

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

PATRICIA MAININI,
Appellant

v.

G1-05-301

TOWN OF WHITMAN,
Respondent

Appellant's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Patricia Mainini (hereafter "Mainini" or Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the Town of Whitman (hereafter "Appointing Authority" or "Town"), bypassing her for original appointment to the position of intermittent police officer in the Whitman Police Department. A full hearing was held on September 18, 2007 at the offices of the Civil Service Commission. All witnesses, with

the exception of the Appellant and Town Administrator Lynam, who testified first, were sequestered. Two tapes were made of the hearing.

FINDINGS OF FACT:

Thirty-five (35) joint exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

Called by the Appointing Authority:

- Francis J. Lynam, Whitman Town Administrator;
- Sergeant Scott D. Benton, Whitman Police Department;
- Detective Sergeant Timothy Hanlon, Whitman Police Department;
- Police Officer Stephen I. Drass, Whitman Police Department;

Called by the Appellant:

- Patricia Mainini, Appellant;

I make the following findings of fact:

1. The Appellant is a thirty-eight (38) year old female from Whitman who graduated from Rockland High School. At age 28, the Appellant, who has supported herself since the age of 16 primarily through waitressing and bartending jobs, decided to further her education. She successfully obtained an Associate degree from Massasoit Community College and a Bachelors degree in criminal justice from Anna Maria College. She subsequently became employed by the Plymouth County Sheriff's office where she was employed at the time she applied to be an intermittent police officer.

(Testimony of Appellant)

2. On March 18, 2005, the Appellant's name appeared on Certification 250241 for the position of intermittent police officer for the Whitman Police Department. (Stipulated Facts)
3. The Whitman Police Department filled four (4) intermittent police officer positions from Certification 250241. (Stipulated Facts)
4. The Appellant's name appeared third on the list of applicants who indicated they would accept appointment to the position(s). (Stipulated Facts)
5. The Town appointed the individuals appearing first and second on the list. ("Candidate #1" and "Candidate #2") (Stipulated Facts)
6. The Town did not appoint the Appellant, who appeared third on the list. (Stipulated Facts)
7. The Town appointed two other applicants appearing lower on the list than the Appellant, hereafter referred to as Candidate #5 and Candidate #7. (Stipulated Facts)
8. On June 30, 2005, the Town notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment for positive reasons related to the lower-ranked candidates and the following negative reasons related to the Appellant:
 - a) untruthfulness during the application process, including what the Appointing Authority deemed "misrepresentations" on her written application; and
 - b) a poor credit history, including a bankruptcy filing. (Exhibit 6)
9. On July 14, 2005, HRD notified the Town that the reasons submitted for selecting the two lower-ranked candidates were not "sound and sufficient" and requested additional information regarding the two lower-ranked applicants, including more specific information regarding their performance during their respective interviews.

Further, HRD sought additional information regarding the Appellant, including information related to the underlying events which the Town used to determine that she was untruthful on her employment application. (Exhibit 8)

10. On August 23, 2005, the Town, in response to HRD's request for additional information, submitted information to HRD regarding the lower-ranked candidates that was mostly unrelated to their interviews. In regard to the Appellant, however, the Town, for the first time, raised an issue about *her* interview before the Town. Specifically, the Town took issue with statements made by the Appellant during her interview in which she "repeatedly stated that she would not confront co-workers who are behaving inappropriately." (Exhibit 9)

11. On November 10, 2005, HRD, after receiving the above-referenced information, approved the Town's reasons for bypassing the Appellant. (Exhibit 10)

Appellant's statements during interview that she would not confront co-workers who are behaving inappropriately

12. As part of the selection process for choosing four (4) intermittent police officers, the Town assembled an interview panel comprised of three (3) sergeants from the Whitman Police Department, including Sergeants Benton, May and Hanlon. The interviews were videotaped by the Town Administrator who also observed the interviews. (Testimony of Lynam) The Whitman Chief of Police "moderated" the interviews, but did not participate in the interviews. (Testimony of Benton) A recording of the Appellant's interview was played at the Commission hearing. (Exhibit 12) Sergeants Benton and Hanlon, both members of the interview panel, testified before the Commission.

