

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

GREGORY SHORE,
Appellant

v.

G1-11-257

BOSTON POLICE DEPARTMENT,
Respondent

Appellant:

Pro Se
Gregory Shore

Respondent's Attorney:

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

On August 17, 2011, Gregory Shore (Appellant), pursuant to G.L. c. 31, § 2(b) filed an appeal with the Civil Service Commission (Commission), contesting his non-selection to the position of permanent full-time police officer with the Boston Police Department (Department). A pre-hearing conference was held on September 6, 2011 and a full evidentiary hearing was held on November 8, 2011. The hearing was digitally recorded and copies of the recording were

¹ This case was heard by Commissioner Daniel Henderson, whose term expired before drafting a decision. Pursuant to 801 CMR 1.00(11)(e), this case was reassigned to Commissioner Christopher Bowman, who reviewed the CD, notes, and exhibits, and drafted a decision.

² The Commission acknowledges the assistance of Law Clerk Meredith Havard in preparing this decision.

given to both parties. The Department submitted a post-hearing brief. The Appellant did not submit a post-hearing brief.

For the reasons cited in the findings and conclusions below, the Appellant's disciplinary history as a police officer in the Town of Norwood provided the Department with reasonable justification to bypass him for appointment as a police officer in Boston.

FINDINGS OF FACT

Thirty-one (31) exhibits were entered into evidence. Based upon the documents entered into evidence and the testimony of:

For the Appointing Authority:

- Janeen Mitchell, Detective, Boston Police Department;
- Robin Hunt, Director, Human Resources, Boston Police Department;

For the Appellant:

- Gregory Shore, Appellant

I make the following findings of fact:

1. The Appellant is currently employed by the Norwood Police Department (Norwood). He has been an officer for seven and a half (7 ½) years, serving since 2004. He attended Norwood High School, receiving a Diploma from the Somerville Center for Adult Learning Experiences in 2000. The Appellant served on active duty in the United States Air Force from October 2000 to December 2003, on reserve under the Air Guard branch from March 2004 to October 2008. He was honorably discharged. (Testimony of Gregory Shore, Exhibit 1,)
2. The Appellant received notification of his bypass from the Department on June 9, 2011 in a letter from Robin W. Hunt, the Director of Human Resources. The letter cited a disciplinary

history for six (6) misconduct complaints against the Appellant during his employment as a Police Officer with the Norwood Police Department. The letter also cited the signed settlement agreement with Norwood in September 2008, mandating a 60 day suspension, with 5 days served and 55 days held in abeyance for 18 months, and anger management counseling. The letter also cited as reason for the bypass two (2) written reprimands, one (1) in December 2005 for failing to file a racial profile report after a motor stop and one (1) in October 2007, for sick leave abuse. He also received a written warning for public disrespect of a superior officer and there were two (2) off-duty incidents that concerned the Department. Based on the reasons proffered in the letter, the Department did not find Appellant eligible for the police officer position. (Exhibit 2)

3. Detective Janeen Mitchell is currently employed by the Boston Police Department. She has been a police officer for 23 years. She has worked with the Recruitment Investigation Unit since November 2001. (Testimony of Janeen Mitchell)
4. Detective Mitchell conducts background investigations for the candidates through checking driving history, employment and where they live and the like. (Testimony of Janeen Mitchell)
5. Every recruit completes an application which is used to develop a more thorough picture of the candidate. Detective Mitchell compiles a Privileged and Confidential Report or PCM which includes criminal, employment, driving records, marital status, residency, military status and personal references. The PCM is given to Mitchell's superiors, which is then presented to a roundtable discussion. (Testimony of Janeen Mitchell; Exhibit 1; Exhibit 4)
6. The roundtable usually consists of the Commander of Recruitment Investigations, the Director of Human Resources, a Deputy Superintendent from Internal Affairs, the Director of

Human Resources, and an attorney from the Legal Advisor's office. (Testimony of Robin Hunt)

