

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

NICHOLAS FELIX,
Appellant
v.

G1-13-58

CITY OF PITTSFIELD,
Respondent

Appearance for Appellant:

Michael R. Hinkley, Esq.
Donovan & O'Connor, LLP
1330 Mass MoCA Way
North Adams, MA 01247

Appearance for Respondent:

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Pittsfield, MA, 01201

Commissioner:

Cynthia Ittleman¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Nicholas Felix (hereinafter “Mr. Felix” or “Appellant”), filed an appeal on March 11, 2013, with the Civil Service Commission (“Commission”) regarding the decision of the City of Pittsfield, the Appointing Authority (hereinafter “City” or “Respondent”), to bypass him for appointment to the position of Pittsfield Police Officer and remove him from the certification. The Appellant filed a timely appeal. A pre-hearing conference was held on March 27, 2013. The Appellant filed a motion to add the state’s Human Resources Division (“HRD”) as a Respondent on May 23, 2013 and subsequently withdrew his motion on June 14, 2013. The Respondent filed a Motion to Dismiss

¹ The Commission acknowledges the assistance of Law Clerk Ryan Clayton in the drafting of this decision.

on June 19, 2013, which was denied on June 21, 2013. The Respondent submitted a written objection to this ruling for the record. A full hearing was held over two (2) days on June 26, 2013, and July 10, 2013, at the Springfield State Building.² The hearing was digitally recorded. Copies of the recording were sent to the parties. Both parties submitted post-hearing briefs in the form of Proposed Decisions on August 21, 2013. For the reasons stated herein, the Appellant's appeal is denied.

Findings of Fact:

The Respondent entered thirteen (13) exhibits, labeled A-M, and the Appellant entered six (6) exhibits, labeled N-S, into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the City:

- Michael Wynn, Pittsfield Police Chief;
- David Granger, Pittsfield Police Captain; and
- Michael Maddalena, Pittsfield Police Sergeant;

For the Appellant:

- Brian Haughey, Holland Police Chief;
- Tom Rubino, West Stockbridge Police Chief;
- Mother of Appellant's son; and
- Nicholas Felix, Appellant

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR § 1.01 and thereafter (formal rules), apply to adjudications before the Commission, with G.L. c. 31 or any Commission rules taking precedence in the event of a conflict.

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, a preponderance of the credible evidence, and reasonable inferences therefrom, establishes the following findings of fact:

1. Mr. Felix was 32 years old at the time of the hearing. He applied for the position of full-time Pittsfield Police Officer in 2011. He is a veteran, having served in the military from 1999 to 2002, and he was honorably discharged. He represented on his job application to the Pittsfield Police Department (“Department”) on December 23, 2011 that he had been a resident of the City of Pittsfield from January of 2008 to December of 2011. (*Stipulated Facts; Exhibit A, p. 3*)
2. Mr. Felix has been certified to be a full-time police officer since April 8, 2011, having attended and graduated from the Police Academy on his own. He has been employed by three (3) police departments in Massachusetts. Specifically, he has been employed as a traffic officer for the Town of Tyringham, as a reserve officer for the Lee Police Department, and as a reserve officer for the West Stockbridge Police Department. (*Testimony of Felix*)
3. On a separate sheet attached to his Pittsfield Police application in regard to his previous employers, Mr. Felix mentioned that he participated in 40 hours of unpaid training time in July of 2010 for the Great Barrington Police Department. On the attached sheet, Mr. Felix reported only that when he reported to training for the Great Barrington Police, the Sergeant on duty told him that things “were not working out.” Mr. Felix stated on this sheet that, “I was never technically appointed in Great Barrington P.D., I was given no written reprimand or reason why they would not proceed with my appointment. No resignation was ever filed.” (*Exhibit A, p. 12*)

