

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

CARLA SULLIVAN

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

**CASE NOS: G2-13-118, G2-13-224,
G2-14-186, G2-14-288**

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Paul M. Stein

DECISION

The Appellant, Carla Sullivan, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b), from decisions by the Respondent, Boston Police Department (BPD), as the Appointing Authority, acting with delegated authority from the Massachusetts Personnel Administrator (HRD), to bypass her for promotion to BPD Sergeant, based on her alleged inability to perform all essential functions of the position or any other sworn position at the time of her consideration. Case Nos. G2-13-118 and G2-13-224 were consolidated for hearing and four days of evidentiary hearings held on August 27, 2013, November 15, 2013, December 5, 2013, December 11, 2013, and February 12, 2014. The Commission received fifty-eight (58) exhibits in evidence, with eight (8) other documents marked for identification. BPD called three witnesses (Daniel Linskey, then-BPD Superintendent in Chief, BPD Captain Mark Hayes and Andrew Brown, M.D.). The Appellant testified on her own behalf and called three witnesses

(James Beck, M.D., Paul Zeizel, Psy.D. and Thomas Gutheil, M.D.). An official record of the hearing was made by digital recording and copies of the recordings were provided to the parties. Each party submitted proposed decisions to the Commission on April 18, 2014.

On October 30, 2013, the Commission heard oral argument on the Appellant's claim (deemed a motion to amend the two then-pending appeals) to add HRD as a party, so as to assert the additional contention that the bypass was invalid, as a matter of law, because HRD had not "received and approved" BPD's reasons for the bypass in accordance with G.L.c.31,§27. This motion was denied, without prejudice, as the issue it presents is pending judicial review in another case. See Commission's Interim Order, November 14, 2013. The Appellant also brought a third, separate appeal (G2-14-186) that renewed this same "Section 27" legal claim against BPD and HRD. This question is now under advisement before the SJC in Malloch v. Town of Randolph, SJC No. 11711 (argued 1/5/2015).

Finally, the Appellant again was bypassed for promotion to BPD Sergeant based on the same reasons as the two prior bypass decisions, from which third bypass she also duly appealed. (G2-14-288). The third appeal presents the same legal and evidentiary issues. This Decision disposes of all four pending appeals (save for the issue of law referenced above pending in the SJC).

FINDINGS OF FACT

Based upon the Exhibits, the testimony of the witnesses and inferences reasonably drawn from the evidence I find credible, I make the findings of fact set forth below.

Appellant's Background

1. The Appellant, Carla Sullivan, is a tenured civil service employee who has been a sworn police officer with the BPD since 1996. She currently holds the designation of Detective. (*Exhs. 9 & 13; Testimony of Appellant*)

2. Prior to joining the BPD, Det. Sullivan worked as an accountant, a computer programmer and software project manager in the banking and financial sectors. She holds a bachelors degree in economics and political science, a masters degree in management information systems and masters degree in criminal justice. (*Exhs. 9 & 13; Testimony of Appellant*)

3. Det. Sullivan joined the BPD at the age of 38. She excelled at academic subjects at the police academy, but struggled in areas of physical ability and strength. She recounted being “picked on” and “yelled and screamed at”, early on, by her instructors at the police academy, which she once said “resulted in progressive isolation during her experience at the academy.” (*Exhs. 9, 11 & 13; Testimony of Appellant*)

4. During her first two years with the BPD, Officer Sullivan was assigned to the Hyde Park district. She received a written commendation for her work. (*Exh. 9; Testimony of Appellant*)

5. Officer Sullivan transferred to Brighton in 1999 and began studying to take the detective’s exam. She recounted several instances she described as being taunted and harassed by fellow officers while assigned there. She transferred to Dorchester, where she worked until becoming a detective in June 2000 and, thereafter was assigned to the South End Station, where she worked until April 2001. (*Exh. 9; Testimony of Appellant*)

6. In April 2001, Det. Sullivan was assigned to the Computer Crimes Unit (CCU), a newly formed unit under the direction of Sergeant Detective MP, within the Forensic Technology Division of the Bureau of Investigative Services. Although Det. Sullivan had no formal training as a forensic examiner, the BPD believed her training and experience in computer science would be an asset in bringing the unit online. She eventually took a course at her own expense and became a certified computer forensic examiner and the BPD expert on Internet crime cases. (*Exhs. 9, 21 & 38; Testimony of Appellant & Supt. Linskey*)

7. Within “twenty minutes” from arriving at the CCU, Det. Sullivan clashed with her supervisor, Sgt. Det. MP (a female and Hispanic 24-year BPD veteran), whom Det. Sullivan said was “completely unqualified”. The conflict ultimately led to Det. Sgt. Det. MP’s request that she be relieved of command of the CCU and reassigned. A series of “To/From” memoranda by Sgt. Det. MP and two other superior officers, document this conflict, which include references to Det. Sullivan being “rude, uncommunicative and uncooperative”, her “lack of eye contact” when spoken to and other problematic interpersonal behavior. Among the examples of this behavior, Det. Sullivan took offense to Sgt. Det. MP once offering her a compliment on her “nice” haircut, demanding an internal affairs investigation after another officer had innocently come to her desk and asked how she liked her job, and expressing hostility about hiring another detective for the unit. In September 2002, Det. Sullivan balked at moving from her small office on the second floor to a larger area on the first floor of BPD headquarters, claiming that she needed to stay put so that she could “keep an eye on the people” because of the “rumors”. In April 2002, Capt. Det. Flaherty met separately with Det. Sullivan and Sgt. Det. MP to attempt to come to some resolution of the conflict. (*Exhs. 21 through 23 & 38; Exh. 47[ID] (limited to establish that supervisor conducted separate meetings with Appellant and MP); Testimony of Appellant & Supt. Linskey*)

8. Det. Sullivan, for her part, reported that she was being “bullied” by Sgt. Det. MP, who, allegedly “provoked” her and was “highly stressed, argumentative and distracting to me”. She took offense that Sgt. Det. MP would take them both out of their way “to buy fudge for her son”. She also reported that she was sexually harassed by numerous male officers, and had been accused of being a “rat” for her work in investigating pornography found on a hard drive removed from the Jamaica Plain police station. She once told a superior officer that he had sided

with Sgt. Det. MP and had looked at her (Det. Sullivan) like he thought she was a “piece of shit”.
(*Exhs. 9, 21 23 & 38; Testimony of Appellant*)¹

9. Eventually CCU was shut down and, in October 2003, Det. Sullivan returned to the South End Station. She complained that her Detective peers excluded her from morning coffee, she was otherwise isolated from others in the unit and was getting crank phone calls. She also complained that her partner repeatedly invited her to accompany him to a nudist colony. She was assigned a new partner thereafter. (*Exhs. 9 & 39; Testimony of Appellant. Supt. Linskey & Capt. Hayes*)

10. In 2005, Det. Sullivan was assigned to the Child Abuse Unit, aka Crimes Against Children Unit (CACU) under the command of Sgt. Det. JD, within the Sexual Assault Unit (SAU) under the command of Lt. Det. (now Captain) Mark Hayes. (*Exh. 39, 54[ID], 55; Testimony of Appellant & Capt. Hayes*)

