

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

Michael Mazzola,
Appellant

v.

G1-06-216

City of Worcester,
Respondent

Appellant's Attorney:

Pro Se
Michael Mazzola

Respondent's Attorney:

Lisa M. Carmody, Atty.
City of Worcester
455 Main Street, Room 109
Worcester, MA 01608

Commissioner:

Daniel M. Henderson¹

DECISION

Pursuant to the provisions of G.L. c. 31, s. 2(b), the Appellant, Michael A. Mazzola, (hereinafter "Appellant") seeks review of the decision of the state's Human Resources Division (hereinafter "HRD") in accepting the reasons proffered by the City of Worcester (hereinafter "Respondent" or "Appointing Authority") to bypass him for original appointment to the position of permanent, full-time police officer. The appeal was timely filed and a full hearing was held on March 24, 2008, at the offices of the Civil Service

¹ The Commission acknowledges the assistance of Legal Intern Heather Sales in the preparation of this Decision.

Commission (hereinafter “Commission”). One (1) audio tape was made of the proceeding.

FINDINGS OF FACT:

Six (6) exhibits and a stipulation were entered into evidence at the hearing. The record was left open for the Appointing Authority and Appellant to submit a certified copy of Appellant’s driving record with explanations to the Commission. Based on the documents entered into evidence, (exhibits 1 - 6), and the testimony of: the Appellant, Michael A. Mazzola and Officer Michael Girardi, I make the following findings of facts:

1. On April 30, 2005 the Appellant took the civil service examination for the position of Worcester Police Officer and achieved a score of 88. (Stipulated fact)
2. The Appellant was listed on Certification # 251061 issued by HRD, of the Commonwealth, for 29 police officer vacancies in response to a Requisition from The City of Worcester. (Stipulated fact and Exhibit 1)
3. Of those 29 candidates appointed, 25 of the candidates selected were ranked below the Appellant. (Stipulated fact).
4. On July 11, 2006, by letter HRD accepted the Appointing Authority’s claim that the Appellant did not qualify (unsuitable) for appointment to the position of police officer for negative reasons regarding: 1) his poor driving history which exemplified irresponsibility and inability to uphold the law; 2) providing false information on the employment application form; and 3) history of maintaining

employment for only short periods of time as well as unfavorable comments from previous employer. (Exhibit 1, 3, and 4; and testimony of Michael Girardi)

Poor Driving Record

5. Officer Michael Girardi (hereinafter “Girardi”), who has been employed with the City of Worcester for fifteen years, was assigned to conduct a background investigation on Appellant which included the acquisition of a driving history through the Worcester Police Department’s Criminal Justice Information System which draws the driving records from the Massachusetts Registry of Motor Vehicles. (Testimony of Girardi)

6. Appellant on his own efforts obtained two driving records from the Registry of Motor Vehicles, dated August 23, 2006 and March 21, 2008, which only delineates incidences from 1996 through 2001. Timeline is as follows:

December 13, 1996 – State Highway violation occurring in Shrewsbury.
February 1, 2001- Speeding violation in Worcester.
(Exhibits 5 and 6)

7. The expanded driving record obtained by Appellant indicates a revocation and “suspension payment default” from the underlying violation of passing a bad check on March 12, 1997. (Exhibits 5 and 6)

8. The driving record obtained through the police department’s Criminal Justice Information System indicates that Appellant’s had five (5) moving violations- four (4) of which he was held responsible for from time period of 1991 through 2004. Timeline is as follows:

May 10, 1991- Minor traffic violation in Worcester.
December 13, 1996 – State Highway violation occurring in Shrewsbury.
July 20, 1997 - Speeding violation in Southborough (held not responsible).
February 1, 2001- Speeding violation in Worcester.

May 15, 2004 – Speeding violation in Shrewsbury.
(Exhibit 2)

9. In its bypass letter dated March 10, 2006, Respondent stated to HRD that Appellant instead had twenty-two (22) traffic violations. (Exhibit 1 and testimony of Girardi)
10. The driving record obtained through the police department indicates that Appellant's license was revoked due to failure to pay a fine due to the underlying violation of writing a bad check; and Appellant's license has been suspended for "payment default," stemming from the bad check, in January 21, 1997, January 23, 1998, and June 8, 2001. (Exhibit 2 and testimony of Girardi)
11. Appellant testified that his license was suspended "just once in 1994." (Testimony of Appellant)
12. This Commission provided thirty (30) days to both parties to provide additional information to clear up why there were (if any) discrepancies in the driving records obtained from the Registry of Motor Vehicles that may indicate that the information on the driving record that Respondent relied upon was erroneous. (Administrative notice)
13. On April 29, 2008, this Commission received a letter from Respondent stating that they obtained a certified copy of the Appellant's driving record from the Registry of Motor Vehicles and sent a copy to Appellant for review. (administrative notice)
14. Neither party reported back to the Commission with any further information on what the certified copy of the Appellant's driving record indicated, if there were any differences in that certified copy than the one obtained by the police

department's database. The parties did not submit a copy of said certified Driver's Record to the Commission. (Administrative notice)