7. If there are issues in the candidate's packet, any "red-flags" are noted. In this case, the Appellant's employment history with Norwood created "red-flags," because of the settlement agreement, the sixty (60) day suspension and enrollment in the anger management program. Such "red flags" led to a discretionary interview of the Appellant. Not all candidates are granted discretionary interviews. (Testimony of Janeen Mitchell; Exhibit 4; Exhibit 31)
8. Detective Mitchell wrote as concerns " IAD Settlement Agreement-Town of Norwood Discipline" and "Multiple Norwood PD Complaints./Disciplines 2005-2008." (Exhibit 4)
9. The Settlement Agreement, dated September 9, 2008 stated there was evidence to support allegations of misconduct of the Appellant. (Exhibit 3; Testimony of Janeen Mitchell)
10. Citizen A filed a citizen complaint for harassment and possible racial profiling. Citizen A claimed to have been operating her vehicle on November 25 at 3:45 in the morning. The Appellant wrote Citizen A a ticket for failing to use her directional signal. Citizen A alleged this was as an act of racial profiling. (Exhibit 6)
11. No racial profiling behavior was found to be present in this stop. However, the Appellant did not use the proper procedures for the traffic stop. He did not deny that he did not call in the stop. The Norwood Police Department issued a written reprimand to the Appellant for failure to file a profiling report as part of the procedure for the motor vehicle stop on November 25, 2006. (Exhibit 6, Exhibit 7, Exhibit 5)
12. On February 7, 2008, Citizen B filed a complaint. The Appellant allegedly approached Citizen B, who was sanding a parking lot that the Appellant was monitoring, asking him

what he was doing there, using foul language, according to Citizen B. The Appellant then followed Citizen B and stopped Citizen B who failed to stop at a stop sign. Citizen B alleged that the Appellant jumped up and down on the running board of the truck. It is undisputed that a citation was issued. (Exhibit 8 and Exhibit 9)

13. On November 15, 2007, Citizen C filed a written complaint. On November 14, 2007, Appellant allegedly initiated a conversation wherein the Appellant asked Citizen C where he lived. Citizen C called the police because the Appellant allegedly sped through the red light six (6) seconds after it had turned. Appellant denied he had sped through the red light, and denied asking where Citizen C lived. (Exhibit 15 and Exhibit 16)
14. On November 20, 2007, Citizen D filed a complaint alleging that the Appellant displayed aggressive behavior. The Appellant was on detail waving traffic. Citizen D alleges he did not see a motion to go or stop when he started to drive around the trucks when the Appellant stopped him. The Appellant allegedly exhibited what Citizen D termed as overly aggressive behavior. The Appellant stated he had stopped a man driving at a very high rate of speed and then began to drive again after stopping Citizen D. (Exhibit 17)
15. On November 1, 2007, the Appellant stopped a vehicle, searched the car and issued a marked line violation warning. The Appellant had not completed a citation or stop date check after the stop. The Appellant reported the stop and the citation, but he did not mark a search of the vehicle. No racial profiling stop data report completed. A formal complaint was not filed. (Exhibit 19 and Exhibit 18)
16. Citizen E alleges that the Appellant was aggressive to her and the driver during a motor vehicle stop on July 16, 2008. The Appellant issued a citation to the driver. Citizen E and the driver both told the investigating officer that Appellant yelled at them. (Exhibits 21-26)

17. In July 2006, there was a letter from a superior officer concerning the Appellant's possible abuse of sick time. The letter indicated that many sick days coincided with holidays and weekends. (Exhibit 11)
18. In March 2007, the Norwood Police Department addressed the Appellant's absence on March 2, 2007 where Appellant did not call in sick or unable to report that day. A doctor's note did not appear until March 8, 2007 regarding an absence on March 2. (Exhibit 13)
19. In October 2007, the Appellant and his union representative met with members of the Department regarding a sick leave request two (2) hours after being denied vacation leave and failing to find a replacement. This instance resulted in a disciplinary agreement where Appellant would submit a doctor's note with a sick report for any time where sick time would be used for a determined period of time, work for an eight-hour shift without pay, and a copy of the disciplinary agreement and report placed in his personnel file. (Exhibit 30 and Exhibit 14)
20. On July 5, 2006, a superior officer wrote that disregard for a direct order and a disrespectful attitude of the Appellant during the assignments for the Fourth of July parade was insubordination when the Appellant allegedly interrupted him with a comment regarding the assignment and the Appellant later left an assigned post. The superior officer attempted to discuss the issues with the Appellant but did not resolve the issue verbally. (Exhibit 10, Exhibit 12)
21. On May 9, 2008, the Walpole Police Department reported that the Appellant had been involved in an incident in Walpole, off-duty. There had been an initial call for a possible domestic disturbance involving the Appellant and two others. No criminal complaints against