13. Sergeant Benton had never met the Appellant before the interview, but he had known Candidate #5 for approximately four years, as Candidate #5 had served as an auxiliary police officer in the Town of Whitman for four years. (Testimony of Benton)
14. As part of his notes regarding the interview, Sergeant Benton wrote that, “Ms. Mianini twice answered that she would never confront a fellow worker.” (emphasis in original) (Exhibit 24) During his testimony before the Commission, the Appellant testified that he was troubled by this conclusion. (Testimony of Benton)
15. Exhibit 12 is a recording of the Appellant’s interview which was played before the Commission. As part of a series of questions regarding hypothetical scenarios, the Appellant was asked: “You and your partners are executing a search warrant on a suspected drug dealer’s residence. Your team finds illegal drugs and a large amount of money in the house. As your team is securing the contraband in the appropriate evidence bags, you observe one team member place some of the money into his pocket. What would you do?” (Exhibit 21) The Appellant responded that she would notify a supervisor. Asked if she would confront her team member, she said “no”. (Exhibit 12)
16. Asked during cross-examination before the Commission if notifying a supervisor wasn’t indeed the proper response, Sergeant Benton stated, “I wouldn’t say [it was the] proper way to do it; I’d say that’s one option.” Asked further what he (Benton) would have the Appellant do in that scenario, Sergeant Benton stated, “whatever she feels she should do; what she would do and what I would do are two different things...I would say something to that officer.” Asked if it would be appropriate to

confront an officer if the suspected drug dealer was present, Sergeant Benton, “I don’t think I would do it in front of the drug dealer”. (Testimony of Benton)

17. Asked by this Commissioner if all of the other selected candidates stated during their interview that they would confront their fellow officer in the hypothetical scenario referenced above, Sergeant Benton stated, “I believe they did; I don’t recall; I believe they did”. (Testimony of Benton)

18. Sergeant Benton could not recall if any other responses by the Appellant contributed to his conclusion that the Appellant would “never confront” a co-worker. (Testimony of Benton)

19. As referenced above, Detective Sergeant Timothy Hanlon was also a member of the interview panel and he testified before the Commission. He had only been serving in the position of sergeant for a few months at the time he was selected to serve on the panel. (Testimony of Hanlon)

20. Mr. Hanlon did not know the Appellant prior to conducting the interview. He did, however, know Candidate #5 as Candidate #5, as referenced above, had served as an auxiliary police officer for the Town of Whitman. (Testimony of Hanlon)

21. As part of his written summary of the Appellant’s interview, Sergeant Hanlon wrote, “Ms. Mainini repeatedly stated that she would not confront co-workers who were behaving inappropriately and would rather notify her superior to handle the situation. She stated this during the integrity scenario question and the co-worker scenario”. (Exhibit 23) The second scenario referenced by Sergeant Hanlon related to another hypothetical scenario in which the candidates were asked if they would confront a co-worker who was “not carrying his weight”. (Exhibit 12)

22. Sergeant Hanlon testified that the Appellant's answers to the above-referenced questions were the primary reason that he did not recommend the Appellant for one of the four available positions as an intermittent police officer. (Testimony of Hanlon)
23. Sergeant Hanlon testified that, in his opinion, the appropriate action to take in regard to the scenario in which you observe an officer putting cash in his pocket while executive a search warrant, may be to "put the officer in question in handcuffs if he's stealing money...but, if there's a reasonable explanation for what he's doing, and now, you put him on notice, that I saw what you're doing...if you get a reasonable explanation, obviously, you're still going to keep track of what happened to that money". (Testimony of Hanlon)
24. The other hypothetical question to which Detective Sergeant Hanlon found the Appellant's answer problematic was, "For the past several months, there has been a push from supervisors to increase the amount of moving violations we issue. Everyone on your shift has done their share except for one person. His continual refusal to write tickets is causing a strain on you and other co-workers. What should you do?" (Exhibit 21)
25. In response to the above-referenced question, the Appellant stated during her interview that she would not confront her co-worker about the issue. (Exhibit 12)
26. Hanlon testified before the Commission that, as a police officer, "you have to be able to confront people as well as fellow officers, because if you can't at least have a conversation and bring up your points to a fellow officer...in my opinion, it's a little bit difficult to do that out on the street." (Testimony of Hanlon)