4. On April 15, 2011, seven (7) days after graduating from the Massachusetts Police Academy, Mr. Felix took the 2011 police examination. (*Testimony of Felix*)
5. In order to have gained Pittsfield residential preference in connection with the 2011 examination, Mr. Felix would have had to have resided in Pittsfield from April 30, 2010 to April 30, 2011. (*Exhibit C, Attachment 1; see also G.L. 31, § 58*)
6. When Mr. Felix registered to take the police officer examination, he certified to HRD that his residence was in Tyringham, MA. At the same time, he certified to HRD that he lived in Tyringham from April 30, 2010 to April 30, 2011. On September 1, 2011, HRD received a request from Mr. Felix to change his residence to Taconic St., Pittsfield. (*Exhibit C, Attachment 1; Exhibit E*)
7. In July, 2012, HRD received a requisition from the City for a certification from which it could appoint two (2) full-time, permanent police officers. The City ultimately appointed three (3) full-time police officers. HRD issued certification 0245 to the city on August 7, 2012. (*HRD Correspondence received March 25, 2013, sent to parties March 27, 2013; Administrative Notice*)
8. Mr. Felix's name appeared on certification 0245. He was ranked thirteenth (13th) on the certification, and was ranked third (3rd) among those who signed. He indicated on his application to the Department that he lived in Pittsfield since January, 2008. (*HRD Correspondence received March 25, 2013, sent to parties March 27, 2013*)
9. Of the three (3) candidates who were ultimately appointed as Pittsfield full-time police officers from certification 0245, one (1) was ranked below Mr. Felix, Mr. S; one was ranked ahead of Mr. Felix; and the third tied with Mr. Felix and therefore did not bypass him. (*HRD Correspondence received March 25, 2013, sent to parties March 27, 2013*)

10. Before giving application packets to prospective applicants, the City met with each applicant in December of 2011, including Mr. Felix, and went through each question in the application packet. Mr. Felix spoke with Capt. Granger and Sgt. Maddalena at the Pittsfield Police Department to review the application. (*Testimony of Granger and Felix*)
11. On December 22, 2011, Mr. Felix submitted his application to the Department. (*Exhibit A, p. 32*)
12. Contained in the application that Mr. Felix filled out is a Certification of Responses that he signed. By signing the certification, Mr. Felix acknowledged that he read and understood each question, that his answers, including his resume, were true, correct, and complete, as well as understanding that willfully withholding information or making false statements can lead to rejection or dismissal. (*Exhibit A, p. 30*)
13. In the spring of 2012, the City began conducting preliminary background checks on the applicants. Capt. Granger performed the background check on Mr. Felix. (*Testimony of Granger*)
14. In May, 2012, Great Barrington P.D. gave the City a negative employment reference for the Appellant during the City's preliminary background check. Mr. Felix called Sgt. Maddalena on June 3, 2012 and he met with Sgt. Maddalena at the Department regarding the Great Barrington negative reference. (*Testimony of Felix, Exhibit O*)
15. On June 6, 2012, Mr. Felix sent a letter to Sgt. Maddalena about their June 3 meeting, which stated in part: "Irrespective of my objection to such [negative] review by Great Barrington P.D. my intent of contacting Sgt. Maddalena and sending this letter is to disclose my current status and relate any information to ensure that my application and additional information submitted is complete and to the best of my knowledge." Sgt.

Maddalena saw the June 6 letter from the Appellant but this letter was not included in the Appellant's background investigation file. (*Exhibit O, Testimony of Maddalena, Exhibit C*)

16. On September 17, 2012, Mr. Felix entered into a non-disclosure agreement with Great Barrington P.D. to not discuss his time there and to expunge his personnel file. (*Exhibit C, Attachment 16*)

17. Subsequently, Capt. Granger attempted to obtain information regarding Mr. Felix's service at the Great Barrington P.D. but the Great Barrington P.D. was reluctant to discuss Mr. Felix's time there. Capt. Granger was unable to obtain Mr. Felix's personnel file at Great Barrington, learning that Great Barrington had put something in Mr. Felix's file that it should not have and so Mr. Felix's file had been expunged. (*Exhibit C, p. 10; Testimony of Granger*)

