

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

ASHLEY SENA,
Appellant
v.

**BOSTON POLICE
DEPARTMENT,**
Respondent

Case No.: G1-14-48

ORDER OF RELIEF

On April 30, 2011, Ashley Sena (Ms. Sena), a twenty-six year old African-American female, took and passed the civil service examination for police officer, receiving a score of 98. As a result, her name appeared on an eligible list, established by the state's Human Resources Division (HRD) on November 1, 2011, for the position of Boston police officer.

On June 1, 2013, HRD issued Certification No. 00746 to the Boston Police Department (BPD) to select fifty-five (55) permanent police officers. Ms. Sena's name appeared on this Certification in the 54th tie group. After completing a background investigation, the BPD issued Ms. Sena a conditional offer of employment, subject to the traditional conditions, including, but not limited to, medical, physical and psychological examinations.

On February 12, 2014, the BPD sent Ms. Sena a notification of bypass, rescinding the conditional offer of employment, based on Ms. Sena's "uncorrected vision worse than 20/100 in either eye."

On February 20, 2014, Ms. Sena filed an appeal with the Civil Service Commission (Commission). A pre-hearing conference was held on March 18, 2014 and a status conference was held on April 1, 2014. At no point during the pre-hearing conference or status conference did the BPD state that Ms. Sena was bypassed for any reason other than her vision test.

G.L. c. 31, § 61A allows candidates sixteen (16) weeks from the date of the failure of the initial examination to undergo a reexamination. Ms. Sena stated at the pre-hearing conference and status conference that she intended to have lasik surgery to correct her vision and then seek a reexamination.

I informed the parties that, for the purposes of this decision, the reexamination period would run until June 4, 2014, sixteen (16) weeks from the date Ms. Sena received her bypass letter, notifying her that she failed the vision examination.

On April 3, 2014, I forwarded the parties a draft "Assented to Order of Relief" stating that, upon reexamination, should Ms. Sena meet HRD's medical requirements related to her vision,

the conditional offer of employment would be reinstated and, assuming that Ms. Sena met all other requirements of employment, she would be appointed and enrolled in the next police academy.

On April 4, 2014, the BPD forwarded an email to the Commission stating:

“The Department would request that the draft order be amended as indicated in the attached proposed modification. As explained in the proposed modification, it has come to the Department’s attention that Ms. Sena failed both the vision *and psychological portions* of the application process. As such, the Department requests that the order be amended to reflect this fact, and to give Ms. Sena an additional consideration with the requirement that she complete *all* aspects of the application process successfully. Thank you for your consideration.” (*emphasis added*)

This communication represented the first time that Ms. Sena (or the Commission) was aware that she had failed her psychological evaluation.

To address this new information, I held a status conference on April 15, 2014. At this status conference, the BPD stated that Ms. Sena was not previously informed of the psychological disqualification because it was not a reason for bypass. However, if Ms. Sena had passed the vision test, the psychological evaluation would have been used as a reason for bypass. Thus, the BPD argues that, instead of being admitted to the next Police Academy upon successful completion of the vision test after her lasik surgery, Ms. Sena should be required to complete all aspects of the application process (again), including a psychological evaluation.

I am troubled by several aspects of what has occurred here. First, “no reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission.” PAR.08.4 (*emphasis added*)

While the BPD has stated that the results of the psychological evaluation were not a reason for bypass, they are indeed now using that evaluation as a reason to rescind Ms. Sena’s conditional offer of employment and not appoint her as a police officer should she successfully pass the vision test upon reexamination. Further, consistent with BPD’s internal hiring practices, Ms. Sena, as a result of her initial psychological disqualification, will automatically be required to undergo a second level psychological evaluation, even if she is “cleared” by the first-level reviewer during a subsequent hiring cycle. Also, the next psychological evaluation is likely to be completed by the same mental health professionals who completed the first evaluation. The point here is that the results of this evaluation, *which Ms. Sena was never aware of*, have adversely affected her opportunity for employment.

More generally, there is something fundamentally wrong with failing to disclose the negative results of a psychological evaluation to a candidate. Had Ms. Sena not decided to undergo lasik surgery and/or not appealed to the Commission, she would never have been apprised of the negative conclusions reached about her as part of this evaluation.

That turns to the psychological evaluation.

The role of the psychiatrist conducting a pre-employment evaluation for police officers in civil service communities is ... “narrowly circumscribed. [His] sole task [is] to determine whether [the candidate] [has] a psychiatric condition that [prevents him] from performing, even with reasonable accommodation, the essential functions of the job.” Police Dep’t of Boston v. Kavaleski, 463 Mass. 680 (2012).

The “Psychiatric” section of HRD’s medical regulations indicates that a Category B medical condition shall include:

“a history of any psychiatric condition, behavior disorder, or substance abuse problem not covered in Category A. Such history shall be evaluated based on that individual’s history, current status, prognosis, and ability to respond to the stressors of the job;” or “any other psychiatric condition that results in an individual not being able to perform as a police officer.”

In Roberts v. Boston Police Dep’t, 21 MCSR 536 (2008), the Commission concluded that:

“An applicant may be disqualified for having a Category B ‘psychiatric condition’ so long as the applicant has a ‘psychiatric condition’ which has manifested itself by a preponderance of scientifically reliable and credible proof of deficient mental health behavior, but not necessarily proof of a psychiatric ‘disorder’ found within the DSM-IV.”

Standing alone, the written summary prepared by the second-level reviewer here does not appear to identify a psychiatric Category B medical condition, even when applying the broader definition of Roberts. Rather, the summary, relying primarily on the same information that was vetted by a BPD background investigator, deems Ms. Sena “unreliable” and, therefore, “unqualified” to be a Boston police officer. This evaluation appears to stray far afield from the “narrowly circumscribed” role of the psychiatrist referenced in Kavaleski.

For all of the above reasons, and primarily because of the procedural irregularities in this case, the Civil Service Commission, pursuant to its authority under Chapter 310 of the Acts of 1993, hereby orders the following:

1. HRD shall place the name of Ashley Sena at the top of the next Certification for the position of Boston Police Officer;
2. Ms. Sena’s name shall remain on said Certification until she is appointed or bypassed;
3. In the event that Ms. Sena is granted a conditional offer of employment by the Boston Police Department, the Department may require Ms. Sena to undergo a psychological evaluation. However, said evaluation shall be completed by mental health professionals other than those who completed the first and second level evaluations referenced in this decision.
4. Should Ms. Sena be determined psychologically fit by the first-level reviewer, she shall not be required to undergo a second-level evaluation.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on May 1, 2014.

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)(1), 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:
Ashley Sena (Appellant)
Meryum Khan, Esq. (for Respondent)
Ernest Law, Esq. (HRD)