

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ANDREA GENDROLIS,
Appellant

v.

G1-11-19

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

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Commissioner:

Christopher C. Bowman¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Andrea Gendrolis (hereinafter "Gendrolis" or "Appellant"), seeks review of the Boston Police Department's (hereinafter "Appointing Authority" or "BPD"), decision to bypass her for original appointment to the position of police officer. A full hearing was held on September 7, 2011 at the offices of the Civil Service Commission. The hearing was digitally recorded and copies were forwarded to the parties.

¹ The Commission acknowledges the assistance of Law Clerk Shawn Weiske in the drafting of this decision.

FINDINGS OF FACT:

Thirty-one (31) exhibits were entered into evidence at the hearing (Joint Exhibits 1-31). Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- Robin Hunt, Director of Human Resources, Boston Police Department
- Detective Bernadette Izzard-Izzard-Stinson, Boston Police Department

For the Appellant:

- Andrea Gendrolis, Appellant

I make the following findings of fact:

1. The Appellant is a thirty-eight (38) year old female from Dorchester. She graduated from Monsignor Ryan High School in 1991 and received a degree in Cosmetology from Blaine Cosmetology in 1993. In 1999, the Appellant received a certificate in massage therapy. In 2008, the Appellant received a certification in Esthetics from the Aesthetics Institute. (Testimony of Appellant; Exhibits 1 and 5)
2. The Appellant was employed as a ramp person for Continental Airlines from 1992 until she was laid off approximately one year later. From 1994 to 1995, she was employed as a seasonal temporary worker with Air Canada during the holidays. From 1996 through 2001, the Appellant was employed with Virgin Atlantic, first as a customer service agent, then as a ramp coordinator. She also worked as an on-board massage therapist. (Testimony of Appellant)
3. In 2000, the Appellant started working as an independent contractor at Body Benefits Day Spa (hereinafter “Body Benefits”) as a massage therapist. In 2001, the Appellant was laid-off at Virgin Atlantic and subsequently began work at Jet Blue in 2003 as a

crewmember, a position she held until resigning in January 2007. (Testimony of Appellant)

4. In May 2010, the Appellant started working for a competitor, the W Boston Hotel, as a massage therapist. She maintains employment at the W Boston Hotel in addition to Body Benefits. (Testimony of Appellant; Exhibits 1 and 5)
5. In May 2009, the Appellant took an open examination for the position of police officer. On April 16, 2010, the Appellant's name appeared on Certification 207159 for the position of police officer for the BPD. (Stipulated Fact)
6. The BPD filled seventy-five (75) police officer positions from Certification 207159. Four (4) of the candidates selected for appointment were ranked below the Appellant. (Stipulated Fact)
7. On August 25, 2010, the Appellant submitted her Student Officer Application to the BPD. (Exhibit 1; Testimony of Robin Hunt)
8. Detective Bernadette Izzard-Stinson (hereinafter "Det. Izzard-Stinson") has been a police officer with the City of Boston since 1985. She was promoted to Detective in 1990 and has been involved in various assignments with the BPD, including a patrol person, sexual assault, community disorders, and power patrol. Det. Izzard-Stinson has been participating in the Recruit Investigations unit since 2006 and has been involved with five or six classes of recruits. In the summer of 2010, Det. Izzard-Stinson conducted the background investigation of the Appellant. (Testimony of Det. Izzard-Stinson)
9. As part of the background investigation, the Appellant submitted personal references to Det. Izzard-Stinson. The Appellant received positive references from numerous

sources, including neighbors, the W Hotel Boston, a Suffolk County Sheriff Corrections Officer, and an FBI lab analyst. (Testimony of Det. Izzard-Stinson; Exhibits 10, 16, 17, 18, 19, 20, 21, and 22)

10. Jennifer Barry (hereinafter Ms. Barry), the Appellant's supervisor at the W Hotel Boston, submitted a letter of recommendation stating that the Appellant has no issues with attendance and is a "responsible team member." (Exhibit 10)

11. Robin Hunt (hereinafter Ms. Hunt), Director of the Boston Police Department's Human Resources Division, testified that the result of the background investigation was presented to a Department hiring committee during a "roundtable" discussion, which typically involves the Commander of Recruit Investigations, the Director of Human Resources, a Deputy Superintendent from Internal Affairs, and an attorney from the Legal Advisor's Office. In the event the roundtable has further questions for the applicant, the applicant may be called in for a discretionary interview before the roundtable. (Testimony of Robin Hunt)