11. When she once went to retrieve evidence from one of her prior investigations in the (now defunct) CCU, Det. Sullivan discovered the CCU unit’s records stored in boxes that had not been logged into the Evidence Management System Database (EMD) but kept unsecured in an unlocked office and that it appeared “a significant amount of items” had been removed from the boxes. Det. Sullivan took photographs to demonstrate her findings. When a superior officer asked her to explain why she photographed the boxes, Det. Sullivan wrote a detailed “To/From” memo pointing the blame on him, and copied four other superior officers:

[Y]ou said you believed that it was my responsibility to have logged the items into EMD. As I explained to you, while I was assigned to the former Computer Crimes Unit, my repeated requests to provide access to the EMD system were denied and the 2½ days I was allocated to shut down the Computer Crimes Unit allowed me only enough time to

¹ Det. Sullivan alleged that on July 5, 2001, a number of male police officers paraded past her desk with their pants unzipped, which she reported to Sgt. JW but was afraid to make a formal report at the time. She also claimed that, while assigned to South End Station, she was called to a Sergeant’s office to find him in his underpants, but did not report that incident. It appears that, in 2005 Det. Sullivan did request an Internal Affairs investigation of allegations of harassment in 2001-2002, but it was not pursued. I note the allegations and the on-going conflict, but make no findings that such decade-old conduct occurred or did not occur, absent corroborating evidence or other percipient witness. (*Exhs. 6, 9, 23 & 38; Testimony of Appellant*)

update the inventory of items and secure the evidence and inventory logs in locked file cabinets in the locked room.

Regrettably, this is the second time I have been caught up in a situation where you have committed egregious acts in violation of B.P.D. rules of evidence. I took the photographs on Monday in a effort to protect myself from becoming entangled in another mess caused by you.

(Exhs. 6 & 39; Testimony of Appellant)

12. In August 2005, Sgt. Det. JD assigned a “51A” child abuse investigation to Det. Sullivan. She declined the assignment on the grounds that it appeared to involve children of police officers and she did not want to investigate such a matter because she still had an on-going complaint of being harassed because of an investigation she had done in 2001 or 2002 involving a BPD officer. She said she was “afraid” to investigate BPD officers or their families and “fearful” of involved in any investigation that involved City of Boston employees. Sgt. Det. JD and Lt. Det. (now Capt. Hayes) informed her that, absent a close family connection, it was not fair to others in the SAU to allow an officer to refuse assignments, and that if she continued to refused to do so, an IAD complaint for refusing a direct order would have to be filed, to which she said: “Go ahead and file it.” Det. Sullivan persisted in her refusal to accept the assignment> At this time, Det. Sullivan asked to transfer out of the SAU. *(Exh. 55: Testimony of Appellant & Capt. Hayes)*

13. Lt. Det. Hayes formed the opinion that Det. Sullivan’s refusal to obey lawful orders was “baseless and troubling”, and that her behavior raised concerns “about her mental and emotional state of mind and well-being” that went beyond the specific incident involved. He noted her claim that “it all started in the Academy and that she has been treated ‘like shit’ in this Department for five and a half years”, her prior disparaging memo to a superior about the CCU evidence, her accusation that Sgt. Det. JD had engaged in “neglectful conduct” and a more recent complaint about a fellow officer (Det. Mc) who played his radio too loud and had annoyed her by whistling. Lt. Det. Hayes concluded that Det. Sullivan was “in dire need of professional

psychological assistance”. He recommended that she be placed on administrative leave, ordered to a psychological examination, and that the IAD conduct an “extensive historical investigation into . . . her journey as a Boston Police Office . . . to ask . . . why has she been transferred so often?” . (*Exh. 55; Testimony of Capt. Hayes*)

14. In direct response to Det. Sullivan’s transfer request to transfer out of the SAU, Lt. Det. Hayes respectfully recommended that it be denied because “[t]ransferring Detective Sullivan will not solve her behavioral and personal problems. Detective Sullivan has been riding the transfer circuit for too long . . . and it is time to deal with the root causes of her problems. A transfer will not accomplish that goal.” (*Exh. 55*)

15. On August 11, 2005, Det. Sullivan received a two-day suspension for her insubordinate refusal to investigate the 51A incident as ordered. Upon appeal to the Police Commissioner, however, the suspension was rescinded on procedural grounds and her back pay reinstated. There is no evidence that any follow-up occurred as to Lt. Det. Hayes’s other recommendations made at that time. (*Exh. 48; Testimony of Appellant*)

16. In February 2006, the CACU moved to the Family Justice Center in Allston where the personality conflicts between Det. Sullivan and her peers and superiors continued, including:

- A report by a colleague (Sgt. Det. C) that he observed her “cowering and uncomfortably shaking, unable to make eye contact”, after he had passed her desk and offered to get her some coffee in March 2006.
- Complaints throughout 2006 about another Detective, including, among other things, his allegedly continuing to distract her by playing “little girl music” loudly on his radio, whistling, disposing of his lunch trash (Det. Sullivan said they were “apple cores” and would stink by the end of the day), and accusing him of being a “backstabber” and calling her “Carl” to spite her.
- In January 2007, returning a holiday gift from her supervisor (an offer of two personal days off), with a hand-written note: “I respectfully decline your holiday gift. Detective Carla Sullivan. 1-5-7.” (She viewed the gift as an ethical violation.)
- In November 2007, upon being ordered to write a “Form 26” to explain why she took pictures of an e-mail (that Det. Sullivan claimed had since been “confiscated” and

disappeared), writing a three-page memorandum reciting that she believed Sgt. Donovan was implying that the e-mail was meant to single her out and, then, going on to complain at length that Det. McCreavan continued to act badly toward her but Sgt. Donovan always seemed to take Det. McCreavan's side, how she had heard that a newly assigned Detective was "barraged with negative comments about working with me", and "[n]ot one Detective in this unit has spoken to me in weeks and I do not know why."

- In December 2008, in response to others playing radios, using a sound machine simulating rainfall to drown out the radio noise, until she was ordered to discontinue that practice.²

(Exhs. 25 through 27, 31, 40 & 41; Testimony of Appellant)

17. In addition, throughout 2008 and 2009, Det. Sullivan had been keeping track of issues with case assignments and, in particular, conflict with another CACU detective, CR for "jumping on" calls that Det. Sullivan thought she should have been assigned to handle. She documented this history in a "To/From" memorandum on March 20, 2009, after Det. CR had lost her temper and complained about Det. Sullivan to their supervisor, Sgt. Det. F. Det. Sullivan's written responses to this incident included calling both Sgt. Det. F and Det. CR liars, calling out Sgt. Det. F for "permitting [Det. CR] to stand at your desk for about 5 minutes and yell so loud that I could hear her 2 rooms away with the door closed repeatedly using 'fucking' as the preface every time she referenced me." Det. Sullivan also wrote: "I have overheard [Det. CR] say that she has some sort of friendship with Sgt. Det. JD outside of work. Perhaps that is why she so brazenly verbally attacks me. I do my best to stay out of Sgt. [JD's] path but since last summer, he has been more and more hostile towards me. I am concerned that so much attention keeps being shed on me when I do my best to work quietly and not bother anyone." *(Exh. 42, 49; Testimony of Appellant)*

