

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

NEYSA CRUCETA,
Appellant

CASE NO: G1-11-29

v.

BOSTON POLICE DEPARTMENT,
Respondent

Attorney for the Appellant:

Neysa Cruceta, Pro Se

Attorney for the Respondent:

Sheila B. Gallagher, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman^{1 2}

DECISION

The Appellant, Neysa Cruceta (“Appellant”), acting pursuant to G.L. c. 31, § 2(b), duly appealed to the Civil Service Commission (“Commission”) the Boston Police Department’s (“Respondent”) decision to bypass the Appellant for original appointment to the position of police officer. A full hearing was held at the offices of the Commission on September 21, 2011. The full hearing was digitally recorded and copies of the recordings were provided to the parties. The Respondent electronically submitted a post-hearing brief on November 18, 2011 and a hard copy was received November 21, 2011. The pro se Appellant did not submit a post hearing brief.

¹ This case was heard by Commissioner Daniel Henderson, whose term expired prior to drafting a decision. Pursuant to 801 CMR 1.00(11)(e), the case was re-assigned to Commissioner Bowman who reviewed the CD of the hearing, the notes of the hearing officer and the various exhibits and drafted a decision.

² The Commission acknowledges the assistance of Law Clerk ThyThy Le in the drafting of this decision.

FINDINGS OF FACT

Nine (9) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Respondent:

- Wayne Williams, Detective, Boston Police Department
- Robin Hunt, Director, Human Resources, Boston Police Department

For the Appellant:

- Darrell DeBarros
- Neysa Cruceta, Appellant

I make the following findings of fact:

1. The Appellant took the civil service exam on April 9, 2009, to be eligible for the position of police officer at the Boston Police Department. (Stipulated facts)
2. On March 16, 2010, the Appellant's name appeared on civil certification #207159, among those willing to accept original appointment for the position of police officer. (Stipulated facts)
3. In May 2010, the Appellant signed and submitted her Student Officer Application for the position of police officer to be considered for the December 2010 recruit class. (Hunt Testimony & Exhibit 2)
4. Detective Wayne Williams of the Boston Police Department was assigned the Appellant's application to perform a background investigatory check. (Williams testimony)
5. Detective Williams testified that he reviewed the Appellant's Student Officer Application and checked the criminal justice information system. (Williams Testimony)

6. Detective Williams testified that upon reviewing the Appellant's application, he generated the Appellant's board of probation report in response to the Appellant's disclosure of a 209A domestic incident on her application. In reviewing the Appellant's board of probation record, he came across the Appellant's 2002 misdemeanor offense of assault and battery for 209A and a felony offense for assault and battery with a dangerous weapon. (Williams testimony & Exhibit 5)
7. Subsequent to an interview Detective Williams held with the Appellant to discuss various matters, Detective Williams testified that he came into possession of the incident report, arrest, and mug sheet pertaining to the offenses. (Williams testimony & Exhibit 3)
8. The incident report states that officers were called to the Appellant's apartment due to a disturbance. The Appellant's daughter had allegedly written on the wall with a ball point pen, which led to an altercation between the Appellant and her daughter's father, Darrell DeBarros ("DeBarros"). The Appellant stated that the altercation became physical, leading to the damage of personal belongings. The Appellant also stated that she pushed DeBarros, which resulted in his fall on a plate where he sustained a wounded arm, requiring medical attention. Officers later obtained a statement from DeBarros while he was being treated at the hospital for his injury. DeBarros told officers that the Appellant had attempted to strike him with the plate and he sustained the wound on his arm as a result of trying to shield himself. The report further stated that a nurse confirmed that the injury DeBarros sustained was consistent with a defensive wound. The Appellant was arrested and was charged with the misdemeanor and felony offense at issue in this case. (Williams testimony, Exhibit 3 & 4)

