standards and assure neutrally applied public policy.” If the Commission finds that there are “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy”, then it should intervene. Otherwise, the Commission cannot substitute its judgment for the judgment of the Appointing Authority. Cambridge at 304.

A “preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315 (1991). All candidates must be adequately and fairly considered. The Commission will not uphold the bypass of an Appellant where it finds that “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988).

Both parties submitted post-hearing, proposed decisions as directed by the hearing officer. Within each, the parties presented cogent arguments to support their positions on the sensitive matter of bypassing police officer candidates on the basis of psychological screening. A review and discussion of these arguments is important in formulating a decision on this appeal.

Here, it is also appropriate to reiterate the exact finding by Dr. Reade that the BPD submitted as a reason to bypass the Appellant for appointment and that was approved by the HRD:

“In summary, Mr. Moriarty has a long history of irresponsible behavior, difficulty taking responsibility for his behavior or decisions, a need for excitement, difficulty thinking clearly when under pressure, and problems coping with stress. At the time of my interview, he appeared moderately depressed and anxious. In my opinion, Mr. Moriarty would have difficulty managing the stresses inherent in police work, and would have problems exercising good judgment when under pressure.” (Exhibits 4 and 7)

Argument of Appointing Authority

In making its argument, the BPD cites Boston Police Dep't v. Munroe, 14 Mass.L.Rptr. 446 (2002), where defendant Munroe was deemed psychologically unfit for appointment as a Boston police officer by a BPD psychologist. Munroe was referred to Dr. Reade for a Second Level Psychiatric Opinion who, after a full evaluation, concurred with the BPD psychologist and concluded that Munroe was psychologically unfit for appointment as a Boston police officer. Munroe was ultimately bypassed. Munroe appealed the bypass decision to this Commission and a full hearing was held. In that case, two psychiatrists² (Note: Footnotes and citations in this section are those of the Appointing Authority.) submitted evidence on behalf of Munroe criticizing the Department's testing and clinical methods used in evaluating him, and claiming that he did not suffer from any psychiatric disorder, personality disorder, or any other psychological condition that would make him unfit to serve as a police officer. The Commission held that there was sufficient evidence to suggest that Munroe was psychologically fit to perform the duties of a police officer and directed the Department to make another conditional offer of employment and agree upon an independent psychiatrist to perform the psychological screening. The Department appealed the decision to the Superior Court pursuant to G. L. c. 30A, § 14. Id.

The Superior Court granted the Department's Judgment on the Pleadings and held that the Commission did not have jurisdiction to review the Department's bypass decision because the Defendant was appointed as a police cadet, and was not appointed under G. L. c. 31. Nevertheless, the Court (Gants, J.), recognized a second independent ground for

² Dr. John Greene, one of the psychiatrists that testified on behalf of the Defendant, provided approximately one year of therapy to the Defendant as part of his probation requiring anger management training.

reversal and held that the Commission exceeded its appropriate scope of review, stating that “BPD’s decision to rescind Munroe’s conditional offer involved no overtones of political control or objectives unrelated to merit standards or neutrally applied public policy . . . the only reason why BPD rescinded its offer is because the two psychologists who interviewed him during his screening had serious concerns about his psychological fitness.” Id. The Court further states that, “this finding involves the exercise of informed judgment, and reasonable psychologists may differ in their findings. . . .” Id.

Notably, the Court further expounds on the rationale for allowing the appointing authority broad discretion in hiring and employment decisions.

Nowhere is the danger of the Commission reaching beyond its proper role more acute than in matters such as these. The Commission, based on its own de novo preponderance finding, is prepared to give Munroe a badge, a gun, and all the considerable powers of a police officer as long as an independent psychologist (perhaps even one that the Commission, not the BPD, chose) declares Munroe fit for duty. The BPD essentially determined that this was too risky a course, but the Commission preferred the findings of Munroe’s psychologists, who thought the risks far lower. If the Commission’s decision were to be affirmed but the BPD’s assessment of risk proved the more accurate, it would be the BPD, not the Commission, who would answer to the charges of abuse of authority and excessive force. Since the Boston Police Commissioner, not the Commission, bears the responsibility for how BPD officers conduct themselves on the job, the Commission should not overrule the Police Commissioner’s hiring decisions if they are supported by reasonable justification.

Id.