² Another incident was reported in December 2008 in which Det. Sullivan was alleged to have disparaged another Detective to a victim's father who had called in, but the facts of this incident are disputed and I do not credit the evidence except as it appears to have been a misunderstanding that Det. Sullivan eventually explained to the satisfaction of her superiors. *(Exhs. 28[ID] through 30[ID], 31 & 41; Testimony of Appellant)*

18. In April 2009, Det. CR expressly declined to respond on a call with Det. Sullivan and had to be given a direct order to go on the call until another Detective volunteered to go in her place. Det. CR wrote a To/From" explaining that she had refused "for safety reasons", claiming that "Det. Sullivan doesn't communicate with me or anyone in the office. . . . has no interaction with anyone and . . . I don't feel safe going out with her." (*Exh. 32*)

19. Through the Summer of 2009, additional incidents indicated Det. Sullivan's continued discomfort with her working relationships and in-person contacts with colleagues and superiors:

- In July 2009, in an e-mail trail concerning an apparent snafu over submission of an overtime slip, Det. Sullivan declined to "communicate verbally" as her supervisors requested, stating: "I prefer that issues are handled in writing".
- In August 2009, Det. Sullivan reluctantly agrees to take on a sexual assault case that "should have been assigned to someone on the SA side. If the Detective who initially took the case needed help, she should have sought assistance from her Supervisor, and not broomed it to an experienced investigator on the PA side."
- In September 2009 Sgt. Det. JD suggested that, when she needed back-up on a call, Det. Sullivan ask one of the two detectives who said they "feel comfortable and safe" working with her, which prompted Det. Sullivan to accused him of "nothing short of intimidation", stating that the "new plan does not seem very well thought out" and repeated her objection to "brooming" cases. She also complained that "there are problems in this unit - they stem from the favoritism you have always practiced but deny . . . eerily similar to Nov 2007 when you held a secret meeting where my coworkers got a bitch session" and demanding that he "please correct this or otherwise I will escalate this to IAD to investigate why 3 detectives in this unit feel 'unsafe and uncomfortable' working with me".

(*Exhs. 51,52,56 & 57; Testimony of Appellant & Capt. Hayes*)

20. In or about July 2009, the BPD's staff psychiatrist, Dr. Marcia Scott, who had been meeting with Det. Sullivan since 2002, directed that Det. Sullivan's supervisors begin filing report regarding her work status. Dr. Scott held about ten sessions with Det. Sullivan. Three of these weekly reports prepared by Sgt. Det. JD were introduced into evidence for a limited purpose to show that the BPD caused these reports to be prepared for Dr. Scott and made part of Det. Sullivan's file. (*Exhs. 35 through 37; Testimony of Appellant, Capt. Hayes & Dr. Beck*)

21. Sgt. Det. JR's reports state, in part:

July 23, 2009 Report

- She gets along well with 1 Detective for now, other tolerate her, others want nothing to do with her – She is e-mailing me only and not speaking to me verbally.
- He rated her “Normal” and “Adequate” as to communications outside unit, response to supervision, work product, attendance and follow through on investigations

September 12, 2009 Report

- 3 of 6 Detectives feel comfortable enough to work with her on calls – 3 do not – Only email little verbal communications with me - She said I put her stuff behind other requests – Did not forward docs as requested for dcf grant of
- Rated “Normal” or “Adequate” on communication outside unit, attendance, reports adequacy, follow through on investigations

November 11, 2009 Report

- Got into email argument with HTU Det. Ca and Sgt. G – Det. Ca complained to me – She was not talking for about a month except when directly confronted – Complained I told her to do illegal phone calls and that I caused dissention and that I was not allowing her enough time for work –emailed Dep. [Supt.] King indicating I might have edited a rambling email about a case before sending it along. I sent it as received –does what requested when ordered directly –begrudging accepts supervision–emailed me stating that I was causing dissention and that I should keep up my old cases that had been reassigned to her while I was out in 2007
- Rated “Normal” or “Adequate” on Work Product, Reports, Attendance and Follow through on investigations.

(Exhs. 35 through 37; Testimony of Appellant, Capt. Hayes & Dr. Beck)

22. In November 2009, issues arose about Det. Sullivan's use of vacation time. Her CACU colleagues complained to Sgt. Det. JD that she ignored proper “swaps” procedure by seeking time off she was scheduled to work without arranging with a colleague to fill in for her. As a result, Sgt. Det. JD rescinded approval to take vacation time in December for which she had been scheduled for “on call” duty. She was also denied “carryover” time in January that she had requested to roll over from ten vacation days (nearly half her vacation allotment) she would not have taken before the year-end, because she had been expressly counseled after doing the same a year before that this was not to be done in the future. *(Exhs.44 & 58, 61; Testimony of Appellant & Capt. Hayes)*

23. Det. Sullivan emailed Sgt. Det. JD and Lt. Det. J on November 27, 2009 that she had only just been through a “stack of emails” and discovered that the schedule had changed and learned that she was assigned “on call” duty the first week of December.³ She arranged for a swap for her December vacation and put in a revised request for “carryover” time. Sgt. Det. JD acceded to Det. Sullivan’s request to take her December vacation and referred the “carryover” request to Capt. Hayes, who denied it. Det. Sullivan was ordered to report to a meeting with her superiors upon her return from vacation on December 10, 2009. (*Exhs. 44, 46, 58 & 62; Testimony of Appellant & Capt. Hayes*)

December 2009 Fitness for Duty Determination

24. Capt. Hayes had been monitoring Det. Sullivan’s work status closely. As a result of these concerns, on the authority of Dep. Supt. King, then in the Bureau of Investigative Services, Dr. Marcia Scott had scheduled an appointment with Det. Sullivan, originally to be held on Wednesday, November 25, 2009. At the request of Det. Sullivan’s union representative, the appointment was postponed to December 1, 2009 but was cancelled by Dr. Scott due to her illness on that date.⁴ (*Exhs. 33 & 58; Testimony of Capt. Hayes*)

25. On December 5, 2009, Capt. Hayes wrote a “To/From” memorandum to Dep. Superintendent King in which he reviewed at length Det. Sullivan’s documented work history, including the events described above as well as others, and stated his concerns about Det. Sullivan’s “mental health, state of mind and psychological fitness to perform the duties of a police officer.” Capt. Hayes reported that he had scheduled a meeting with Det. Sullivan and her union representative on December 10, 2009, along with Lt. Det. J and Sgt. Det. F. He reported

³ Copies of two assignment calendars appear to confirm that the original December schedule (dated 9/9/2009) did not include Det. Sullivan “on call” for the first week of December, while a revised schedule (dated 10/26/2009) did. Both documents predate the November timeframe. (*See Eshs. 63[ID] & 64[ID]; Testimony of Appellant*)

⁴ I note that Det. Sullivan knew of this appointment when she was negotiating to take that as a vacation day, claiming she had booked a flight for early that morning. (*Exh. 58*)

twice in this memorandum that her co-workers feared that “she may shoot them” and requested authority to confiscate her firearm when he met with her on December 10, 2009.