18. In late September, 2012, Mr. Felix met with Capt. Granger and Lieutenant Jeffrey Bradford. This was the Appellant's second meeting with officers at Pittsfield P.D., the first being when Mr. Felix obtained his application. During this second meeting, Capt. Granger asked Mr. Felix the reason Great Barrington would not release his personnel file. Mr. Felix responded by presenting the September 17, 2012 non-disclosure agreement between himself and Great Barrington, indicating that his personnel file had been expunged and that Great Barrington had agreed not to talk about his time there. When reminded by Capt. Granger that he (Mr. Felix) had signed an Authorization for Release of Information as part of his application to Pittsfield, Mr. Felix pushed the non-disclosure agreement across the table toward Capt. Granger and stated that he could not provide the

information because of the non-disclosure agreement. (*Testimony of Granger, Exhibit C p. 10 and Attachment 16*)

19. In the same September meeting, Mr. Felix was asked why he was no longer employed as a traffic officer with the Tyringham P.D., to which he responded “I was not reappointed.” Mr. Felix did not give any further reason, stating that Capt. Granger should speak with the Tyringham Police Chief. (*Exhibit C, p. 8*)

20. Contained in Mr. Felix’s application, on a separate sheet, is a list of all residences for the previous ten (10) years, as requested. This list included his Taconic St., Pittsfield address from January 2008 to present, with two references; a rented home in Plymouth for his attendance at the Police Academy from October 2010, to April 2011, with no references; an address listed only as “Galopago St” with his brother with no references (a phone number was provided for his brother), and no city or town listed; another address that Mr. Felix reported that he intermittently resided at was listed only as “Edward Ave” with one reference; his longstanding address in Tyringham, his family’s home; and others, including a residence in Mexico for several months with no references, a residence in Lee with a reference listed, and his time stationed at Camp Lejeune in North Carolina. (*Exhibit A, p. 5*)

21. Mr. Felix stated in a previous job application to the West Stockbridge Police Department on April 28, 2010 that he had lived Tyringham for the previous twenty-four (24) years. (*Exhibit D, p.3*)

22. The Tyringham address is Mr. Felix’s family address from his childhood and the address he often uses on employment applications and for other mail to guarantee he receives his mail although he did not reside there.³ (*Testimony of Felix and his son’s Mother*)
23. Capt. Granger spoke with a Pittsfield attorney, whom Mr. Felix had listed as a residency reference for his Taconic St., Pittsfield address. The attorney gave glowing reviews, stating, “He was a good neighbor.” Capt. Granger also spoke with another attorney about Mr. Felix’s residence at the Taconic St., Pittsfield address. The second attorney told Capt. Granger that Mr. Felix had resided at the Pittsfield address for the last three to five years. (*Testimony of Granger*)
24. Mr. Felix was asked in the application if any of his children had ever “been the subjects of a C.H.I.N.S. petition or M.G.L. CH 119, Sec. 51A investigation”⁴ to which Mr. Felix answered “yes.” On a separate sheet, he wrote “in approximately 2008, [Department of Children and Families] (“DCF”) did investigate anonymous allegations of abuse regarding my son. I have attempted to attain [sic] a copy of the investigation, however, I was told it would take several weeks. A DCF employee interviewed me, [my son’s] mother, and [my son] regarding the allegations. The allegations were unfounded at the conclusion of the investigation.” (*Exhibit A, p. 5*)
25. Both Mr. Felix and the mother were alleged perpetrators, though Mr. Felix did not explicitly state this directly in his application. The Intake Report listed their address in 2008 as being “Edward Ave” in Pittsfield. (*Exhibit K*)

³ It is unclear the last time Mr. Felix actually resided at the Tyringham address. He states he merely used it for mail purposes at some points in time.

⁴ A C.H.I.N.S. is a petition to court concerning a child in need of services. A G.L. c. 119, §51A investigation concerns possible abuse and/or neglect of a child.