The BPD also cites Boston v. Buckley, 61 Mass. App. 1117 (2004)³, where the Appeals Court reversed the Superior Court’s affirmance of the Commission’s decision to overturn the Department’s psychological bypass decision.⁴ In that case, the Commission grounded its decision on three letters by independent psychologists, each rating the Defendant psychologically fit for the position. Relying on the same cases and rationale

³ The Buckley decision is an unpublished Memorandum and Order Pursuant to Rule 1:28.

⁴ Dr. Julia M. Reade was the 2nd Level Screening psychiatrist for the Department in the Buckley case.

as mentioned above, the Court stated that, “the department reasonably relied upon two failed examinations as credible evidence, which provided reasonable justification for the bypass” and held that, “it was error of law for the commission to ignore the deferential standard and make its own de novo determination regarding the evidence as to [the Defendant’s] fitness. The Superior Court judge likewise erred by focusing on whether the record supports the Commission’s reasoning, rather than whether the record showed support for the department’s decision.” Id.

In this matter, the BPD maintains that it has sustained its burden of proving that it was reasonably justified in bypassing the Appellant for appointment as a Boston police officer. The BPD asserts that it followed its HRD approved psychological screening plan. Every potential Boston police officer recruit that is offered a conditional offer employment, including the Appellant, must take the MMPI-2 and PAI exams, meets with a First Level Psychiatrist, and if given an unfavorable first opinion, is referred to Dr. Reade for a Second Level Screening interview. Both Department psychiatrists reviewed all the Appellant’s background information and test scores and results prior to conducting their interviews. After examining and evaluating the totality of the information before them, both Dr. Scott and Dr. Reade, on separate occasions, concluded that the Appellant was not psychologically fit for appointment as a Boston police officer.

Dr. Reade testified that she is the second-level screener for the Department and she makes the final determination as to the candidate’s psychological fitness. She testified that she actually overrules Dr. Scott, the first level screener’s, determination 10-20 % of the time. The two psychiatrists who conduct the interviews for the Department are separate entities who make their own determinations. Dr. Reade testified that she

conducts her clinical interview in a semi-structured fashion, always with the focus on whether the candidate is a good fit to be a Boston Police officer. According to Dr. Reade, it is not an arbitrary conversation. She is looking at the candidate's life experiences, their problem solving skills, interest in police work, communication, interpersonal relationships, and community.

Based on her review of the Appellant's background information, his recruit investigation file, his MMPI-2 test results and analysis, his PAI test results and analysis, Dr. Scott's report of unfavorable opinion, and Dr. Reade's own clinical interview with the Appellant, Dr. Reade, in her learned and professional opinion, concluded that the Appellant has "a long history of irresponsible behavior, difficulty taking responsibility for behavior or decisions, a need for excitement, difficulty thinking clearly under pressure, and problems coping with stress. At the time of my interview, he appeared moderately depressed and anxious. In my opinion, Mr. Moriarty would have difficulty managing the stresses inherent with police work, and would have problems exercising good judgment when under pressure."

The BPD asserts that its decision to bypass the Appellant involved the exercise of informed judgment and the fact that the Appellant's hired psychiatrist, Dr. Beck, may have a differing opinion as to whether or not the Department should hire the Appellant is of no relevance. If the BPD's assessment of the risk is more accurate than that of the Appellant's psychiatrist, it is the BPD, and not the Appellant's psychiatrist, who would answer to the charges of abuse of authority, excessive force, or negligent hiring. The BPD concludes that, not only has the Appointing Authority met its burden of proving that the decision to bypass was reasonably justified, but that the Appellant has failed to show

that the Department's decision to bypass was made with any political considerations, favoritism and/or bias.

Argument of the Appellant

The Appellant argues that it is the BPD's burden to demonstrate, by a preponderance of the evidence, that the Appellant was psychologically unfit to perform the duties of a Boston Police Officer. Furthermore, "[t]he Appellant had the right to be considered for appointment based on a fair consideration of his relative ability, knowledge and skills or 'basic merit principles' pursuant to G.L. c. 31, § 1. Aponte v. Boston Police Dep't, Docket No.: G-01-1072 (August 4, 2004). (Note: Footnotes and citations in this section are those of the Appellant.) These principles further require that applicants receive fair and equal treatment in all aspects of personnel administration, and that they be protected from arbitrary and capricious action. *See Tallman v. Holyoke, et al.*, Docket No.: G-2134, and compare Flynn v. Civil Service Comm'n, 15 Mass. App. Ct. 206 (1983).