15. The Driving Records submitted as Exhibits and testified about did enumerate a sufficient number of serious entries to be qualified as a poor driving record.
(Exhibits and testimony)

Lack of Veracity or Accuracy on Employment Application

16. All Worcester police officer applicants must complete an employment application form (i.e., Personal Information Questionnaire). Warnings are given before completion of the questionnaire to tell the truth and take as much time as one needs. (Testimony of Girardi)

17. Appellant returned his questionnaire packet, wherein Appellant responded "NO" to the question, "Has your driver's license ever been suspended, revoked, or placed on court probation?" (Exhibit 3 and testimony of Girardi)

18. Appellant conceded at the hearing that responding "NO" to this question on his application was a "horrible mistake" which he has since regretted making.
(Testimony of Appellant)

19. The Admittedly erroneous answer here is either an attempt to deceive or a serious error or omission. In either event it raises a serious and justifiable concern regarding the Appellant's characters or temperament, and therefore his qualifications to be a police officer. (Exhibits and testimony)

Negative Employment Aspects

20. In the March 10, 2006 bypass letter to HRD, Respondent indicated that a negative employment aspect of Appellant was that he was employed with nine (9) different

employers within an eight (8) year period of time from 1997 to 2005. (Exhibit 4 and testimony of Girardi)

21. One of those nine employers, Hartford Officer Supply, dissolved resulting in the lay off of Appellant. (Exhibit 1 and testimony of Appellant).
22. Officer Girardi conducted various phone conversations with Appellant's prior employers. Three (3) previous employers provided positive comments on Appellant's character and a fourth employer stated they would rather not comment on Appellant. (Exhibit 1 and testimony on Appellant)
23. Appellant was terminated from his position of Sales Representative with W.B. Mason in 2003 based upon "mutual agreement" for "being unable to meet our expectations and the requirements for this job." (Exhibit 4 and testimony of Girardi)
24. On December 12, 2005 Officer Girardi spoke with Paul Butts from W.B. Mason who verified Appellant's termination date, who spoke positively about Appellant's character, but opined that Appellant did not have the personality for sales. (Exhibit 1 and testimony of Girardi).
25. It was unsubstantiated whether Paul Butts was in fact a supervisor of the Appellant, or bore any working relationship with the Appellant at the time he was employed with W.B. Mason.
26. The Appellant explained that in sales you would always be looking for a better paying job and that is the main reason he changed jobs so often. Also, that it would not be advantageous to inform your current employer you were looking for a new job. Sometimes a new employer was a competitor of a prior employer and

the change would cause animosity, but that was the nature the sales business.

(Testimony of Appellant)

27. Considering the known facts and circumstances at the time of his bypass, the Appellant did not have a negative or poor employment history. (Exhibits and testimony)

Positive Aspects Proffered by the Appointing Authority

28. Appellant has no criminal record, has received an honorable discharge from the U.S. Coast Guard after completing a four-year commitment; and was deemed mature, intelligent, energetic, and a responsible person by employment references. (Exhibit 1)

CONCLUSION:

The Respondent has shown adequate reasons as sufficiently supported by credible evidence, and therefore was justified in its decision to bypass the Appellant for appointment to the position of permanent police officer.

The Commission here is only obligated to determine whether the Respondent's action was justified. The governing statute, G. L. c. 31, s. 2(b), requires the commission to find whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority. This parallels the standard of review under G.L. c. 31, s. 43. Mayor of Revere v. Civil Serv. Commn., 31 Mass. App. Ct. 315, 320 n.10, 321 n.11, 322 n.12 (1991). See Commissioners of Civil Serv. v. Municipal Court of the City of Boston, 359 Mass. 211, 214 (1971); Murray v. Second Dist. Court of E. Middlesex, 389 Mass. 508,

516 (1983); Gloucester v. Civil Serv. Commn., 408 Mass. 292, 297 (1990); Watertown v. Arias, 16 Mass. App.Ct. 331, 334 (1983); Dedham v. Civil Serv. Commn., 21 Mass. App. Ct. 904, 906 (1985). That standard gives the commission some scope to evaluate the legal basis of the appointing authority's action, even if based on a rational ground. "Justified," in the context of review, means "done upon 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. Court of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Serv. v. Municipal Court of the City of Boston, supra at 214.