26. Mr. Felix did not answer the question in the job application whether his past employers have treated him fairly. (*Exhibit A, p. 12*)
27. Mr. Felix was also asked in the application if any disciplinary action had been taken against him when he was in military service, to which he answered “No.” (*Exhibit A, p. 13*)
28. Mr. Felix’s military record showed that he had once failed to report for duty as ordered and was given a documented counseling session as a minor infraction. (*Exhibit C, p. 11*)
29. Mr. Felix stated in his application that he had Taser training in Peabody, MA. He was certified in the use of a Taser on July 11, 2011 and he attached a certificate in this regard to his application. Holland Police Department (“Holland P.D.”) was the agency that sponsored Mr. Felix for this training. However, since Mr. Felix was not a sworn police officer and he was not an employee of a police department at that time, he should not have been allowed to take the Taser training. (*Exhibit C, attachment 24; Testimony of Granger*)
30. Mr. Felix met the Chief of Holland P.D., Chief Haughey, at the Police Academy. Mr. Felix had asked Chief Haughey to sponsor him for the Taser training and Chief Haughey agreed to do so. (*Testimony of Felix*)
31. During the preliminary background investigation of Mr. Felix by the City, Holland P.D. informed the City that Mr. Felix was never employed at the Holland P.D. and there were also no employee records for him on file. Thereafter, on August, 29, 2012, City Police Chief Wynn wrote a letter to Chief Haughey of Holland P.D. requesting any information that the Holland P.D. had regarding Mr. Felix since the Taser training certification indicated he was a police officer there. (*Exhibit F*)

32. On August 30, 2012, City Sgt. Maddalena wrote a letter to the Taser Training Academy requesting information regarding Mr. Felix's registration for the Taser course. Sgt. Maddalena's letter stated that Mr. Felix attended the Taser Training Academy representing himself as a Holland Police Officer but the Pittsfield P.D. had learned that Mr. Felix was never employed by Holland, MA as a police officer. (*Exhibit G*)
33. At the time, Chief Haughey of Holland P.D. was relatively new to his position as Chief and unaware that only employed and sworn police officers were allowed to take the training and so he sponsored Mr. Felix, who was not employed as a sworn police officer at that time. (*Testimony of Haughey*)
34. Mr. Felix possessed an electrical weapon (a Taser) in violation of G.L. c. 140, §131J. Only law enforcement officials, corrections officials, and suppliers of Tasers are permitted to possess them under this statute. (*Exhibit C, p. 19*)
35. Mr. Felix admitted in his application that he had a poor driving record in Massachusetts. He answered "Yes" to all of the questions, indicating that he had received many citations, been in an accident, had his registration suspended or revoked, and paid for traffic fines, parking tickets and excise taxes. He included in his application information from his driving record, which shows that he was responsible for a number of his traffic citations. He did not give any reasons or explanations for the vast majority of the citations. The driving record involves incidents dating back to 1998, many of which occurred after he was discharged from the military. (*Exhibit A, p. 15, Exhibit C, p. 13 and Attachment 19*)
36. Mr. Felix has a substantial credit history. He has a number of loans for which he was listed as "delinquent," with two accounts listed as "in collection," and two (2) open loan accounts, one being listed delinquent nine (9) times and the other being delinquent two

(2) times. Mr. Felix attached a separate sheet to try to explain some of these issues, stating that he has been late on bank payments on his vehicles and on some personal loans. He also stated he could not remember all of his loans but part of the reason he was late on some payments was that he was employed part-time with unsteady paychecks, at some point in time, and that he was self-employed at some point in time and not earning enough money. These circumstances made it challenging to pay his loans and car payments on a consistent basis. (*Exhibit A, p. 17, Exhibit C pp. 15-16 and Attachment 21*)

37. Mr. Felix also had two (2) small claims court judgments against him. In his application, he mentions a small claims case in the Central Berkshire District Court but he did not disclose another small claims case against him in the Southern Berkshire District Court.⁵ (*Exhibit C, pp. 16-17 and Attachments 22-23*)