He recommended her termination (“possibly an involuntary psychological disability retirement”) or immediate transfer out of the Family Justice Group. (*Exh. 33; Testimony of Capt. Hayes*)

26. While Det. Sullivan was away, the Chief of the Family Protection and Sexual Assault Bureau of the Suffolk County District Attorney’s Office, wrote to BPD Commissioner Edward Davis, copy to Lt. Det. JD, advising “the outstanding work done . . . by Detective Carla Sullivan” had resulted in a guilty plea and sentencing of a defendant who had assaulted his then-infant daughter. The letter praised Det. Sullivan for her “thorough, thoughtful and effective” investigation, and stated that working with her “was a pleasure as her responses to my requests were consistently timely and professional Without Detective Sullivan’s work on this case . . . [i]t is even possible that the case might not have been solved at all.” On December 11, 2009, Commissioner Davis acknowledged this letter and ordered it placed as a permanent record in Det. Sullivan’s personnel file. (*Exhs. 16 & 17; Testimony of Appellant*)

27. On December 10, 2009, Capt. Hayes met with Det. Sullivan, her union representative, Sgt. Det. JD and Sgt. Det. F. At this meeting, Capt. Hayes confiscated Det. Sullivan’s firearm, informed her that she was ordered to take her remaining vacation days and report back to duty on December 21, 2009. She was also ordered to report on December 15, 2009 to the BPD Occupational Health Unit for a fitness for duty evaluation to be performed by Dr. Scott. She was provided with a written set of orders concerning these and other matters related to her future duty assignments. (*Exh. 53; Testimony of Capt. Hayes*)

28. On December 21, 2009, Lt. Det. PI, then Acting Captain at the Family Justice Group, was instructed to inform Det. Sullivan, when she reported to work, that Dr. Scott had determined

that Det. Sullivan was not fit for duty. At approximately 10:30 am, Det. Sullivan had not arrived, and calls to her cell and home phones were not returned, Lt. Det. PI and several other officers traveled to Det. Sullivan's residence in search of her, returning to the Family Justice Center about noon to find Det. Sullivan there. She had called in the night before and reported she would be delayed due to the weather. She was informed that she had been found unfit for duty, put on paid administrative leave and escorted out of the building. (*Exh. 65; Testimony of Capt. Hayes*)⁵

29. Det. Sullivan reported to Capt. Hayes at the Family Justice Center on January 8, 2009 to submit overdue paperwork. Capt. Hayes's reports documented several examples of unusual behavior, including ignoring his greeting "Good Morning Carla", failing to respond to his questions and avoiding eye contact. She was not allowed to go through the case files for additional personal items, as she said it would take "hours". Det. Sullivan was upset that she could not go through the files, recalling that she once had a problem securing her personal items in 2007 and did not want to leave them in unlocked cabinets. This behavior was witnessed by the union President. (*Exhs. 59 & 66; Testimony of Appellant & Capt. Hayes*)

30. Det. Sullivan next returned to the Family Justice Center on February 19, 2009 to turn in the department laptop and pager that she had kept at home. She was also presented with several boxes of personal property that Sgt. Det. JD had culled from the case files since her last visit. Capt. Hayes gave permission to download any materials she chose from her office computer onto a thumb drive to take with her, but the computer would not boot up, prompting her to claim someone had sabotaged it. Capt. Hayes arranged for technical help to try to solve the problem but it could not be solved that day. Det. Sullivan again avoided direct interaction and eye contact with Capt. Hayes during this interaction, directing all contacts to the union

⁵Det. Sullivan initially was on unpaid status and required to use accrued sick time. She also was offered a voluntary disability retirement which she apparently declined. She eventually was returned to paid status and received a retroactive settlement for her unpaid time. (*Testimony of Supt. Linskey & Appellant*)

President and Vice President, who accompanied her. Capt. Hayes took extensive notes during this visit. (*Exh. 50; Testimony of Appellant & Capt. Hayes*)

Subsequent Psychiatric Evaluations

31. On August 10, 2010, Det. Sullivan sought a psychiatric evaluation from James C. Beck to support her return to duty. Dr. Beck holds a Ph.D. in Psychology from Yale University (1960) and an M.D. from Harvard Medical School (1963). He is a licensed Massachusetts Psychologist and Psychiatrist who practices clinical and forensic psychiatry. His Curriculum Vitae lists numerous publications and awards and references dozens of fitness for duty examinations of police officers. (*Exhs. 9, 14 & 20; Testimony of Dr. Beck*)

32. Dr. Beck interviewed Det. Sullivan for approximately two hours and reviewed the notes of her prior sessions with the BPD's psychiatrist, Dr. Scott, which dated back to 2002. The scope of his engagement was confined to determining whether or not Det. Sullivan suffered from a psychiatric condition including recommendation for future treatment, if any. His evaluation did not include review of collateral source data and was "not adequate for a fitness for an assessment of fitness for duty". (*Exhs. 9 & 34: Testimony of Dr. Beck*)

33. Dr. Beck's report saw Dr. Scott's interaction with Det. Sullivan as "adversarial". He took issue with many of Dr. Scott's observations and her "failure to consider that some of Detective Sullivan's complaints may have a basis in fact." Dr. Beck found "no evidence of a personality disorder but I did see evidence of a self-contained woman who is very determined" and "I do not believe there is evidence to support Dr. Scott's conclusion that Detective Sullivan's difficulties are entirely a function of a personality disorder or even of her personality traits. Her record as a police officer and later as a detective . . . [I]n some situations Detective Sullivan may have problems where some other people would not, but that with appropriate supervision it

should be possible for Detective Sullivan to continue to provide the important professional service that she is quite capable to offer.” Although he saw no current evidence of a mental or personality disorder, Dr. Beck agreed to re-evaluate Det. Sullivan at three-month and six-month intervals to ascertain whether “evidence of psychopathology for which treatment is indicated” had developed at a later time. (*Exh. 9*)

34. On June 20, 2011, in a joint referral from BPD’s Occupational Health Unit and her union, Det. Sullivan saw Thomas G. Gutheil, M.D., a board certified physician in both general and forensic psychiatry with a medical degree from Harvard University (1967). Dr. Gutheil is Professor of Psychiatry in the Harvard Medical School and has served as the president of the American Academy of Psychiatry and Law, the national forensic psychiatric association, and the International Academy of Law and Mental Health. His Curriculum Vitae lists hundreds of publications and numerous awards. (*Exhs. 10 & 11; Testimony of Dr. Gutheil & Supt. Linshey*)

35. After reviewing the evaluations of Dr. Scott and Dr. Beck, along with a description of the job requirements of a BPD officer, numerous BPD emails, notes and memos as well as psychological test results, Dr. Gutheil conducted a personal interview with Det. Sullivan. His report opined that Det. Sullivan “does not suffer from a diagnosable mental disorder that would be inconsistent with a return to duty” and found “no evidence that she would be unsafe with a firearm.” He did conclude: “However, she does manifest certain traits that may prove problematic in her current circumstances.” These traits include:

- Social and personal distance from peers and superiors. “Det. Sullivan stands out from officer groups in a number of ways”, due in in part, to the challenges Det. Sullivan herself acknowledges in “reconciling the differences in her current environment from her previous experience in ‘corporate culture’.”
- “Det. Sullivan manifests obsessive-compulsive traits” that, while having “many positive advantages in detail-oriented work settings. . . .may lead to conflict with peers who are more relaxed in their standards”. Det. Sullivan agreed . . . that she might come across in a ‘goody-two-shoes’ sort of manner, a view that may

influence her comfort or success in group settings. While this is not an actual impairment, it may interfere with team cohesiveness.”