9. The Appellant testified that she tendered a plea in court to the charges and does not dispute that she admitted to sufficient facts of the charges as a result of tendering a plea. The Appellant received a disposition of continuance without a finding for six (6) months for both offenses. (Appellant's Testimony & Exhibit 6)
10. Detective Williams testified that he came into possession of a letter addressed to the Appellant drafted by her attorney regarding the charges. The letter states that the Appellant voluntarily, knowingly and intelligently admitted to sufficient facts in the court of law and that the matter would be dismissed in six (6) months if she complied with the terms of the disposition. The Appellant testified that she never received the letter from her attorney. However, the Appellant does not dispute that the address listed in the letter is her correct address. (Appellant Testimony & Exhibit 6)
11. The Appellant testified that had she known that her tendering a plea to both offenses would subsequently affect her career and consideration for the position of police officer, then she would have taken the case to trial. (Appellant's Testimony)
12. Detective Williams testified that he spoke to DeBarros to inquire about the Appellant's character. DeBarros claimed that he had no issues with the Appellant and that she would make a fine candidate for police officer. (Williams Testimony)
13. DeBarros testified that the 2002 altercation between him and the Appellant was an isolated incident that unfortunately happened in the heat of the moment. (DeBarros Testimony)
14. Detective Williams testified that he came across a memorandum dated June 30, 2008 issued by Maximus, an existing employer, as a formal warning addressed to the Appellant regarding the Appellant's tardiness and unexcused absences. The letter cited

three (3) previous attempts to encourage the Appellant to improve her continuous decline in attendance. Detective Williams spoke to the representative at Maximus who drafted the memorandum, confirming the information. (Williams Testimony, Hunt Testimony, Exhibit 1 & Exhibit 7)

15. In concluding his investigation, Detective Williams testified that he compiled a privileged and confidential memorandum (“Detective’s memorandum”) documenting his findings including, but not limited to, extensive information of the Appellant’s employment history, criminal history, driver’s record, three year attendance record, letters, and references. (Williams Testimony & Exhibit 8)
16. The Detective’s memorandum was presented at the round table. The round table involved legal representatives, the deputy of internal affairs, commander of the recruit investigation unit, and Robin Hunt (“Hunt”), director of human resources. Occasionally, the detective who performed an investigatory check on an applicant is present at the round table. The purpose of the round table is to determine case by case, which candidates will move forward in the hiring process. (Hunt Testimony)
17. Hunt testified that the decision to bypass the Appellant was made at the round table discussion. The primary reason for the decision to bypass was the Appellant’s disposition of the felony charge of assault and battery with a dangerous weapon. (Hunt Testimony & Exhibit 1)
18. Hunt testified that a continuance without a finding disposition is viewed by the department as an admission to the facts of the charge and that the Appellant’s admission to the facts of the 2002 charges is viewed as an admission to the facts of her felony charge. (Hunt Testimony)

19. Hunt further testified that candidates with any felony disposition are taken very seriously by the department and are typically not hired. Hunt concedes that there is no written rule disqualifying a candidate for the position of police officer due to a felony charge with a continuance without a finding, but stated that it is done as a matter of practice. Hunt testified that to her knowledge while working as Director of Human Resources, she does not recall any candidate with a disposition of a continuance without a finding for a felony charge that was hired for a position of police officer. (Hunt testimony)
20. In addition to the round table's concern regarding the Appellant's felony offense, the inconsistencies apparent in the Appellant's statements made in the police report and the statement made by DeBarros at the hospital also raised an issue. The Appellant told the police that DeBarros had fallen on the plate, while DeBarros stated that he was injured by the plate as a result of the Appellant attempting to strike him with it. A nurse confirmed that DeBarros' injury was consistent with a defensive wound. Hunt testified that police officers are held to a high standard because their job requires them to demonstrate excellent judgment and testify in the court of law, therefore requiring the individual to possess traits of integrity and honesty. Thus, the Appellant's inconsistent statement and subsequent admission that she had attempted to strike DeBarros with the plate, raised significant concern at the round table on whether the Appellant would be suitable for the position. (Hunt testimony & Exhibit 1)
21. The Appellant conceded that she gave the police false statements that DeBarros had sustained his injury as a result of falling on the plate because she was afraid of the negative consequences. The Appellant testified that she did not want an isolated spontaneous incident to negatively affect her daughter, herself, or DeBarros. The

Appellant was also in her early twenties when the incident occurred and testified that she has a clean record apart from the 2002 incidents. (Appellant's Testimony)