The Appellant claims that he was not fairly and adequately considered and he has not received "fair and equal treatment," free from "arbitrary and capricious action." Specifically, in deciding that he was psychologically "unqualified for appointment as a Boston Police Officer," the BPD inexplicably failed to properly consider his documented successful performance, over a period of approximately five (5) years, as an armed and sworn police officer in the City of Boston. Indeed, Dr. Reade's Report is incomplete and not objectively written. For example, in addition to unfairly discounting the Appellant's experience as a police officer, she also failed to adequately consider the overwhelmingly positive opinions of the Appellant's BCPD co-workers and supervisors. Dr. Beck is correct in his characterization of Dr. Reade's assessment of these references as

“strikingly incomplete.” Furthermore, in addition to largely ignoring the Appellant’s positive and relevant work history, she barely mentions his strengths or positive attributes. The Appellant contends that her report reads more like an indictment than an objective appraisal of the Appellant’s psychological fitness.

The Appellant points out that in order to be appointed as a BC Police Officer, he successfully underwent a screening process which consisted of an oral interview, in-depth background investigation, physical abilities test, and psychological examination. The Appellant characterized this selection process as very similar to, if not exactly the same as, the selection process which he underwent for the position of Boston Police Officer. As part of the BC Police pre-employment psychological evaluation process, the Appellant took the MMPI-2 psychological examination, underwent a psychological evaluation, and was found suitable for employment as an armed police officer. The Appellant completed full-time standard municipal police academy training, wears a traditional police uniform, and operates a fully marked police cruiser.

Further, the Appellant emphasizes that, in addition to having graduated from the municipal police academy, he is trained and certified by the FAA to carry a firearm while on board an aircraft and certified in police mountain bike patrol. He has also undergone training by the Bureau of Alcohol, Tobacco, and Firearms on how to trace firearms and identify suspects carrying concealed weapons. The Appellant serves on the BCPD’s Special Response Team where he is responsible for crowd control. He carries police equipment such as radio, baton, handcuffs, OC spray, and a firearm. In the line of duty, he has drawn his firearm and used OC spray to protect himself.

The Appellant highlights that as a Boston College Police Officer, the Appellant's performs virtually the same duties and confronts the same challenges and stresses as his municipal police counterparts. His arrest authority exceeds that of a Boston Police Officer's, as he has police powers throughout both Middlesex and Suffolk Counties. See Commonwealth v. Baez, 42 Mass. App. Ct. 565, 566 (1997) ("...a deputy sheriff is authorized both to serve criminal process and to make arrests in certain circumstances. It follows that, for purposes of G.L. c. 90C, § 3(A)(1), a deputy sheriff is a police officer authorized to issue a citation for a civil motor vehicle infraction."); See Commonwealth v. Howe, 405 Mass. 332, 333-334 (1989) (A "...deputy sheriff was authorized to stop the defendant's vehicle and to arrest him for operating a motor vehicle in Plymouth County while under the influence of intoxicating liquor. A deputy sheriff has authority to act that a private person would not have in similar circumstances.) The Appellant has used this authority to effect off-campus arrests within the City of Boston and he has personally investigated and responded to a variety of crimes such as assaults, narcotics offenses, domestic abuse, sexual assaults, and individuals carrying firearms. As part of his duties as a BC Police Officer, the Appellant regularly rides with Boston Police Officers in a marked Boston Police Cruiser. Together, they respond to both college and non-college related off-campus police calls in the City of Boston.

Also, incident to his police duties, the Appellant has effectively testified in numerous courts, including Suffolk Superior Court. In fact, the Suffolk County District Attorney's Office has commended him for his courtroom testimony and a copy of the written commendation was included in the Appellant's BPD Recruit Investigation Package. In contrast to this demonstrated ability to testify effectively, which the Appellant maintains

that Dr. Reade was or should have been aware of, is her opinion that the Appellant suffers from anxiety which affects his ability to think clearly and recall information under pressure. Dr. Reade testified that this perceived inability to recall facts under pressure was problematic because testifying in court is stressful and something that police officers are required to do. However, given his history of effective courtroom testimony, the Appellant states that Dr. Reade's testimony on this point defies logic and is fundamentally unfair.