27. Asked by this Commissioner if there were any circumstances within the hypothetical scenario regarding the execution of a search warrant in which it would not be appropriate to confront a co-worker you witness putting money in his pocket, Mr. Hanlon stated, “if you’re safety is in jeopardy, as in you’re not sure if the house is clear or not; depending on what kind of a drug house you are going into; if you’re going into a clandestine lab...some of those things are volatile, but it’s all going to come back to officer safety. If you’re not safe, who cares where someone put money if someone’s going to...harm your safety or take your life or something to that effect.” (Testimony of Hanlon)
28. Asked if he recalled the answers given to this hypothetical scenario by the candidates who *were* recommended for appointment, Mr. Hanlon stated, “the majority did not say they would be non-confrontational; some of them said...notify a supervisor.” Asked specifically by this Commissioner if all of the selected candidates said they would confront a fellow officer under the hypothetical scenario described above, Mr. Hanlon stated, “I don’t remember exactly what they said; there were those who said they would take action” but he couldn’t recall if others said they wouldn’t “take action”. (Testimony of Hanlon)
29. In regard to the Town’s conclusion that she is unable to confront others, the Appellant, who had been a bartender in various establishments over the past two decades, offered a poignant rebuke during her testimony before the Commission stating, “those guys don’t know me; its ironic that they think I can’t confront people; I’ve been a bartender / bouncer at bars for years, and I have no problem confronting

anybody, but I'm not going to fight with a fellow officer in the midst of a search warrant." (Testimony of Appellant)

Untruthfulness

30. As part of the negative reasons provided to HRD to justify its bypass of the Appellant, the Town stated, "in her application for employment, in response to the question 'have you ever been a plaintiff or defendant in a court action, including divorce action?' Ms. Mainini answered 'no' when, in fact she was a defendant in a criminal action in Stoughton District Court on May 31, 1989, where she appeared before the court on a charge of 'Operating after a suspended license.' On June 30, 1989, Ms Mainini defaulted, and on October 11, 1989, Ms. Mainini was found guilty of this charge and paid a \$100 fine. In addition, she failed to honestly answer that same question in her application for a firearms license." (Exhibit 9)
31. In regard to the criminal action in Stoughton District Court, the Appellant testified before the Commission that, "in my defense, I thought that was a civil case; and I just found out when I went with Sergeant Bates about a month and a half ago to get my new license to carry, because I filled it out again and said 'no', and he said, 'you have to say that's criminal; did you realize your suspension was criminal?'" at which point the Appellant told him she didn't realize that. According to the Appellant, "all this time, I have thought that my suspension, that license, because it was a driving case, was a civil case". (Testimony of Appellant)
32. In regard to another question on the application which asks whether an applicant has ever been a plaintiff or defendant in a court case, including a divorce proceeding, the Appellant indicated that she answered 'no' to that question because, "in my mind,

I've never sued anyone; I've never been sued, and I've never been married.”