12. Police officers are expected to maintain reliability, integrity, credibility, and truthfulness in all aspects of their employment. Further, officers are required to work critical days in response to events that may give rise to significant public safety concerns. The failure of an officer to report to work has a domino effect that hinders the entire operation of the BPD. (Testimony of Robin Hunt; Exhibits 29, 30, and 31)

13. All members of the roundtable discussion agreed that a pattern of reliability, judgment and truthfulness issues in the Appellant's employment history rendered the Appellant unsuitable to be a Boston Police Officer. (Testimony of Robin Hunt and Det. Izzard-Stinson)

Jet Blue

14. As part of the background investigation, Det. Izzard-Stinson obtained the Appellant's employee disciplinary records from the Jet Blue Human Resources Department. This was important since the Appellant marked "YES" to the following questions: "Have you ever been terminated from a job"; "Have you ever quit a job after being told you would be terminated"; and "Have you ever left a job by mutual agreement under unfavorable circumstances." (Testimony of Det. Izzard-Stinson; Exhibit 1)
15. On the Student Officer Application, the Appellant explained that due to her part-time status at Jet Blue, she was unable to maintain sufficient hours after taking a leave under the FMLA and swapping shifts with fellow employees. The Appellant stated that she was allowed to swap shifts under Jet Blue policy. She testified that the FMLA and shift swaps were due to "divorce issues" and that a mutual agreement was reached with Jet Blue that allowed her to resign in lieu of termination. (Exhibit 1; Testimony of Appellant)
16. The Appellant further explained in her testimony that she needed to take a personal leave of absence and swap her shifts because her husband had medically-related issues that she discussed in detail at the hearing. She testified that she was attempting to help her husband overcome his issues. When this failed, she filed for divorce. The Appellant testified that her supervisors at Jet Blue were sympathetic and flexible with her schedule so that she could resolve her domestic issues. (Testimony of Appellant)
17. The Appellant testified that employees are allowed to swap shifts with others as long as the shift is successfully covered. She further testified that in the event that a shift

swap goes uncovered by another employee, both employees who agreed to participate in the swap will receive written disciplinary action. (Testimony of Appellant)

18. On January 12, 2007, the Appellant traveled on Jet Blue as a “revenue customer” on a trip to Florida and returned on January 20, 2007. On January 14, 2007, the Appellant called out sick for her shift. The Appellant testified that she had arranged for a colleague to cover her shift, however, the colleague never showed up to work, resulting in written disciplinary action for both employees. (Exhibit 8; Testimony of Appellant)

19. The Appellant testified that she decided to fly to Florida on January 12, 2007 and remain there until January 20, 2007 to allow her husband to move out of the house without incident. The Appellant testified that on the advice of counsel she removed herself from the home while her husband moved out. (Testimony of Appellant)

20. The Appellant stated in her follow up responses to the September 7, 2010 request for clarification that she flew to Florida in order to be around family and “clear my head and figure out my situation.” (Exhibit 3)

21. The Appellant testified that Jet Blue has a policy that restricts employees from taking time off work during “Blackout Days.” These days are typically heavy travel days for the airlines, which includes Christmas Eve, New Years Eve, and New Years Day. (Testimony of Appellant; Exhibits 6 and 8)

22. As indicated in exhibits 6 and 8, Sherry Ricupero (hereinafter “Ms. Ricupero”), the Appellant’s supervisor at Jet Blue, issued a final disciplinary progressive guidance report on January 22, 2007 for the following reasons: Appellant called out sick on November 12, 2006, November 28, 2006, December 13, 2006, December 18, 2006,

December 19, 2006, December 24, 2006, December 31, 2006, January 1, 2007, January 14, 2007, and January 21, 2007. (Testimony of Appellant; Exhibits 6 and 8)

23. Ms. Ricupero scheduled a meeting on January 21, 2007 to discuss the Appellant's attendance issues. The Appellant failed to attend the meeting because she called out sick on January 21, 2007. Ms. Ricupero scheduled another meeting for January 22, 2007. Ms. Ricupero noted in the Appellant's employee file that she is difficult to counsel because of her constant call outs and shift swaps and placed the Appellant on "suspension pending a possible termination" as a result of her attendance issues.