Not only does the Appellant assert that he has performed the same functions of a Boston Police Officer for approximately 5 years, but he notes that he has performed them in an exemplary manner. For example, as a result of what was initially a routine motor vehicle stop, the Appellant properly discerned that criminal activity was afoot. He subsequently pursued and arrested an individual who was illegally carrying a loaded fully automatic weapon. He received a letter of commendation for his work. In another incident, he pursued and arrested an individual who was carrying a loaded nine-millimeter firearm, which the suspect attempted to surreptitiously discard. In yet another incident, the Appellant pursued and arrested a suspect after the suspect violently assaulted him. According to Lt. Winslow, the Appellant was able to clearly recall the incident, provide a full statement, and write his report. .

Drawing on his firsthand personal observations of the Appellant, having personally supervised him over the past six (6) years, the Appellant emphasizes that Lt. Winslow directly and convincingly contradicted the opinions contained in Dr. Reade's report. Lt. Winslow testified credibly that he has seen the Appellant in numerous dangerous and stressful situations, some of which are described above, and the Appellant has always

demonstrated good judgment and clear thinking. According to Lt. Winslow, the Appellant handled the situations in accordance with his academy training, departmental policies and procedures, and the law. Over the past six (6) years, Lt. Winslow has seen no evidence of the supposed inability to cope with stress which the Respondent describes. Further, the Appellant points out that Lt. Winslow has not discerned any manifestations of the other characteristics enumerated in Dr. Reade's report such as rigidity, nervousness, depression, thrill seeking, the inability to think clearly, difficulties dealing with periods of inactivity and problems with constructive criticism. In fact, the Appellant notes, Lt. Winslow testified that the Appellant makes the most arrests in the department and has particular acumen for detecting crime. Lt. Winslow characterized the Appellant's performance as "stellar." He further testified emphatically that he knows of the Boston Police Officers' duties and work atmosphere and he believes that the Appellant would excel as a Boston Police officer.

The Appellant reminds the Commission that Lt. Winslow was not alone in his endorsement of the Appellant. Here, the Appellant cites various professional references from his candidacy to the BPD which are contained in Exhibit 9 as entered into the record of this matter. BCPD Sergeant Peter F. Keating, who had supervised the Appellant for approximately four years, stated that the Appellant "uses good judgment every day," and he "is a great public servant." Sgt. Keating also described a volatile situation which the Appellant properly handled. Likewise, Officer Sean Daley described a situation where the Appellant exercised sound judgment by not immediately stopping a motor vehicle. After waiting for back-up, the Appellant arrested two of the vehicle's occupants for the unlawful possession of ammunition and narcotics. Similarly, BCPD Patrol Supervisor

Kevin R. Croke, who had supervised the Appellant for over four (4) years, characterized him as a “conscientious worker with the utmost regard for the Boston College Community” and “an excellent police officer, a leader involving arrest[s] and officer originated calls for service.” Patrol Supervisor Croke also noted that the Appellant “has shown the ability to handle many different situations as a police officer and he has performed admirably.” Croke concludes that the Appellant “would be an asset to the Boston Police Department and a loss to Boston College.” The Appellant contends that the foregoing reviews and documented examples of his successful performance as a police officer in the City of Boston convincingly demonstrate that he has the “relative ability, knowledge and skills” to be a successful Boston Police Officer. *See Tallman v. City of Holyoke, et al., supra.*

The Appellant argues that, against this backdrop of his documented exemplary performance as a police officer in the City of Boston, spanning a period of at least 5 years, having testified in numerous courts and properly handled numerous dangerous, serious, stressful, and complex police calls, many involving loaded firearms, is the Respondent’s opinion that the Appellant “cannot adequately perform the essential functions of the public safety position for which [he has] applied” because he “would have difficulty managing the stresses inherent in police work, and would have problems exercising good judgment when under pressure.” (Exhibits 5 and 7). In fact, the Respondent claims that the Appellant is not suited for the “highly stressful nature of urban police work.” (Exhibit 4). This decision is based on Dr. Reade’s opinion that the Appellant “would have difficulty managing the stresses inherent in police work, and would have problems exercising good judgment when under pressure.” (Exhibit 7).

Given the Appellant's substantial and long-term work history as a "stellar" police officer in the City of Boston, it is his opinion that such assertions are indicative of a seriously flawed selection process.