38. On January 22, 2013, the City asked HRD to remove Mr. Felix from the 2011 certification pursuant to PAR .09 (Personnel Administrator Rule). The effect of this would be that Mr. Felix would be removed from the eligible list for police officer in Pittsfield and not considered for employment during the life of the eligible list. (*Exhibit B*)

39. PAR .09(2) states: “If an appointing authority concludes the appointment of a person whose name has been certified to it would be detrimental to the public interest, it may submit to the administrator a written statement giving in detail the specific reasons substantiating such a conclusion. The administrator shall review each such statement, and if he agrees, he shall remove the name of such person from the certification and shall not

⁵ In both cases, Mr. Felix defaulted and warrants were issued, following which he paid the judgments in full. (*Exhibit C, Attachment 23*)

again certify the name of such person to such appointing authority for appointment to such position.”

40. The City offered a number of reasons to remove Mr. Felix from the certification:

- failure to provide specific details of the DCF investigation;
- failure to provide personal reference or the name of a person who knew him at each residence for the prior ten (10) years;
- failure to provide dates of employment for previous positions held⁶;
- failure to provide specific reasons regarding removal, or dismissal from previous employment;
- failure to provide any answer to the question “have your employers always treated you fairly”;
- failure to provide/untruthful in providing residential information accurately;
- failure to provide accurate information regarding disciplinary action taken against him in the military;
- obtaining Taser certification when he should not have;
- not providing specific information why he was separated from Great Barrington P.D.; and
- concerning patterns in Mr. Felix’s driving and credit history to which he did not provide written explanations or specifics. (*Exhibit B*)

41. On March 22, 2013, Mr. Felix was informed by HRD that it had approved the City’s request to remove him from the certification, pursuant to PAR .09. Mr. Felix had

⁶ The background investigation report specifically mentions Mr. Felix’s failure to list the month and year he began employment as a nursing aid, which is listed as 1999 to present, and the month in which he began self-employment listed as 1999 to present. (*Exhibit A, pp. 9-10, Exhibit C, p. 8*)

previously been informed of the City's intent to bypass him when he received a copy of the January 22, 2013, letter sent by the City to HRD asking to remove him from the certification. (*Exhibit Q*)

42. Mr. S, who bypassed Mr. Felix, is also a veteran who was honorably discharged.

However, Mr. S specifically identified all current and past residences with references; described any military discipline he had, which was minor; he provided an appropriate employment history; answered all questions without leaving any blank; did not obtain Taser training before he was a sworn police officer; and he did not present a non-disclosure agreement to the City regarding prior employment that precluded the City from obtaining pertinent information. (*Exhibit M*)

43. Mr. Felix filed his appeal on March 11, 2013.

DISCUSSION

Applicable Law

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.” Cambridge v. Civil Service Comm’n, 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, § 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 a 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). G.L. c. 31, § 43.

An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. *See* City of Beverly v. Civil Serv. Comm’n, 78 Mass.App.Ct. 182, 189 (2010). “In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” *Id.* at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous decision of the appointing authority, but rather decides whether 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.” *Id.* at 824 (quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983)).

In deciding an appeal, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was reasonable justification” shown. Beverly at 188. An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone ... than in disciplining an existing tenured one.” *See* City of Attleboro v. Mass. Civil Serv. Comm’n, C.A. BRCV2011-00734 (MacDonald, J.), citing Beverly, *supra*, at 191. In light of the high standards to which public safety personnel are appropriately held, appointing authorities are given significant latitude in screening candidates.

City of Beverly v. Civil Service Commission, 78 Mass.App.Ct. 182, 188 (2010), citing Cambridge, *supra*, at 305.

The Commission is charged with ensuring that the system operates on “[b]asic merit principles.” Mass. Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001). “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Id. (citing Sch. Comm’n of Salem v. Civil Serv. Comm’n, 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm’r of Health & Hosps. of Bos. v. Civil Serv. Comm’n, 23 Mass.App.Ct. 410, 413 (1987)).