- “Two additional traits are a tendency toward social isolation and a likely problem with perspective taking. The first constitutes a problem in . . . cooperative decision making” and “team functioning may suffer as may the ability to partner effectively.”
- The “problem with perspective-taking . . . can cause difficulties in areas of negotiation with others over daily chores, tasks and personal arrangements; this factor may also come across as entitlement or, under some extreme circumstances, as insubordination. One would expect that this difficulty might manifest itself in . . . interpersonal situations where the ability to see the other person’s viewpoint or experience is important.”

Dr. Gutheil opined: “While none of her traits rise to a level of an actual psychiatric diagnosis or a mentally based unfitness, they can cause friction or conflict in group settings such as a police force.” (*Exhs. 11 & 19; Testimony of Dr. Gutheil*)

36. In Dr. Gutheil’s opinion, “given all of the above conclusions”, he described the kind of task or setting in which Det. Sullivan would be likely to succeed:

- A situation that is somewhat isolative, in which she has significant solo responsibility where she can use her past training and experience to best effect.
- The guidelines for officer’s conduct should be unambiguously spelled out, possibly even in writing.
- This could, but need not, involve firearms carrying.

Dr. Gutheil acknowledged that “such an optimal situation may simply be unavailable at present or ever, or may be inconsistent with overall policy” which, ultimately, was a matter for BPD’s institutional judgement. (*Exh. 11: Testimony of Dr. Gutheil*)

37. Based on Dr. Gutheil’s recommendations, the BPD created a position for Det. Sullivan in the Forensics Unit, reporting to Capt. Dowd, and returned her to duty in October 2011, but did not return her firearm. She works in an isolated setting on selected computer forensics assignments with virtually no responsibility for interpersonal contact with peers or supervisors. She had been tasked with and has completed only a handful of work assignments since her return

to duty. She has said she “reads the Newspapers all day”. She has remained on this modified duty status to the present day. The BPD has no intention to assign another Detective to this job were she to vacate the position. (*Testimony of Appellant, Supt. Linsky & Dr. Brown*)

38. From March 2011 until January 2012, on referral from her union, Det. Sullivan was evaluated by Paul D. Zeizel, Psy.D., a licensed Massachusetts clinical psychologist. Dr. Zeizel holds a degree of Doctor of Psychology from the Massachusetts School of Professional Psychology (1987). His work includes psychological support for employees of the U.S. Drug Enforcement Administration, fitness for duty evaluations for public safety personnel including the Massachusetts Department of Correction, and consulting for civilian personnel deployed in international conflict situations. (*Exhs. 12 & 13; Testimony of Dr. Zeizel*)

39. Dr. Zeizel reviewed the prior evaluations by Drs. Scott, Beck and Gutheil, as well as selected information he obtained, primarily from Det. Sullivan’s union president, of her BPD work history. He administered a battery of psychological tests and interviewed her over seven separate sessions. (*Exh. 13; Testimony of Dr. Zeizel*)

40. Dr. Zeizel’s report, dated May 2, 2012, contains sharp criticism of Dr. Scott’s evaluation, which he found was based, in part, on “bias” and “gossip” provided to Dr. Scott over the period of eight years that she had been following Det. Sullivan, her failure to “recognize data that appeared to have the markers of harassment”, a lack of “empathy” that “devalued the therapeutic relationship.” He concurred with Drs. Beck and Gutheil, finding no basis in Dr. Scott’s evaluations or his own testing and evaluation to support a conclusion that Det. Sullivan suffered from any form of “personality disorder” or other “psychopathology”. Her MMPI-2 test results classified her as an “introvert” but, otherwise, showed no evidence of psychopathology or personality disorders. He disagreed that she was “socially isolated” or unable to be “empathic” or

“take the perspectives from other points of view.” He “downgraded” the validity of many of the documents from BPD as having “no substance”. Rather, he attributed her work conflicts to being “mistreated by colleagues and superiors” who, unlike her, did not practice “high work standards and were “thrill seekers”, as well as her intolerance for the “unethical and perhaps illegal” behavior that she witnessed in other BPD officers. (*Exh. 13; Testimony of Dr. Zeizel*)

41. Dr. Zeizel opined that Det. Sullivan “can return to her previous position as a Boston Police Detective, without restrictions.” He specifically opined that, based on her history of never having misused her weapon, her intelligence and her “disciplined” nature, she was qualified to carry a firearm. (*Exh. 13; Testimony of Dr. Zeizel*)

42. In May 2012, the BPD Occupational Health Unit referred Det. Sullivan for further evaluation by Andrew Brown, M.D., who then served as the BPD lead consulting psychiatrist. Dr. Brown holds a medical degree from Albany Medical School (1993) and is licensed to practice medicine in Massachusetts and New Hampshire. He is board certified in Psychiatry and Neurology. He is also a Consulting Psychiatrist for the Police Department and Fire Department in the Town of Brookline. (*Exh. 5; Testimony of Dr. Brown*)

43. Prior to his two interview sessions with Det. Sullivan on May 17, 2012 and May 31, 2012, Dr. Brown reviewed the prior psychiatric evaluations by Drs. Scott, Beck and Gutheil, along with numerous records of Det. Sullivan’s work history at the BPD. He also initiated his own contact with certain (unidentified) “Collateral Sources” within the BPD knowledgeable of Det. Sullivan’s present work status. His 33-page report contains dozens of verbatim extracts from these records. (*Exh. 6; Testimony of Dr. Brown*)

44. Det. Sullivan presented herself to Dr. Brown “as a cooperative, intelligent, and dedicated professional It is not difficult to empathize with Detective Sullivan, and it is

similarly not difficult to identify the negative feelings that are associated with her sense that she has not been treated fairly in general, and that she has been targeted, in particular. Because . . . Detective Sullivan's formidable intelligence is employed to account for any aspect of her history that may be inconsistent with [her] own perspective regarding the numerous interpersonal conflicts she has experienced, it is possible, upon meeting with Detective Sullivan, to derive impressions that are similar [to her own], i.e., that her present situation at work is due to inadequacies on the part of [the BPD] rather than to factors that are in some way internal to Detective Sullivan." He found Det. Sullivan saw herself as a "victim of injustice . . . convinced of the accuracy of her own perspectives and interpretations." (*Exh. 6; Testimony of Dr. Brown*)