- the Appellant were filed. A Walpole officer wrote that the Appellant was rude and obnoxious. The Appellant identified himself as a police officer. (Exhibit 27 and Exhibit 28)
22. The Appellant recognized some fault for the previous incidents, but he asserts that he has changed his ways. The Appellant stated that he believed there were internal issues concerning the reports and investigations by the Norwood Police Department. (Testimony of Gregory Shore)
23. The above incidents included in the personnel files and the settlement agreement were discussed at the roundtable. (Testimony of Robin Hunt)
24. Detective Mitchell did not approach the Norwood Police Department for a further investigation because she did not believe it was necessary to do so given the overwhelming evidence included in the Appellant's personnel files. (Testimony of Detective Mitchell)
25. The Appellant signed a settlement agreement with the Town of Norwood and the Norwood Police Officers Union on September 9, 2008 which imposed a sixty (60) day suspension, with five (55) days held in abeyance for eighteen (18) months. The settlement agreement also required the Appellant to continue participation in the Employee Assistance Program anger management program, in which he was already enrolled prior to the signing of the Settlement Agreement. (Exhibit 3 and Exhibit 20)
26. The Appellant stated that he has since grown and that the anger management has helped him see that he has a "loud voice with a big personality." (Testimony of Gregory Shore; Exhibit 31)
27. The agreement and all incidents referred to in these findings were discussed at the roundtable. Ms. Hunt stated that the nature and theme of behaviors were of concern regarding

insubordination, sick time abuse, and hints of untruthfulness and possibilities of his temper getting the best of him. (Testimony of Robin Hunt)

28. The Appellant was granted a discretionary interview to address his disciplinary history in Norwood. After hearing from the Appellant, the members of the roundtable still had concerns regarding the Appellant's disciplinary history and recommended to bypass him. (Testimony of 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. Beverly citing Cambridge at 305, and cases cited.

The Commission has held that bypassing a candidate based upon an extensive, prior disciplinary record is a valid reason for bypass. Kennedy v. City of Pittsfield, 22 MCSR 729 (2009). Poor employment history may also be a factor taken into account providing reasonable justification to bypass a candidate. Modig v. Worcestor Police Department, 21 MCSR 78 (2008).

Here, the decision to bypass the Appellant was based upon his extensive disciplinary history with the Norwood Police Department. In his seven and a half years as a police officer, the Appellant has a disciplinary record that includes failing to complete proper protocol at motor vehicle stops, aggressive behavior, sick time abuse, and insubordination. He signed a settlement agreement with Norwood in which he agreed to sixty day suspension with fifty-five days held in abeyance for 18 months so long as there was not another sustained incident.

The Appellant alleges that the Department failed to conduct a proper, complete report in not contacting the Norwood Police Department to investigate past the documents provided. Although indicating he could rebut some of the allegations and documents provided, the Appellant did not provide any documentation or witnesses to rebut his disciplinary and employment record. Further, the Boston Police Department afforded him the opportunity to address his disciplinary history in Norwood and they were not satisfied with his responses.

The picture painted here is that of an individual with serious self-control and anger management problems in his current position as a Norwood police officer. While the Appellant argues that he has matured and those problems are no longer an issue, his aggressive behavior was on full display at the hearing before the Commission. The hearing officer was forced to admonish the Appellant multiple times for his conduct and aggressive behavior.

The Appellant's disciplinary history provided the Boston Police Department with reasonable justification for bypassing the Appellant and there is no evidence of ulterior motives that would warrant the Commission's intervention.

For these reasons, the Appellant's appeal under Docket No. G1-11-257 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein [Absent], Commissioners) on August 9, 2012.

A True copy. 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:

Sheila Gallagher (for Appointing Authority)
Gregory Shore (Appellant)