(Exhibit 6; Exhibit 7)

24. The Appellant testified that she was unaware of any scheduled meeting with Ms. Ricupero on January 21, 2007. The Appellant did successfully attend the rescheduled meeting on January 22, 2007. (Testimony of Appellant)

25. The Appellant testified that she resigned from Jet Blue in January 2007 in anticipation of being terminated for her attendance issues. The Appellant stated in her Student Officer Application that the decision to resign was a mutual decision.

(Exhibit 1; Testimony of Appellant)

Body Benefits Day Spa

26. The Appellant was employed as an independent contractor at Body Benefits, from 2000 to the present, as a massage therapist. (Exhibit 1; Testimony of Appellant)

27. Det. Izzard-Stinson contacted Ms. Fiona Michael (hereinafter "Ms. Michael"), the owner of Body Benefits, as part of the background investigation. Ms. Michael told Det. Izzard-Stinson that the Appellant had a problem with truthfulness. According to Ms. Michael, the Appellant had told clients that she was in the hospital while she was

working for a competitor, the “W” Hotel. (Exhibit 5; Testimony of Det. Izzard-Stinson)

28. Ms. Michael informed Det. Izzard-Stinson that the Appellant had forgotten about appointments with clients and that she had to call her to remind her of the appointments. Ms. Michael told Det. Izzard-Stinson that the only reason the Appellant is still employed with Body Benefits is because they are friends and have known each other for a long time. (Exhibit 5; Testimony of Det. Izzard-Stinson)
29. The Appellant testified that she never told anyone that she was in the hospital. Rather, she said that she hoped that another surgery would not be necessary in light of current health issues. The Appellant testified that she is not friends with Ms. Michael, but instead maintains a professional relationship with her. Further, the Appellant testified that she has missed only two appointments in the eleven years she has worked at Body Benefits. (Testimony of Appellant; Testimony of Det. Izzard-Stinson; Exhibit 5)
30. The Appellant still maintains employment with Body Benefits on a one day a week basis. (Exhibit 5; Testimony of Appellant)

Bypass

31. On December 13, 2010, the BPD notified the Appellant that it was bypassing her for appointment for the following reasons: a) Appellant resigned from her position at Jet Blue before being fired for attendance issues. Several references were made to “callouts” in her employee file, as well as documentation of written coaching and suspension. Appellant also called out sick and then took a trip to Florida “the same day” on Jet Blue; b) Det. Izzard-Stinson was informed that Appellant had told Ms.

Michael and Body Benefits clients that she had to have surgery and was in the hospital. Ms. Michael had informed Det. Izzard-Stinson that the Appellant, on occasion, had failed to show up for a booked appointment with a client. Further, the Appellant was deemed to have “exercised poor judgment on multiple occasions” and had “reliability issues.” (Exhibit 9; Testimony of Det. Izzard-Stinson and Robin Hunt)

CONCLUSION

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. at 304. “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 1.

Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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 at 304. 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.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass. App. Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police

officers appropriately are held, appointing authorities are given significant latitude in screening candidates. Beverly citing Cambridge at 305, and cases cited.

Andrea Gendrolis took and passed the civil service examination for the position of police officer in 2009. She scored high enough to rank among those individuals to be considered for appointment as a police officer to the BPD. A long-time resident of Dorchester and a graduate of Monsignor Ryan High School, the Appellant presented herself as a professional with a sincere desire to serve her community as a police officer.

The BPD bypassed the Appellant due to a pattern of reliability, judgment, and truthfulness issues. According to the BPD, this pattern was established by the Appellant's demonstrated inability to reliably report to work while employed at Jet Blue, calling out sick for her shift at Jet Blue and taking a trip to Florida "the same day," her failure to maintain two scheduled appointments at Body Benefits, and falsely informing Ms. Michael and Body Benefits clients that she was hospitalized.

The Appellant's attendance issues did not arise until she faced domestic issues related to her husband in November 2006. Indeed, as the Jet Blue employment records indicate, the constant sick calls began in mid-November 2006 and lasted through January 2007, when the Appellant resigned after being placed on suspension pending possible termination. Prior to these sick days, the Appellant took a leave of absence in early 2006 pursuant to the FMLA. However, this leave of absence was not stated as a reason for the bypass. The Appellant admits that she was absent on "blackout days" because of a divorce resulting from issues related to husband. She was caught in a domestic situation that caused substantial stress and hardship and it affected her ability to reliably report to

work. Her supervisors at Jet Blue appear to have been fully aware of her situation and accommodated her.