The Appellant notes the opinion offered by both parties that, indeed, the psychological examination process which the Respondent used to reach the aforementioned conclusion is far from an exact science. In fact, Dr. Beck characterized the effectiveness of the process as only 10 to 15 percent better than chance. Dr. Beck further testified emphatically that psychological testing is not department specific and it cannot discern whether an applicant is suitable for one department as opposed to another. "That goes far beyond anything remotely that we [psychiatrists] are able to do." The Appellant believes that this lack of reliability is exemplified by his having passed the psychological evaluation for the BCPD, yet failed the BPD's evaluation, with both using the MMPI-2. The Appellant testified that both psychological screenings were the same. Given the limitations of psychological testing, in order to make a meaningful conclusion, both Doctors Beck and Reade agreed that the candidate's history must be considered. Dr. Beck characterized this as "critical data."

The Appellant holds that the selection process in the instant case was flawed in that Dr. Reade relied too much on the psychological test results, failed to adequately consider the Appellant's substantial police experience, and allowed her misconceptions regarding the nature of the Appellant's work as a Boston College police officer to cloud her judgment. For example, Dr. Reade testified that "there is a big difference between working as part of a 50-person police force in a college community with mostly privileged, rule following adolescents, and working in a huge sprawling department in a

very large and complex city.” However, the Appellant contends that the police calls which he has successfully handled were exactly the type of calls which he would be called upon to handle as a Boston police officer. Indeed, the Appellant points out that those who he investigated and arrested for drug dealing, illegal firearms possession, and violent assaults were not the “mostly privileged, rule following adolescents” which Dr. Reade described. In the performance of his duties as a Boston College police officer, the Appellant confronted violent suspects armed with firearms and he had been assaulted on ten to twenty occasions. The Appellant testified that these assaults consisted of being pushed, kicked, punched in the head, and being bitten by an individual who claimed to have AIDS. Nevertheless, the Appellant charges that Dr. Reade unfairly dismissed his work history and performance based on her misconception of the nature of the Appellant’s work. In fact, according to the Appellant, Dr. Reade went so far as to characterize his work history as “checkered.” (Exhibit 7). In light of his six (6) year successful and unblemished track record as a successful member of the BCPD, the Appellant avers that such a characterization is plainly inaccurate. Indeed, the Appellant reasons that if he truly had a “checkered” work history, he would not have passed the Respondent’s background investigation and been given a conditional offer of employment.

The Appellant maintains that, not only did Dr. Reade unfairly ignore his successful work history as an armed police officer in the City of Boston, but she also failed to consider reasonable explanations for many of the concerns mentioned in her report. For example, she noted that the Appellant displayed a flat affect and depressed mood. (Exhibit 7). However, did not ask him how much sleep he got the night before the

examination. On cross examination, she admitted that lack of sleep “could have affected elements of his presentation.” Also, she characterized him as defensive, giving only short and concrete answers, and unwilling to disclose information. At the Commission hearing, the Appellant explained that he considered being interviewed by Dr. Reade as akin to being questioned in court and, in accordance with his police academy training, he gave short answers and did not volunteer information. The Appellant offered that this perceived lack of openness is a function of the police culture as well as the Appellant’s police training and experience. The Appellant opines that, if Dr. Reade had viewed him as the police officer that he is, she likely would have considered these explanations and reached a different conclusion.

The Appellant claims that Dr. Reade’s report is conclusory and unfairly prejudicial in that it contains statements and predictions based on little or no support. He cites Dr. Reade’s opinion that the Appellant has a “long history of irresponsible behavior.” According to the Appellant, that opinion is contradicted by the Appellant’s six (6) year successful tenure as a member of the BCPD, good credit and stable family situation. (Exhibits 7 and 15). The Appellant argues that, if he truly had such a history, he would not have passed two background investigations, been hired by the BCPD and been given a conditional offer of employment by the Respondent. The Appellant puts forth that such unsubstantiated opinions will not support a bypass. Borelli v. MBTA. (The Commission will not uphold the bypass of an Appellant where it finds that "the reasons offered by the appointing authority were untrue...incapable of substantiation, or are a pretext for other impermissible reasons.")