(Testimony of Appellant)

33. Another candidate selected for appointment was convicted of operating an unregistered and uninsured motor vehicle in 2000 and the charges were dismissed after payment of \$300 in court costs. That candidate answered ‘yes’ to both of the above-referenced questions on his application for employment. (Exhibit 25)

Poor Credit History

34. As referenced above, the Town listed the Appellant’s poor credit history as a negative reason for bypassing the Appellant. (Stipulated Facts)

35. It is undisputed that the Appellant declared personal bankruptcy in 2002, approximately three years prior to applying for the position of intermittent police officer in the Town of Whitman. Further, after filing for bankruptcy in 2002, the Appellant was again delinquent on her credit card payments. The Appellant attributed this delinquency due to the loss of a job. (Testimony of Appellant)

36. None of the candidates selected for appointment had a poor credit history.
(Testimony of Lynam)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by

correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, s. 2(b) requires that bypass cases be determined by a preponderance of the evidence. 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 Commission, 31 Mass. App. Ct. 315 (1991). ; G.L. c. 31, § 43.

Appointing Authorities are rightfully 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, 334 (1983). See Commissioners of Civil Serv. v. Municipal 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. City of Cambridge, 43 Mass. App. Ct. at 304.

Patricia Mainini took and passed the civil service examination for the position of intermittent police officer. A 38-year old resident of Whitman and a graduate of Anna Maria College, the Appellant is an articulate individual with an impressive life story. She

has been on her own since the age of 16 and managed to successfully return to college later in life and obtain her college degree while supporting herself as a bartender, waitress and part-time employee at the Plymouth County Sheriff's office. Unfortunately for Ms. Mainini, she has a poor credit history and she mistakenly provided misinformation on her application for employment to the Town of Whitman, two reasons which provide the Town with reasonable justification to bypass her for appointment.

In regard to her credit history, the Appellant filed for personal bankruptcy in 2002, approximately three years prior to seeking employment as an intermittent police officer. Subsequent to filing bankruptcy, Ms. Mainini opened new credit card accounts and once again was delinquent in her payments. The Appellant's poor credit history alone, particularly given its recent nature, is a sound and sufficient reason for bypassing the Appellant, particularly for a law enforcement position.

In regard to the Town's assertion that the Appellant was untruthful on her application for employment, I find the Appellant's testimony credible that she misunderstood the questions on the application pertaining to any prior criminal convictions or being a party to prior litigation. That notwithstanding, it was the Appellant's responsibility to seek clarification about any question on the application she was not clear about. More specifically, any candidate applying for a position in law enforcement must err on the side of caution when being asked such questions on an application for employment and be as forthcoming as possible. In this case, the Appellant was not as forthcoming as she should be -- and her incorrect answers were a sound and sufficient reason for bypassing her for employment as an intermittent police officer.

In regard to the issue belatedly raised by the Town, that the Appellant would be unable to confront individuals, including her co-workers, I find no credible evidence to support this conclusion. In fact, the Town's own witnesses acknowledged that, in the hypothetical scenario posed to the Appellant, it may indeed be inappropriate to confront a fellow officer depending on timing and other factors. Moreover, the Appellant, a veteran bartender / bouncer, convinced this Commissioner that she could more than hold her own with other officers, including those members of the interview panel who concluded otherwise.

Finally, although the Town has presented two sound and sufficient reasons for bypassing the Appellant, the Town would be well-advised to fine-tune its selection process going forward. It is inherently unfair for all three members of an interview panel to be familiar with only one of the candidates. In this case, that candidate, who was ranked lower than the Appellant, was chosen for appointment. Although I found no evidence that the familiarity with the chosen candidate led to his appointment, the mere appearance of a conflict calls into question the integrity of the process. Even given the limited resources of Appointing Authorities, there are creative, non-burdensome methods that can be used to ensure a hiring process that is above reproach. *See Brown v. Town of Duxbury*. 19 MCSR 407 (2006).

For all of the above reasons, the Appellant's appeal under Docket No. G1-05-301 is hereby denied and the appeal is *dismissed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By a 3 – 2 vote of the Civil Service Commission (Bowman, Chairman – YES; Guerin, Commissioner – YES; Henderson, Commissioner – NO; Marquis, Commissioner – YES; Taylor, Commissioner - NO) on November 29, 2007.

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:

Frank McGee, Esq. (for Appellant)

Michelle Allaire McNulty, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)