45. Dr. Brown explained that, in forensic psychology, undue reliance on the perspective presented by the subject being evaluated is not appropriate. Similarly, use of the Diagnostic Criteria from the DSM-IV used to diagnose and categorize psychiatric disorders and conditions in the course of clinical psychopharmacological treatment are not as directly relevant or germane in the context of forensic psychiatric evaluations such as fitness for duty. Rather, forensic psychiatrists seek to maintain integrity by examining the issue or problem at hand from all reasonable perspectives, which requires exploring and considering all data sources and all sides of the case in order to arrive at an expert opinion in order to make objective sense of competing interpretations and perceptions that arise in forensic types of evaluation. All expert psychiatrists concurred with this approach. (*Exhs. 6, 19 & 20; Testimony of Drs. Brown, Beck & Gutheil*)

46. After taking into account both Det. Sullivan's self-reporting and the collateral and independent information he reviewed, Dr. Brown concluded that, although Det. Sullivan was "motivated and inclined to cooperate" with the BPD's efforts to return her to full duty, her re-integration should proceed cautiously. He found that Det. Sullivan's "capacity to function as a

member of a team remained compromised by the pervasive and enduring presence of impairments in interpersonal functioning” and that she had not demonstrated a present capacity to “adequately, communicate, coordinate and collaborate” with team members. He also concluded that the “astonishingly large volume of reports” about her style of communications, limited capacity to engage in productive relations with others and other interpersonal risks he identified, and her tendency to see her difficulties as unconnected to her interpersonal challenges but solely attributable to her being at the receiving end of injustice, provided sufficient reason to conclude that Det. Sullivan should not be allowed to carry a firearm. He recommended a follow-up evaluation in six months. (*Exh. 6; Testimony of Dr. Brown*)

47. In September 2012, Dr. Brown received additional documentation from the BPD, including Dr. Zeizel’s fitness for duty evaluation and a number of documents that had been prepared by Det. Sullivan “to advance her own perspective”. Dr. Brown opined that, after review of these materials, his conclusions had not changed. (*Exh. 7*)

Bypass for Promotion to Sergeant

48. On March 6, 2013, the BPD generated Certification No. S001-13 of candidates eligible for consideration for promotion to the rank of Sergeant. Thirty-two names appeared on the Certification. Det. Sullivan’s name appeared in the first tie-group of nine (9) candidates. (*Exh. 1: Testimony of Supt. Linskey*)

49. Effective March 22, 2013, BPD Commissioner Davis appointed eight (8) Sergeants from Certification No. S001-13. Seven (7) of the nine (9) candidates in Det. Sullivan’s tie group were selected and two (2), Det. Sullivan and one other, were not selected. The eighth candidate selected was in the tie-group below Det. Sullivan. (*Exhs. 1 & 2; Testimony of Supt. Linskey*)

50. The eight new Sergeants (four Detectives and four Police Officers, were reassigned to the Bureau of Professional Development/Academy effective March 23, 2013. In accordance with BPD practice, after training, each promoted Sergeant was assigned to a district station within the Bureau of Field Services to serve as a uniformed first-line supervisor. The BPD has never selected a candidate for promotion to Sergeant who was not then working at full duty capacity or who was not required to act as a first-line supervisor. (*Exh. 2; Testimony of Linskey*)⁶

51. As first-line supervisors, BPD Sergeants are relied upon more than superior officers of any other rank to provide immediate, hands-on mentoring, back-up support and direction to subordinate officers. The core duties of a Sergeant include a panoply of administrative and personnel management functions, which include responsibility to: plan, coordinate and command on-scene field operations and tactical responses; communicate and explain laws, department policies and administrative orders, conduct shift change roll calls; maintain standards of performance of subordinates and provide periodic evaluations; counsel and mediate subordinates on personal and work-related problems and resolve disputes, friction and tensions among personnel under her supervision. (*Exh. 15; Testimony of Supt. Linskey & Capt. Hayes*)

52. About 40% of the BPD sworn officers have earned a college degree and most BPD supervisory officers have earned college degrees. Detective supervisors tend to be older and about 95% of them have college degrees, and many have advanced degrees. In particular, two of Det. Sullivan's supervisors, (now) Lt. Det. JD and Sgt. Det. MP held Master's Degrees. (*Testimony of Appellant & Capt. Hayes*)

⁶ Supt Linskey, a 28-yeara BPD veteran, knew of only two examples in which a newly promoted Sergeant was not reassigned to uniformed duty. One Detective was retained in the Homicide Unit after promotion and supervised a squad of Detectives; another Detective who had six years of special assignment in the District Attorney's Office was kept in that office where he assumed a supervisory role over the other detectives. (*Testimony of Appellant & Supt Linskey*) Det. Sullivan believed a female Sergeant had been promoted to Lieutenant while out on medical leave, but "it was quite a few years ago" and she "could not verify" that claim. (*Testimony of Appellant*)

53. Supt. Linskey reviewed Det. Sullivan's current work status with her direct supervisors and concluded that the issues that had compelled her light duty assignment had not yet fully resolved. In particular, she continued to avoid interpersonal contact with peers and supervisors (something Supt. Linskey witnesses himself first-hand), which meant she could not be relied upon to communicate with and supervise others effectively, had not developed her interpersonal skills and ability or perspective to know how to evaluate, mediate and resolve disputes, and could not be counted on to work collaboratively with others. (*Testimony of Supt. Linskey*)

54. There also remained lingering concerns among her colleagues (even her own union representative) who had expressed reluctance about working with her. Although Supt. Linskey understood that Dr. Gutheil and others had suggested there was no clinical or medical impairment or history of misuse that prevented Det. Sullivan from carrying a firearm, concerns about her interpersonal limitations, alone, were compelling reason, to believe she should not be placed in a command position where she would be required to carry a firearm into potentially confrontational and stressful situations. (*Testimony of Supt. Linskey & Dr. Brown*)

55. By letter dated March 21, 2013, BPD Director of Human Resources notified Det. Sullivan that she had been bypassed for promotion to Sergeant. The reasons stated for the decision to bypass her: "Currently you are on light duty status and are unable to perform the essential functions of your current position or any other sworn position at this time." (*Exh. 4*)

56. Det. Sullivan's initial appeal duly ensued. (*Claim of Appeal [Case No. G2-13-118]*)

57. On June 6, 2013, Dr. Brown met with Det. Sullivan's current BPD supervisors. The purpose of the meeting was to discuss Det. Sullivan's current work performance in her limited duty position and, again, update the assessment of her capacity to constructively and productively engage and collaborate with colleagues and supervisors. At this meeting, Dr. Brown

received the following report of the observations of her supervisors, that, essentially, report no change to the previous accounts of her work status:

- Det. Sullivan works alone and does not interact with colleagues
- She had to be given a direct order “multiple” times to take an Ethics Test
- Her current supervisors have “never seen her work collaboratively with a single officer” and both supervisors “emphatically agreed” it would not be possible to place her with a partner.
- Her supervisors felt a “sense of frustration” about her lack of gainful activity and “perception that Det. Sullivan’s capacities were declining”, that was “tempered by compassionate concern for her health and well-being”