Equally unsupported, the Appellant states, is the suggestion that he is at risk for receiving a “poorly suited rating.” (Exhibit 7). In fact, he notes, his references unanimously indicate the opposite. Similarly, there was absolutely no independent evidence of recent job related problems, anger management, alcohol, and/or substance abuse problems. (Exhibit 9) The Appellant is emphatic that these inflammatory and unfairly prejudicial predictions, which were supported only by the results of a “pencil and paper” examination, have no place in Dr. Reade’s report. In fact, the Appellant points out, she testified that she absolutely does not rely on results which are the sole product of the “pencil and paper” tests. Consequently, she should not have included such unsupported statements in her report and they cannot serve as reasonable justification for bypassing the Appellant. *See Borelli v. MBTA, supra.*

The Appellant concludes his argument by stating that, for all of the reasons set forth above, Dr. Reade’s opinion cannot be considered “reasonable justification” for disqualifying the Appellant. *See Cambridge, supra.* This is supported by Dr. Beck’s expert testimony and report, wherein he notes that the Respondent’s psychiatrists place too much emphasis on the interview and psychological test results. (Exhibit 15). According to Dr. Beck, their reports “are remarkable for their failure to note and address the six year history of successful police work.” (Exhibit 15). “Again, life performance, not interview performance is the primary basis on which to assess future performance. Troubling about these interviews of this candidate is that strengths are barely mentioned in the assessment interviews. Balanced psychological assessment requires a consideration of strengths as well as weaknesses.” (Exhibit 15). The Respondent’s failure to conduct a balanced psychological assessment violates basic merit principles and warrants the

Commission's intervention. The bypass of the Appellant on the grounds of psychological disqualification was not "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." (*citations omitted*).

Decision

The Commission has issued three (3) recent decisions concerning appeals by individuals bypassed for original appointment as Boston police officers that apply here: Roberts v. Boston Police Dep't, 21 MCSR 536 (2008); Boutin v. Boston Police Dep't, Docket Nos. G1-06-139, G1-06-317 (January 29, 2009); and Cawley v. Boston Police Dep't, 19 MCSR 389 (2006).

In Roberts, the Commission ruled that:

"When an Appointing Authority relies on scientific evidence provided through expert witnesses to support the justification for a by-pass decision, the Commission is mindful of the responsibility to ensure: (a) the scientific principles and methodology on which an expert's opinion is based are grounded on an adequate foundation, either by establishing "general acceptance in the scientific community" or by showing that the evidence is "reliable or valid" through an alternative means, e.g., Canavan's Case, 432 Mass. 304, 311, 733 N.E.2d 1042, 1048 (2000) citing Commonwealth v. Lanigan, 419 Mass. 15, 641 N.E.2d 1342 (1994); (b) the witness is qualified by "education, training, experience and familiarity" with special knowledge bearing on the subject matter of the testimony, e.g., Letch v. Daniels, 401 Mass. 65, 69-69, 514 N.E. 2d 675, 677 (1987); and (c) the witness has sufficient knowledge of the particular facts from personal observation or other evidence, e.g., Sacco v. Roupenian, 409 Mass. 25, 28-29, 564 N.E. 2d 386, 388 (1990).

Experts' conclusions are not binding on the trier of fact, who may decline to adopt them in whole or in part. See, e.g., Turners Falls Ltd. Partnership v. Board. of Assessors, 54 Mass.App.Ct. 732, 737-38, 767 N.E.2d 629, 634, rev. den., 437 Mass. 1109, 747 N.E.2d 1099 (2002). As a corollary, when the fact-finder is presented with conflicting expert evidence, the fact-finder may accept or reject all or parts of the opinions offered. See, e.g., Ward v. Commonwealth, 407 Mass. 434, 438, 554 N.E.2d 25, 27 (1990); New Boston Garden Corp. v. Board. of Assessors, 383 Mass. 456, 467-73, 420 N.E.2d 298, 305-308 (1891); Dewan v.

Dewan, 30 Mass.App.Ct. 133, 135, 566, N.E.2d 1132, 1133, rev. den., 409 Mass. 1104, 569 N.E.2d 832 (1991)