"Substantial evidence" is defined in G. L. c. 30A, s. 1 (6), as "such evidence as a reasonable mind might accept as adequate to support a conclusion." Under the substantial evidence standard, a reviewing court must examine the entire record, including any evidence that detracts from the weight of the agency's decision. See, Cohen v. Board of Registration in Pharmacy, 350 Mass. 246, 253 (1966). We need only inquire whether the commission's decision was "legally tenable and supported by substantial evidence on the record as a whole." Commissioner of Health & Hosps. of Boston v. Civil Serv. Comm'n., 23 Mass. App. Ct. 410, 411 (1987). Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, Section 1 (6) (1988 ed.). New Boston Garden Corp. v. Assessors of Boston, 383 Mass. 456, 466 (1981).

In the present case the Appointing Authority did establish by substantial credible evidence that the Appellant has a poor driving history and lied or made a serious error of judgment on his employment application. However, regarding the other claimed bypass

reason a poor prior employment, the Respondent did not meet its burden of proof. His employment record on balance the nine (9) prior employers listed over an eight (8) year period was not in itself a justified reason to bypass. The Appellant adequately explained that large number of prior employers and it was not attributed to any instability on his part. On balance, the Appellant's prior employment history falls on the positive side of the scale.

The position of a police officer requires the operation of a motor vehicle and a need to show adherence to the laws of operating a motor vehicle. Incurring a suspension and revocation of one's license from passing a bad check and four (4) moving violations does not show adherence to the law or maturity. Appellant contends that the driving record the police department obtained is repetitive; and testified that his license had only been suspended once in 1994 (as opposed to three times as indicated in Exhibit 2 as a result of the 1997 bad check violation). However, this does not eliminate the fact that he has had his license suspended for writing a bad check (a sign of immaturity and poor judgment) and has been cited for moving violations over the course of thirteen (13) years (a sign of consistent inability to follow the law).

The Commission does note that the City of Worcester erroneously indicated that Appellant incurred a total of twenty-two (22) traffic violations on their letter to HRD. This was due in part to the confusing way that the Registry of Motor Vehicles lists duplicative entries arising out of delayed court appearances or defaults on payment of fines or fees. The Commission strongly encourages the City to be more diligent in the future when tallying candidates' violations, but again, this does not excuse the numerous violations that are actually on Appellant's record. There was no evidence presented to

show that any of the selected candidates had driving records similar to the Appellant's. It is possible that the other candidates who were appointed had no motor vehicle infractions on their driving records.

Moreover, when Appellant was given an opportunity post-hearing to provide a certified copy with an explanation, he failed to do so. Appellant did receive a certified copy of his driving record from Respondent, but again, did not contact the Commission to claim the certified copy was still inaccurately depicting suspensions. Personal Administration Rule, PAR.03 states in pertinent part:

Essential qualifications for all levels of public employment are honesty, respect for law and the democratic process...[and] [t]he burden of proof of such qualifications shall in all cases be upon the applicant, who may be required by the administrator to furnish evidence *additional to the information required* to be stated in his application.

The position of a police officer also requires that the individual is honest and forthcoming. Appellant responded "NO" on a substantial and serious question on the employment application that asked whether his license had ever been suspended, when in fact it had been suspended at least once. His answer was belatedly admitted to be erroneous. Appellant testified to the Commission that this was a mistake he made that continues to keep him up at night, but this testimony is inadequate and belatedly self-serving. Appellant was warned before the completion of the employment application that truth telling was an essential element of the permanent police officer position.

Although the Appointing Authority's assumption that the Appellant's numerous employment positions indicates some instability to perform some of the required duties of a police officer, Appellant explained adequately why he had held nine different employment positions within an eight year time frame in the field of sales. The bulk of Appellant's references reported him to be mature, intelligent and responsible, "[i]t is not

within the authority of the commission . . . to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” City of Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. at 304 (1997). “In the task of selecting public employees of skill and integrity, appointing authorities are invested with sound discretion.” Id. at 304-05

The Commission does not minimize the positive aspects of the Appellant’s background. The Appellant has no criminal record, has successfully completed a four-year commitment with the U.S. Coast Guard, and has positive references from almost all prior employers. In absence of Appellant’s crucial mistake on his employment application, his driving record could be remedied over time, thus the Commission would recommend that the City of Worcester consider the Appellant in the future for openings for the position of Police Officer. Notwithstanding, the Respondent acted within its sound discretion in choosing to bypass the Appellant for the position of Police Officer. There is a heightened scrutiny that is rightly imposed upon police officers, Police Commr. of Boston v. Civil Serv. Commn., 22 Mass. App. Ct. 364, 370-371 (1986). The City has shown through a preponderance of the credible and reliable evidence in the record that the Appellant did not possess maturity, judgment and character to hold the position of police officer, at the time of his bypass.

The Appointing Authority, for all the above stated reasons, was justified and did have sound and sufficient reasons to bypass the Appellant for this appointment.

Wherefore, for all of the above the Appellant’s appeal is hereby *dismissed*.

Civil Service Commission

Daniel M. Henderson,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on July 23, 2009.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:

Michael Mazzola
Lisa M. Carmody, Atty.
John Marra, Atty. HRD