Respondent’s Argument

The Respondent argues that the City provided multiple reasons to remove the Appellant from the certification under PAR.09 and bypass him. Although the Appellant asserts that any inaccuracies in his applications were simple mistakes and that the City should have attempted to clarify any questions about his application, questions regarding where one resides or one’s employment history, for example, are not ambiguous questions. In Costa v. City of Brockton, the Commission explains that “Appointing authorities must rely upon applicants to fill out the forms fully and correctly.” 26 MCSR 242 (2013). By not disclosing his military discipline and not answering the question “have your employers always treated you fairly?” he did not fully fill out his application, thus making it incomplete and inaccurate.

The Respondent also argues that the Appellant was untruthful in his use of a non-disclosure agreement and refusal to answer Captain Granger’s question as to why he left the Great Barrington P.D. By relying on a non-disclosure agreement, it looks as though he has something to hide from the City. The Appellant further misrepresented himself as a patrol officer

of the Holland P.D. to obtain Taser training when only sworn officers are permitted by law to obtain such training when he was not so sworn. He was also untruthful regarding his residence. His application to the City stated that he lived on Taconic St., Pittsfield for the pertinent period of time and yet when he registered for the exam with HRD, he indicated that he lived in Tyringham during that time period. His application address was also inconsistent with the fact that he told West Stockbridge P.D., in an employment application there, that he lived in Tyringham. The Appellant did not inform HRD of the change in his residence until September 1, 2011; as a result, the Appellant could not be granted residency preference for Pittsfield because he did not live in Pittsfield for the year prior to the 2010 police exam, as required for the residency preference. In addition, the City averred that it had reasonable justification to bypass and/or remove the Appellant from consideration for failing to explain his considerable driving history, to disclose his credit history, the DCF investigation and certain residential information. Given the Appellant's untruthful, inaccurate and incomplete statements, and the obligation of police to be truthful, the City argues it has reasonable justification to bypass the Appellant and/or seek his removal from the certification.

The City rejects the Appellant's argument that it did not follow civil service law because the notice to the Appellant regarding his bypass and/or removal from the certification failed to contain any positive information regarding the Appellant. It avers that Costa makes clear that appointing authorities are not required to list positive information when bypassing and/or removing a candidate from a certification when the Appellant has failed to establish residency and fully complete the application. The City further avers that this case is similar to Costa, in which the appointing authority bypassed a candidate to the Bridgewater Police Department for

not fully and completely filling out his application and offering no viable proof of residency for the timeframe required.

Appellant's Argument

The Appellant first argues that failing to check two boxes on the application should not constitute a reason for bypass. Rather, he asserts, his failure to check the two (2) boxes was an inadvertent omission and a mistake and he openly acknowledged his mistake in not checking two (2) boxes (“Have your employers always treated you fairly?” and “Are you currently enrolled in a school of any type?”). Neither should he have been bypassed for allegedly withholding information. The Appellant states that he provided a substantial amount of information on his application, even though it could have had a potentially negative impact on him. The Appellant also properly answered and provided specific details regarding the DCF investigation. The bypass letter stated that the Appellant failed to indicate that he was an alleged perpetrator but any reasonable reading of his addendum shows that the Appellant volunteered the who, what, why, when, and how of the investigation and that the allegations were ultimately proved unfounded.

The Appellant also avers that his residence during the relevant time period was on Taconic St. in Pittsfield. He provided references with telephone numbers and one of the references was an attorney who gave Mr. Felix “glowing reviews.” Capt. Granger spoke with both that attorney and that attorney’s partner. Capt. Granger testified that he did not speak to other residency references because he believed them. The Appellant asserts that his use of the Tyringham address was not meant to deceive anyone; it was used merely as a reliable mailing address. Further, the Appellant states that the minor form of military discipline he incurred should not be used to bypass him. He was honorably discharged and had no recollection of the incidents since the infractions were so minor. In regard to his time at Great Barrington P.D., the

Appellant provided an overview of his position there, stating that he spent forty hours of unpaid time training and was forthright about the matter.