No specific degree of certitude is required for expert testimony and it may be accepted if the opinion is “reasonable” and expressed with sufficient firmness and clarity. See, e.g., Commonwealth v. Rodriguez, 437 Mass. 554, 562-63, 773 N.E.2d 946, 954 (2002); Bailey v. Cataldo Ambulance Service, Inc., 64 Mass.App.Ct. 228, 235, 832 N.E.2d 12, 11-18 (2005); Resendes v. Boston Edison Co., 38 Mass.App.Ct. 344, 352, 648, N.E.2d 757, 763, rev. den., 420 Mass. 1106, 651 N.E.2d 410 (1995). So long as the expert’s opinion is sufficiently grounded in the evidence, but certain facts were unknown or mistakes were made in some of the expert’s assumptions, that generally goes to the weight of the evidence. Commonwealth v. DelValle, 443 Mass. 782, 792, 824 N.E.2d 830, 839 (2005); Sullivan v. First Mass. Fin. Corp., 409 Mass. 783, 79-92, 569 N.E.2d 814, 819-20 (1991). However, “it is also a familiar principle that testimony may not rest wholly on conjecture, and that is no less the case when conjecture flows from the mouth of an expert. [Citations] Qualification as an expert does not confer a license to spout nonsense.” Fourth Street Pub, Inc. v. National Union Fire Ins. Co., 28 Mass.App.Ct. 157, 547 N.E.2d 935, 939 (1989) (Kass, J., dissenting), rev. den., 406 Mass. 1104, 550 N.E.2d 396 (1990). See also, Board. of Assessors v. Ogden Suffolk Downs, 398 Mass. 604, 606-607, 499 N.E.2d 1200, 1202-1203 (1986) (expert testimony stricken which blatantly overlooked critical facts).”

Roberts at 30-32.

In Boutin, the Commission ruled that “an Appointing Authority must establish that a candidate has a Category A or Category B psychiatric or behavior disorder.” Boutin at 24, *citing* Roberts at 33. Both Boutin and Roberts state that, in order for an Appointing Authority to prove its burden of reasonable justification for bypassing an individual based on psychiatric screening, an automatically disqualifying condition pursuant to Category A of the HRD Regulations or a psychological condition or disorder in accordance with Category B must be evident.

Cawley touches on personal bias on the part of the psychological screeners infecting the evaluation process. The same BPD psychological screeners performed the subject evaluations in the instant appeal. Specifically, the Commission found that:

“Despite the unquestionable credentials of Dr. Reade and her honest, forthright testimony before the Commission, it is clear that Dr. Reade has unwittingly established an unattainable bar for [Cawley] that appears to be tinged with personal bias.”

Cawley at 17.

It is important to note that in Cawley, the Commission did not find an intentional bias with “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy.” Cambridge, *supra*.

The Commission cannot and should not “substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Id. Neither should the Commission’s jurisdictional reach include choosing between the valid scientific findings of one expert clinician over another. However, the Commission is not bound to blindly accept such evidence if it does not comport with basic merit principles. Any evidence that is used to support reasonable justification for a bypass must still be credibly substantiated, regardless of its complexity or scientific origin. It is well-settled that if the Appointing Authority cannot meet that burden of justification, it is appropriate for the Commission to intervene.

Based on a preponderance of the evidence as adduced at hearing and the standards, laws and regulations that herein apply, the Commission finds that the BPD has not sustained its burden to prove reasonable justification for the bypass and, therefore, this appeal must be granted.

The BPD cites Munroe where it was found by the Superior Court that the Commission had over reached its jurisdiction by preferring the findings of Munroe’s privately hired psychologists over those of the BPD’s clinicians. Such is not the case here. Although Dr. Beck’s findings and methodology differ from those of Drs. Scott and Reade, the

Commission does not simply choose his over theirs. Rather, the Commission finds that the reasons used by the BPD to bypass the Appellant were “incapable of substantiation”, as in Borelli, and “unrelated to merit standards”, as in Cambridge.

It is undisputed by the parties that the Appellant was not found to have a diagnosable psychiatric condition or disorder. The closest indication to the Appellant having a disqualifying affliction in accordance with the HRD Regulations was Dr. Reade’s opinion that he showed a propensity to exhibit negative traits “over a period of time.” The evidence clearly shows that this finding was critical in formulating Dr. Reade’s – and therefore, the BPD’s – bypass decision that the Appellant “has a long history of irresponsible behavior, difficulty taking responsibility for his behavior or decisions, a need for excitement, difficulty thinking clearly when under pressure, and problems coping with stress.” The body of credible evidence to the contrary was overwhelming in this case. The lengthy period of time that the Appellant has performed as a “stellar” police officer within the City of Boston and the credible evidence of accolades for thinking, judgment, integrity, restrained and responsible actions, coping with stress and overall law enforcement success, coupled with the demonstrated stability in his private life, easily refutes and renders this reason unsubstantiated. In short, the Appellant has yet to exhibit any negative traits “over a period of time.” This lends credence to the Appellant’s assertion that “Dr. Reade relied too much on the psychological test results [and] failed to adequately consider the Appellant’s substantial police experience.” Additionally, the Commission also finds that this reason did not comport with the HRD Regulations and are, therefore, not related to merit based principles.