*(Exh. 8; Testimony of Appellant, Dr. Brown & Capt. Hayes)*⁷

58. On August 16, 2013, BPD Commissioner Davis appointed six (6) new Sergeants, including the remaining candidate in Det. Sullivan’s tie group, and five (5) others ranked below Det. Sullivan. Det. Sullivan’s second bypass appeal duly ensued. (Claim of Appeal [G2-13-224])

59. On December 4, 2013, shortly prior to his testimony before the Commission, Dr. Beck prepared a second report concerning Det. Sullivan. He was provided with copies of the reports of Dr. Brown, Dr. Gutheil and Dr. Zeizel, along with “stacks” of documents from Det. Sullivan’s BPD files, and conducted another clinical interview with her that focused “on symptoms of mental disorders”, for the purpose of rendering an opinion as to her fitness for duty and, specifically, for her fitness to be promoted to Sergeant which would require her to carry a firearm. Dr. Beck agreed that Det. Sullivan had a “lengthy history of documented personnel issues” which included “years at some assignments where she had known difficulties with other officers or administration.” He discounted this history of “continued difficulties in her relationship with the Boston Police Department” as “primarily a result of their attitude toward her rather than her behavior on the job.” He found “no evidence for a character problem or

⁷ Dr. Brown’s June 6, 2013 supplemental report was admitted de bene, subject to the Appellant’s motion to strike on the grounds that the document was prepared after the Appellant’s initial bypass, which I took under advisement. After considering all of the evidence, I conclude that the substance of the report has been sufficiently corroborated by other documents and the testimony of Capt. Hayes, that it may properly be given probative weight as to the merits of both the initial bypass and those that occurred thereafter. The motion to strike is denied.

other similar condition that would in any way caused [sic] her to be unfit to carry a firearm.”
(*Exhs. 34 & 34A; Testimony of Dr. Beck*)

60. On November 14, 2014, Det. Sullivan was bypassed a third time for appointment to the position of Sergeant for the same reasons stated for bypassing her in March 2013 and August 2013, from which she also duly appealed. (*Claim of Appeal [G2-14-288]*)

STANDARD OF REVIEW

This appeal involves a bypass of the Appellant for promotional appointment to a permanent civil service position. This process is governed by G.L.c.31, Section 27, which provides:

“If an appointing authority makes an original or promotional appointment from certification of any qualified person other than the qualified person whose name appears highest [on the certification], and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file . . . a written statement of his reasons for appointing the person whose name was not highest.”

An appointing authority’s discretion bypass candidates for civil service appointments who have qualified for the position by taking and passing a civil service competitive examination is not absolute and is subject to review by the Commission. When a candidate for appointment appeals from a bypass, however, the Commission’s role is not to determine whether that candidate should have been bypassed. Rather, the Commission determines, on the basis of the evidence before it, whether the appointing authority has sustained its burden of proving, by a preponderance of the evidence, that the decision to bypass the candidate was made after a “thorough review” and that there was “reasonable justification” for the decision. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Brackett v. Civil Service Comm’n, 447 Mass. 233, 241 (2006), citing G.L.c.31,§ 2(b); Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010) See generally Barry v. Town of Lexington, 21 MCSR 589, 597

(2008) citing Sabourin v. Town of Natick, 18 MCSR 79 (2005) (civil service test score is a baseline tool for relative ability, knowledge and skills under basic merit principles)

“Reasonable justification in this context means ‘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.’ ” E.g., Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006) and cases cited; Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). In determining whether the department has shown a reasonable justification for a bypass, the Commission's primary concern is to ensure that the department's action comports with “[b]asic merit principles,” as defined in G.L.c.31,§1. See Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, 748 N.E.2d 455 (2001); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991)

The “preponderance of the evidence test” requires the Commission to conclude that an appointing authority established, through substantial, credible evidence presented to the Commission, that the reasons assigned for the bypass were “more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321, 577 N.E.2d 325, 329 (1991); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427, 430 (1928) (*emphasis added*)

In conducting its inquiry, the Commission “finds the facts afresh”, and is not limited to the evidence that was before the appointing authority. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012), citing Beverly v. Civil Serv. Comm’n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003); Tuohey v. Massachusetts Bay Transp. Auth., 19 MCSR 53 (2006); Borelli v. MBTA, 1 MCSR 6 (1988). The Commission

must take account of all credible evidence in the record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65, 748 N.E.2d 455, 462 (2001). It is the function of the hearing officer to determine the credibility of evidence presented through witnesses who appear before the Commission. See Covell v. Department of Social Svcs., 439 Mass. 766, 787 (2003); Doherty v. Retirement Bd., 425 Mass. 130, 141 (1997); Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988).

Experts' conclusions are not binding on the trier of fact, who may decline to adopt them in whole or in part. See, e.g., Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 694-95 (2012); Turners Falls Ltd. Partnership v. Board of Assessors, 54 Mass.App.Ct. 732, 737-38, rev. den., 437 Mass. 1109 (2002). As a corollary, when presented with conflicting expert evidence, the Commission may accept or reject all or parts of the opinions offered. See, e.g., Ward v. Commonwealth, 407 Mass. 434, 438 (1990); New Boston Garden Corp. v. Board of Assessors, 383 Mass. 456, 467-73 (1981); Dewan v. Dewan, 30 Mass.App.Ct. 133, 135, rev.den., 409 Mass. 1104 (1991). No specific degree of certitude is required and expert's opinion may be accepted if it is "reasonable" and expressed with sufficient firmness and clarity. See, e.g., Commonwealth v. Rodriguez, 437 Mass. 554, 562-63 (2002); Bailey v. Cataldo Ambulance Service, Inc., 64 Mass.App.Ct. 228 (2005); Resendes v. Boston Edison Co., 38 Mass.App.Ct. 344, 352, rev.den., 420 Mass. 1106 (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 (2005); Sullivan v. First Mass. Fin. Corp., 409 Mass. 783, 79-92 (1991).

Especially when it comes to selecting an applicant for a sensitive public safety position, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown . . . Absent proof that the [appointing authority] acted unreasonably . . . the commission is bound to defer to the [appointing authority’s] exercise of its judgment” that “it was unwilling to bear the risk” of hiring the candidate for such a sensitive position. Beverly v. Civil Service Comm’n 78 Mass.App.Ct. 182, 190-91 (2010); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (Commission must not substitute its judgment for a “valid” exercise of appointing authority discretion, but civil service law “gives the Commission some scope to evaluate the legal basis of the appointing authority’s action, even if based on a rational ground.”) See also Town of Reading v. Civil Service Comm’n, 78 Mass.App.Ct. 1106 (2010) (Rule 1:28 opinion); Burlington v. McCarthy, 60 Mass.App.Ct. 914,(2004) (rescript opinion); Massachusetts Dep’t of Corrections v. Anderson, Suffolk Sup. Ct. No. 2009SUCV0290 (Memorandum of Decision dated 2/10/10), reversing Anderson v. Department of Correction, 21 MCSR 647, 688 (2008). This principle is particularly apt when the applicant is under consideration for a promotion to a superior position.