The Appellant also notes that he was not being deliberately untruthful regarding Taser training certification. To the contrary, he included it in his application. He avers that the fact that he received laser training when he should not have was a result of mutual mistake he and Chief Haughey made, in part due to Chief Haughey being new to the job as Chief, and a lack of knowledge regarding who is allowed to receive such training. With regard to his driving and credit history, the Appellant states that he offered written explanations for both in his employment application and thus neither should be used to bypass hi and/or remove him consideration.

Analysis

The City has bypassed Mr. Felix on a number of bases. While some of the reasons given are not supported by a preponderance of the evidence, others are, and so I find that the City had reasonable justification to bypass Mr. Felix and/or remove him from consideration.

- Failure to provide specific details of the DCF investigation.

The City stated in its bypass letter that Mr. Felix failed to provide specific details of the DCF investigation regarding allegations of abuse and neglect, particularly that he was an alleged perpetrator. I find that this reason is groundless. First, the result of the investigation was that the allegations were unfounded. Secondly, Mr. Felix provided information on a separate sheet attached to his application that detailed the allegations, and that DCF interviewed him and the mother of his child about the matter. He also stated that he attempted to obtain a copy of the investigation but that DCF told him it would take several weeks to produce and the completed Pittsfield Police applications were due before then. Considering that the Appellant filled out and

turned in his Pittsfield Police application, disclosing the DCF matter therein shows that there was no attempt to hide it during the background investigation and that the allegation was unfounded. Therefore, the City has failed to establish by a preponderance of the evidence that the Appellant failed to provide certain details of the DCF investigation.

- Failure to provide personal reference or the name of a person who knew him at each residence for the prior ten (10) years.

The City takes the position that since Mr. Felix did not provide a reference for each and every residence for the prior ten (10) years Mr. Felix's application was incomplete. Mr. Felix did not include references for the Plymouth residence where he briefly stayed in order to attend the police academy, his several months' stay in Mexico, nor did he provide references for when he was stationed at Camp Lejeune in North Carolina. Mr. Felix did, however, provide references and phone numbers for the rest. It is understandable that Mr. Felix did not have a reference for Plymouth given the brief amount of time he stayed there to attend the academy, as well as not having a reference for the relatively brief period he was out of the country. In addition, the Appellant informed the City in his application that he resided on Taconic St. in Pittsfield, for which he provided two references. Capt. Granger contacted both references, who stated that Mr. Felix had lived at that address for the pertinent period of time. Therefore, the City has failed to establish by a preponderance of the evidence that the Appellant did not establish residence in Pittsfield at the pertinent time.

- Failure to provide dates of employment for previous positions held.

The City contends that the Appellant failed to provide the month and year he worked at certain jobs. However, the Appellant indicated that he worked as a nursing aid beginning in 1999 and he began self-employment also beginning in 1999. Thus, he provided the years for

those jobs but not the months. Given the length of time it has been since he began working in either of those positions, and that Mr. Felix provided the month and year for his other places of employment, the City has failed to establish by a preponderance of the evidence that the Appellant failed to provide the dates of employment and that there is reasonable justification to bypass the Appellant on this basis.

- Failure to provide/was untruthful in providing residential information accurately.

The City also contends that Mr. Felix was untruthful when he indicated on his application that he lived on Taconic St. in Pittsfield but told HRD, when registering for the exam, and told the West Stockbridge P.D. when he applied for a position there, that he had lived in Tyringham during the same time period that he lived in Pittsfield. A person can have only one residence. *See Town of Shrewsbury v. Civil Service Commission and Jeremy LaFlamme, C.A.No. 08—CV-2124-B (Worcester Superior Court)(August 28, 2009).* A preponderance of the evidence establishes that the Appellant resided in Pittsfield at the pertinent time but that he provided different addresses for the same time period and, therefore, the City had reasonable justification to bypass the Appellant for this reason.

- Failure to provide specific reasons regarding removal or dismissal from previous employment and not providing specific information why he was separated from Great Barrington P.D.