The numerous call outs on blackout days during the Appellant's employment at Jet Blue sufficiently gave rise to a legitimate concern of reliability for the BPD. The BPD requires police officers to work on critical days during the year for public safety reasons, which are akin to the blackout days as prescribed by Jet Blue. Additionally, police officers are expected to be reliable and report to work when scheduled. A single call out by a police officer causes a domino effect that hinders the entire department, especially on critical days when public safety concerns are at their peak. The failure of the Appellant to successfully report to work on blackout days while employed at Jet Blue, regardless of the reason, is a concern that is legitimate and reasonable given the sensitive nature of the position to which the Appellant aspires. Although the Appellant may have had a legitimate reason for calling out sick on blackout days, the issue is not whether she had a legitimate reason; the issue is the BPD's legitimate concern.

The BPD stated that a reason for bypass was that the Appellant took a trip to Florida and called out sick the same day. However, the evidence indicates that the Appellant took her trip on January 12, 2007 and called out sick January 14, 2007. The Appellant arranged for a colleague to cover her shift on January 14, 2007, but the colleague failed to report to work. In response to this failure, the Appellant called out sick since she was in Florida and unable to report to work. The Appellant maintains that she took the trip to Florida because legal counsel advised her to leave the home while her husband vacated

the residence. Her family lives in Florida and she sought comfort and advice during this tumultuous period in her life.

Regardless, the BPD maintains that the Appellant's action of calling out sick, when she was not in fact sick, calls into question her integrity and credibility. Police officers are expected to maintain high standards of integrity and credibility. The fact that the Appellant planned the trip in advance, then subsequently called out sick when she was not sick, gives rise to a legitimate concern. Again, the issue is not whether the Appellant had a legitimate reason for calling out sick, but whether the BPD has a legitimate concern that is reasonably justified.

The BPD places significant importance on Ms. Michael's statements regarding the Appellant's two missed appointments at Body Benefits. While the allegations of missed appointments are undisputed, the BPD's reliance on them is trivial at best. Devoid of other claims of absenteeism, missing two appointments in an eleven year span of employment is far from the type of conduct one expects from an unreliable employee. Furthermore, the Appellant is still employed a Body Benefits, the implications of which manifest a curious situation given the supposed issues Ms. Michael has had with the Appellant.

The BPD's reliance on Ms. Michael's statements regarding the Appellant's alleged untruthful claims of hospitalization are not supported by a preponderance of the evidence. The BPD relied on hearsay statements as conveyed by the Appellant's current employer and never provided the Appellant with the opportunity to respond to the serious charge of untruthfulness. The Appellant testified that she was never in the hospital, nor did she tell

anyone that she was in the hospital. Rather, the Appellant testified that she told clients that she hoped she wouldn't need another surgery. I credit her testimony and give no weight to the hearsay evidence as obtained by the detective conducting the background investigation.

While the BPD has not provided sufficient evidence to substantiate all the reasons for bypass, they have “put forward a sufficient quantum of evidence to substantiate its legitimate concerns” regarding some of the reasons for bypass after conducting an “impartial and reasonably thorough review that confirmed that there appeared to be a credible basis for these allegations.” See Beverly.

Specifically, the BPD has substantiated its legitimate concern that the Appellant was terminated from her prior employment with Jet Blue after failing to report for work on various “black out days”. For the reasons referenced above, this was a legitimate concern that justified bypassing the Appellant for appointment as a police officer. While I may have reached a different conclusion regarding the Appellant's worthiness to be a Boston Police Officer, intervention by the Commission, given the evidence that has been presented, would constitute an impermissible substitution of judgment by the Commission.

For all of the above reasons, the appeal under Docket No. G1-11-19 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Chairman, Bowman; Henderson, McDowell, and Stein [Marquis – Absent]) on December 1, 2011.

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:

Jeffery Mazer, Esq. (for Appellant)
Timothy Bolen, Esq. (for Appellant)
Nicole Taub, Esq. (for Appointing Authority)