Dr. Reade further testified that “good performance in one place does not necessarily translate to another place.” Here, her anecdotal opinion was that the differing demographics between the City of Boston and the Boston College community were so disparate as to make the Appellant’s success as a police officer with the BCPD irrelevant to his advancement to the BPD. The difference in these demographics is apparent and was not disputed but, again, credible evidence and testimony overwhelmingly refuted her conception that *police service* within those jurisdictions differs significantly. Further, the Commission finds that this opinion was inappropriately introduced to the screening process and clouded Dr. Reade’s summary opinion that the Appellant was not fit to be a police officer in Boston.

Similarly, Dr. Reade testified that she took the Appellant’s strengths and years of working and lifestyle success into account when preparing her written evaluation of the Appellant, yet not a single positive trait was ascribed to the Appellant in the report. We find that omitting any positives in her evaluation, along with her anecdotal views of police service contributed to establishing a similarly “unattainable bar” for the Appellant to hurdle that is “tinged with personal bias” as found in Cawley.

Finally, the bedrock assertion by Dr. Reade that became the BPD’s ultimate reason for bypassing the Appellant was her finding that, “In my opinion, Mr. Moriarty would have difficulty managing the stresses inherent in police work, and would have problems exercising good judgment when under pressure.” This was answered by the Appellant in his final argument where he stated that, “if he truly had such a history, he would not have passed two background investigations, been hired by the BCPD and been given a conditional offer of employment by the Respondent.”

There is simply nothing in the record of this appeal that even remotely suggests that the Appellant has “difficulty managing the stresses inherent in police work, and would have problems exercising good judgment when under pressure.” Additionally, this opinion was robustly rebuffed by an expert in her own field as well as testimony and personal references from members of law enforcement. As seen in Commonwealth v. Rodriguez, “no specific degree of certitude is required for expert testimony and it may be accepted if the opinion is ‘reasonable’ and expressed with sufficient firmness and clarity.” Based on the wealth of evidence in the record refuting this opinion, we do not find it reasonable.

The BPD argues that this finding was an exercise in informed judgment and was Dr. Reade’s learned opinion, therefore the finding is essentially immune from Commission intervention. I disagree. Dr. Reade is well respected as an expert witness in psychological bypass appeals but that does not obligate the Commission to accept any and all of her clinical predictions without question. There is sufficient doubt here that the reasons for bypassing the Appellant are a matter of unsubstantiated conjecture and are not justifiable.

Therefore, the Commission finds that, by a preponderance of the credible evidence in the record of this matter and for all the reasons discussed herein, the appeal on Docket No. G1-05-442 is hereby ***allowed***. Accordingly, HRD is ordered to take the following action:

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission directs that the name of the Appellant, Daniel G. Moriarty, be placed at the top of the eligibility list for original appointment to the position of Police Officer so that his name appears at the top of any current certification and list and/or the next certification and list from which the next original appointment to the position of Police Officer in the Boston Police Department shall be made,

so that he shall receive at least one opportunity for consideration from the next certification for appointment to the position of Boston Police Officer. The Commission further directs that, if and when Daniel G. Moriarty is selected for appointment and commences employment as a Boston Police Officer, his civil service records shall be retroactively adjusted to show, for civil service seniority purposes only, as his starting date, the earliest Employment Date of the other persons employed from Certification No. 250537. Finally, the Commission directs that the BPD may elect to require Daniel G. Moriarty to submit to an appropriate psychiatric medical screening in accordance with current BPD policy, but that such screening shall be performed, de novo, by qualified professional(s) other than Dr. Scott or Dr. Reade.

Civil Service Commission

John J. Guerin, Jr.
Hearing Officer

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman - No; Henderson, Commissioner – Yes; Taylor, Commissioner – Yes; Stein, Commissioner – Yes; and Marquis, Commissioner - No) on April 9, 2009.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:

Brian E. Simoneau, Esq. (for Appellant)

Tara L. Chisholm, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)