The City offers these as two separate reasons but they reference the same thing. Great Barrington P.D. was briefly mentioned. Mr. Felix first attempted to explain the reason Great Barrington P.D. initially gave him a negative employment reference. Upon learning about the negative reference in May, 2012, Mr. Felix set up a meeting with Sgt. Maddalena to discuss it. Subsequent to this, Capt. Granger attempted to obtain Mr. Felix's personnel file but learned that

it had been expunged. After that, Mr. Felix hindered the background investigation on this topic by trying to present to the City a non-disclosure agreement between himself and Great Barrington to explain that Great Barrington should not have disclosed anything. Mr. Felix did not explain the reason for leaving Great Barrington after only forty (40) hours of unpaid training. Police officers, by their status, are held to higher standards of conduct. They must be forthright and honest. A preponderance of the evidence establishes that Mr. Felix hindered the background investigation by obtaining a non-disclosure agreement which prevented the City from accessing important information relevant to the City's hiring decision. Therefore, the City had reasonable justification to bypass the Appellant on this basis.

- Failure to provide any answer to the question "have your employers always treated you fairly," and failure to provide accurate information regarding disciplinary action taken against him in the military.

The City contends that Mr. Felix's application was incomplete and, therefore, it was inaccurate. Appointing authorities, especially in the field of law enforcement, depend heavily upon applicants giving full and honest information in their applications. If applicants do not fill out their applications completely then the appointing authorities are at risk of hiring individuals who are not qualified. By not filling out the application completely, Mr. Felix further hindered the process the City's ability to properly assess his background and qualifications. Specifically, a preponderance of the evidence establishes that the Appellant failed to disclose the discipline he incurred while in the military. The City representatives met with Mr. Felix when they handed out applications, explaining the application to him. The burden is on the candidates to accurately and completely fill out the application. By not disclosing the minor infractions against him in the

military, the Appellant failed to accurately fill out the application. Therefore, the City had reasonable justification to bypass the Appellant on this basis.

- Obtaining Taser certification when he should not have.

The Appellant argues that he obtained Taser certification as a result of a mistake. Mr. Felix had already gone through the police academy but was not a sworn police officer at any police department at the time of his Taser training. I find it difficult to believe that he did not know at any point during the process, either through his time at the academy or during the Taser training, that only sworn police officers are allowed to receive such training. In addition, the certification indicates that Mr. Felix was with Holland P.D. when, in fact, Mr. Felix was not a sworn police officer there. The City has established by a preponderance of the evidence that the Appellant obtained Taser certification when he was not permitted to do so and that this is a valid reason bypassing the Appellant.

- Concerning patterns in Mr. Felix's driving and credit history to which he did not provide written explanations or specifics.

The Appellant argued that since he has left the military, he has been a responsible and productive individual. However, his driving and credit history indicate otherwise. The Appellant stated in his application that he had received written motor vehicle citations and warnings and he included a copy of at least part of his driving record with his application. The driving record included many traffic citations, including having his registration suspended or revoked. His driving record provided information as far back as 1998, showing many citations for which he was held responsible, and the Appellant did not provide much by way of explanation for the vast majority of those citations. In addition, the Appellant had a number of loans on which payments were delinquent. Further, the Appellant had two small claims Court judgments against him, only

one of which he listed on his application. The Appellant defaulted in both Court cases, the court issued warrants, and the Appellant subsequently paid the debts he owed. Therefore, a preponderance of the evidence establishes that the Appellant failed to provide explanations and specifics regarding his driving record and credit history and that the City had reasonable justification to bypass the Appellant on these bases.

CONCLUSION

Based on the findings of fact herein and the applicable law, the City's decision to bypass Mr. Felix is affirmed and the Appellant's appeal under Docket No. G1-13-58 is hereby *denied*.

Civil Service Commission

Cynthia A. Ittleman, Esq., Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on May 29, 2014.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten (10) days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty (30) day time limit for seeking judicial review of this Commission order or decision.

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

Notice:

Michael R. Hinkley, Esq. (for Appellant)

Kathleen E. Degnan, Esq. (for Respondent)