ANALYSIS

Applying these principles to the facts of the present appeal, the BPD has proved by a preponderance of the evidence that it had reasonable justification to bypass Det. Sullivan for promotion to BPD Sergeant. The BPD showed that it relied on a thorough independent review of the relevant facts to conclude that, at the time of each bypass decision, Det. Sullivan had not been cleared for full duty, which was an essential requirement for promotion and, in particular, that she was unlikely to perform satisfactorily at a supervisory level.

First, when the BPD makes a promotion to the rank of Sergeant, the newly promoted officer receives training and, thereafter, is assigned as a full-duty patrol supervisor, responsible to serve as a shift commander. The BPD has never promoted an officer to Sergeant whom the BPD command staff believed was unable to perform at such a full duty capacity.

Det. Sullivan was assigned to limited duty at the time she sought promotion to Sergeant. Her job duties involved working as an individual contributor on specific tasks assigned to her from time to time specifically designed to permit her to limit her interaction with peers and supervisors. She had not worked with a partner in a full-duty assignment since 2009, let alone demonstrated a present ability to supervise and command others. These restrictions were implemented as a result of the well-documented and rationally-supported assessments by two medical professionals, Dr. Thomas Gutheil and Dr. Andrew Brown. Supt. Linskey and Capt. Hayes provided persuasive testimony that corroborated the medical opinions, with specific evidence about Det. Sullivan's tendency toward social isolationism, including shortcomings in the areas of interpersonal relationships, rigidity, communications skills and the ability to work collaboratively with others, which have been manifested for a period of about a decade prior to the promotional bypasses. For this reason alone, the BPD was reasonably justified in deciding that Det. Sullivan was not suited for promotion to a supervisory position.

I have discounted some of the evidence that seems worthy of little weight. For example, the hearsay medical opinions of Dr. Scott that date back to 2002 were not considered in reaching my conclusion. Similarly, I do not infer from hearsay statements by some of Det. Sullivan's colleagues who said they were afraid to partner with her that they feared specific intentional retaliatory harm, and I do not take literally that some thought she might "shoot them". I do find, however, that the considerable weight of the direct, consistent evidence reported by BPD peers

and supervisors, composed of the input of many different individuals over an extended period of time, considered as a whole, presents a very credible mosaic upon which the BPD could reasonably rely to conclude that Det. Sullivan was a person who has been a source of friction in the BPD, that she seemed to be oblivious to accepting her share of responsibility for that situation, and that there was little support to suggest that she was suitable to assume a command position. Indeed, the Appellant's demeanor at the Commission hearing showed many of the same traits that troubled the BPD, including, for example, a persistent lack of eye contact (often gazing at the wall, seemingly reluctant to look at this hearing officer and the witnesses), and her unwavering perception that her current predicament was entirely due to flaws of others (which she described in detail, even those many years in the past).

Thus, on this record, I find it is unreasonable to discount the credible testimony of the two senior command staff BPD witnesses who appeared before me, along with the numerous written reports made in the ordinary course of business by BPD officers, detectives and supervisors, solely on the strength of the Appellant's own testimony and recollections of events, some more than a decade old, coupled with the opinions of Dr. Zeizel and Dr. Beck whose conclusions, themselves, were primarily formed on the basis of Det. Sullivan's "self-reporting" to them. More importantly, I find that the BPD was more than reasonably justified to discount the Appellant's version of events over the extensive and credible record to the contrary that questioned the veracity of much of her recollections and perspective.

Second, I have fully considered Det. Sullivan's claim that the BPD's opinion of her character is tainted by unlawful bias against her, variously attributed to her age, gender, educational status and high ethical standards, which allegedly created obstacles for her integration into the "culture" of the BPD and forced her to become isolated and eventually ostracized. I have no

doubt that she genuinely believes these allegations. The evidence, however, fails to establish this claim. Supt.. Linskey and Capt. Hayes both demonstrated that their judgments were fact-based, and not emotionally driven. I discerned no indicia that they harbored any personal animus against Det. Sullivan and, in fact, they took pains to see that the BPD made the best use of her skills, as they honestly saw them, and repeatedly showed a willingness to accommodate the limitations that she brought to the job. Dr. Brown noted that Det. Sullivan was clearly a very intelligent person with considerable experience in her field of expertise and found that her story, although a distortion of reality in many respects, still engendered empathy with him. The record makes it clear that Det. Sullivan has many positive qualities that she brings to her service with the BPD, and the BPD has recognized her appropriately for those contributions. Unfortunately, the BPD is not confident that supervisory skills are among them.

Third, this is not a case in which the BPD has claimed, and BPD is not required to show, that Det. Sullivan was medically unfit for duty in order to bypass her for promotion. As Dr. Gutheil deftly stated: “While none of her traits rise to the level of an actual psychiatric diagnosis or mentally based unfitness, they can cause friction or conflict in a group setting such as a police force.” Although the experts differed on their opinions about Det. Sullivan’s mental health, they all agreed that a police officer and a police supervisor, in particular, must have the ability to interact, communicate and collaborate with others. Thus, in this situation, the BPD did not act on the basis of a psychiatric disqualification, but made a judgment that, mental health labels aside, at the times in question, Det. Sullivan’s long, documented history of performance showed that she was not suitable for promotion.

Fourth, any thought that the BPD’s decision to bypass Det. Sullivan could be impeached indirectly by challenging the BPD’s decision to keep her on restricted duty and refuse to issue

her a firearm also must fail. Even the Appellant acknowledges that “firearm use . . . is totally under the control of” the BPD and the Appellant does not ask the Commission to decide that “the BPD should give [Det. Sullivan] a firearm.”

Finally, the Appellant’s remaining contentions can be dismissed summarily. The claim that the BPD failed to meet its “burden of proof” to establish reasonable justification for bypassing Det. Sullivan is not supported. For the reasons stated above, the BPD did prove by a preponderance of evidence that its bypass decision was justified. Similarly, the claim that the Appellant’s “bad performance” was not of her own making but the result of “bad supervision” is without merit. The example of the alleged “nadir” of this deficient supervision -- Capt. Hayes’s sending a “motorcade” to Det. Sullivan’s house when she had not reported for work in December 2009 to “embarrass her and possibly to celebrate [Dr. Scott’s finding her unfit for duty]” – is borderline frivolous. I also reject the claim that the notice of bypass was “ambiguous” and lacked sufficient disclosure of the reasons for bypass. The Appellant was clearly put on notice that she was being bypassed because she was on restricted duty and because she could not perform “all” of the functions required of a police officer and Sergeant, which, by seeking the position, she would have to have known, or reasonably should have known.

For all of the above reasons, the appeals of the Appellant, Carla Sullivan, under Docket Nos. G2-13-118, G2-13-224, G2-14-186, G2-14-288 are hereby *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

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

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may

have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of a Civil Service Commission's final decision.

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:

Galen Gilbert, Esq. [for Appellant]

Nicole I. Taub, Esq. [for Appointing Authority]

Melinda A Willis, Esq. [for HRD]