22. Hunt testified that the Appellant's 2008 tardiness and abensteeism at Maximus was also a concern at the round table, which supported the Respondent's decision to bypass the Appellant. Hunt testified that the Department holds great weight on a candidate's attendance records as exemplary attendance is a critical trait needed for the position of police officer. Police officers are expected to promptly arrive for their shift at varying hours and the department may incur overtime charges if a police officer fails to meet that obligation, creating a burden for tax payers. (Hunt Testimony, Exhibit 1 & Exhibit 7)
23. The Appellant contends that the 2008 Maximus letter regarding her attendance issues is not an accurate representation of her attendance history. The Appellant testified that her attendance issues occurred only in 2008 due to health issues, which she did not feel comfortable disclosing to her employer. The Appellant claims that she later presented doctor notes to her employer in attempt to explain her attendance issues. However, the employer kept the formal warning letter in her personnel file despite a subsequent letter in 2011 written by a human resource manager, stating that the Appellant attendance record has improved since 2008. The letter also stated that the Appellant addressed the attendance issues since the 2008 written warning, thereby making a final written warning unnecessary. (Appellant testimony & Exhibit 9)
24. On December 13, 2010, The Appellant received a letter informing her that she was bypassed for the position of police officer. The letter stated that the bypass decision was based on the Appellant's 2002 felony charge of assault and battery with a dangerous

weapon and the truthfulness issues arising from the incident, in addition to her 2008 attendance record at Maximus. (Exhibit 1)

25. On January 26, 2011, the Appellant duly appealed the Respondent's decision to bypass her for the position of police officer with the Commission.

CONCLUSION

The role of the Commission is to determine whether the appointing authority has sustained its burden of proof through a preponderance of evidence that the appointing authority's actions were reasonably justified. G.L. c. 31, § 2(b); Mass Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 260 (2001); Cambridge v. Civ. Serv. Comm'n, 43 Mass. App. Ct. 300, 304 (1997). 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. Civ. Serv. Comm'n, 31 Mass. App. Ct. 315 (1991); G.L. c. 31, § 43. Reasonable justification means that the appointing authority's actions were based on "...adequate reasons sufficiently 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); Cambridge, at 305. Situations that are appropriate for the Commission to intervene involve personnel decisions that are marked by political bias, objectives unrelated to merit standards or neutrally applied public policy. Cambridge, at 304.

In the exercise of sound discretion, the appointing authority may select among persons eligible for appointment or promotion or may decline to make any appointment. See Goldblatt v. Corp. Counsel of Boston & others, 360 Mass. 660, 666 (1971); Comm'r of the Metro. Dist.

Comm'n. v. Director of Civ. Serv., 348 Mass. 184, 187-193 (1964). See also Corliss v. Civ. Serv. Comm'rs., 242 Mass. 61, 65; (1922) Seskevich v. City Clerk of Worcester, 353 Mass. 354, 356 (1967); Starr v. Bd. of Health of Clinton, 356 Mass. 426, 430-431 (1969). Cf. Younie v. Director of Div. of Unemployment Compensation, 306 Mass. 567, 571-572 (1940). Greater deference is appropriately given to appointing authorities when hiring police officers. Beverly v. Civ. Serv. Comm'n., 78 Mass. App. Ct. 182, 188 (2010). An appointing authority is given significant latitude in screening candidates due to the fact that police officers are held to high standards as figures of public authority. Id. Thus, "the Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions." Beverly, at 187 citing Falmouth v. Civ. Serv. Comm'n., 447 Mass. 814, 824-26 (2006). The Commission is to decide "not whether the city relied on improper considerations, but on whether the city put forward a sufficient quantum of evidence to substantiate its legitimate concerns." Beverly, at 188. In reviewing, the Commission must also observe its fundamental principal of guarding against political considerations, favoritism, and bias in public employment decisions. Cambridge, at 304. In contrast, the Commission may not accomplish such means by acting as a "super appointing agency" and "substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority." Boston Police Dep't v. O'Loughlin, 27 Mass. L. Rptr. 515 (Mass. Super. Ct. 2010).

"Prior misconduct has frequently been a ground for not hiring or retaining a police officer." Cambridge, at 305. An appointing authority has the discretion to consider the circumstances surrounding the arrest record and criminal charges even if the charges did not result in a conviction and is entitled to appropriate weight as to such factors as the appointing authority deems fit. Thames v. Boston Police Dep't, 17 MCSR 125 (2004); Brooks v. Boston

Police Dep't, 12 MCSR 19 (1999); see Soares v. Brockton Police Dep't, 14 MCSR 109, 110 (2001); see also Lavaud v. Boston Police Dep't, 12 MCSR 236 (1999).

I find that the Respondent's decision to bypass the Appellant for the position of police officer was reasonably justified. The Respondent heavily relies on the Appellant's 2002 felony charge, the inconsistent statements the Appellant made to the police regarding the charge, and the 2008 attendance issues at Maximus. Although the Respondent acknowledges that the Appellant has presented evidence of positive employment and personal references, the Respondent was reasonably justified in finding that the 2002 felony charge, inconsistent statements, and attendance issue outweighed all other factors considered. These reasons provided a credible basis in which the Respondent was justified in finding that the Appellant is unfit for the position as a police officer.

The Respondent was reasonably justified in relying on the Appellant's 2002 felony charge as a reason for the bypass decision. Although the Appellant argues that she has a clean record apart from the isolated 2002 felony and misdemeanor charges, the felony charge raised legitimate concerns on whether the Appellant possesses qualities that deem her fit for the position of police officer. Despite the fact that the Appellant received a continuance without a finding for the felony charge, the Appellant gave an admission to sufficient facts relating to the charge. The Respondent has the discretion to consider such conduct and surrounding circumstances. The Respondent may rely on an applicant's criminal record to evaluate whether the candidate is suitable for the position of police officer. In Hunt's testimony, she stated that the felony charge was the primary reason for the bypass and any felony disposition is taken very seriously in the selection process. Although Hunt conceded that there is no written rule automatically disqualifying a candidate due to a felony charge with a continuance without a

finding, the Appellant's admission to sufficient facts of the felony charge was appropriately considered in making the decision to bypass the Appellant. In the case at hand, the Appellant engaged in violent conduct, which resulted in the felony charge of assault and battery with a dangerous weapon. The Appellant's 2002 felony charge and subsequent admission, demonstrated poor judgment and behavior. See Boston Police Dept. v. Suppa, 79 Mass. App. Ct. 1121 (2011) (rule 1:28 disposition).

The Appellant testified that she told police officers that the altercation between her and DeBarros resulted in DeBarros' injury from falling on a plate. However, DeBarros told police officers that he sustained a wound on his arm as a result of the Appellant attempting to strike him with the plate. DeBarros' statement was later confirmed by a nurse at the hospital who stated that DeBarros' injury was consistent with a defensive wound. The Appellant conceded the fact that she gave the police false statements because she feared that telling the truth would yield negative consequences that would affect her child, herself, and DeBarros. Although the altercation between DeBarros' and the Appellant may have been a personal matter, it unfortunately escalated into a situation that required police assistance, whereby the Appellant lied to police. Such behavior raises legitimate concerns on whether the Appellant is suitable for the position as police officer. Police officers are expected to be honest and forthcoming when upholding the law in the interest of justice. As a figure of public authority, police officers are also expected to testify in court.

The Respondent also considered the Appellant's 2008 attendance issues at Maximus. The Appellant received a formal warning from Maximus citing three (3) previous attempts to encourage the Appellant to improve on her continually declining attendance record. Hunt testified that police officers need to be dependable and punctual, as police officers are expected

to promptly arrive for shifts at varying hours. The Respondent has the discretion to determine whether the Appellant is worth the inherent risk of hiring a candidate with a prior poor attendance record for a position where punctuality is critical. The Appellant's past attendance record presented a legitimate concern that the Appellant would not be reliable when needed to appear for shifts as a police officer. Although the Appellant attributes the 2008 poor attendance issue to medical problems that she was not comfortable in disclosing to her employer, the Appellant still failed to correct her continually declining attendance after three previous warnings issued by Maximus. The Appellant also contends that Maximus issued a subsequent letter in 2011 stating that the Appellant's attendance has improved since. However, the Respondent has the discretion to consider the Appellant's previous poor attendance record in addition to other considerations. The Respondent acknowledges that the Appellant has positive references and recommendations. However, the Appellant's prior poor attendance record in conjunction with the 2002 felony charge and the false statements made to the police outweighs any other applicable consideration. Therefore, the Respondent has presented credible evidence that reasonably justified its decision to bypass the Appellant based on the Appellant's 2002 felony incident, inconsistent statements made to the police, and prior poor attendance record.

For all of the above reasons, the appeal under docket number G1-11-29 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on April 5, 2012.

A true record. Attest:

Commissioner

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

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

Notice to:

Neysa Cruceta (Appellant)

Sheila B. Gallagher, Esq. (for Respondent)