

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

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

**VINCENT R. PETERS,**  
Appellant,

v.

**G1-14-92**

**NEW BEDFORD POLICE DEPARTMENT,**  
Respondent.

Appearance for Appellant:

Pro Se  
Vincent R. Peters

Appearance for Respondent:

Jane Medeiros Friedman, Esq.  
City Solicitor's Office, New Bedford  
133 Williams Street  
New Bedford, MA 02745  
508-979-1515

Commissioner:

Paul M. Stein<sup>1</sup>

**DECISION**

On April 14, 2014, the Appellant, Vincent R. Peters ("Mr. Peters"), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission ("Commission"), contesting the decision of the City of New Bedford (City) to bypass him for original appointment to the position of permanent full-time Police Officer. A pre-hearing conference was held at UMASS Dartmouth School of Law on May 9, 2014 and a full hearing was held at the same location on July 25, 2014.<sup>2</sup> Witnesses were not sequestered.

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Barbara Grzonka in the drafting of this decision.

<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence

The hearing was digitally recorded and both parties were provided with a CD of the hearing<sup>3</sup>. Both parties submitted proposed decisions.

**FINDINGS OF FACT:**

Five (5) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

*Called by the Appointing Authority:*

- Officer Kevin Lawless, New Bedford Police Department
- Lieutenant Ricard Rezendes, New Bedford Police Department

*Called by the Appellant:*

- Vincent R. Peters, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies, and reasonable inferences from the credible evidence; a preponderance of credible evidence establishes the following facts:

1. At the time of the hearing, Mr. Peters was a 22 year old male, residing in New Bedford, Massachusetts. (Exhibit 3)
2. Mr. Peters attended New Bedford High School for a brief period. In February 2010, Mr. Peters received his high school diploma from Penn Foster High School, an “online” institution located in Scranton, PA. (Exhibits 3& 4; Testimony of Appellant)
3. In July 2011, Mr. Peters applied to be a police cadet with the New Bedford Police Department (NBPD). In his application, Mr. Peters listed his high school education at Penn Foster High School. He also described his participation in various extracurricular activities

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<sup>3</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

at New Bedford High School, including “football, track, baseball, JROTC (Sergeant Mjr), JROTC: Drill team, rifle team, honor guard, Raiders Team.” (Exhibit 4)

4. The NBPD conducted a thorough background investigation of Mr. Peters’s Police Cadet Application. The investigation included a standard check for prior adverse driving or adult criminal history which showed no issues, but did note a number of juvenile criminal charges. The investigation report also revealed:

- Mr. Peters was not a member of the football, track or baseball teams at New Bedford High School.
- There were no records of Mr. Peters being a member of the JROTC.
- The Colonel in charge of the New Bedford High School JROTC stated that Mr. Peters was “definitely not the Sergeant Major.”
- Mr. Peters’s Facebook account listed his occupation as New Bedford Police Department, Police Officer prior to a decision be made on his application.
- Mr. Peters’s MySpace page contained several pictures of Mr. Peters wearing United States Marine Corps T-shirts, standing in front of a US Marine Corps flag, and in one photo wearing what appears to be a US Marine Corps dress uniform.
- Mr. Peters lists his age as twenty-three on his MySpace page and his hometown as Paris Island.
- Mr. Peters stated on his application that he personally knew Sergeant Robert Holmes (Sgt. Holmes) of the NBPD. When asked about Mr. Peters, Sgt. Holmes stated that he only advised Mr. Peters on a records matter and they occasionally say hello to each other. (Exhibits 3 & 4)

5. Based on the investigation report, the NBPD elected not to process Mr. Peters's application for selection as a New Bedford Police Cadet.<sup>4</sup> (Exhibit 4; Testimony of Lt. Rezendes)
6. On June 15, 2013, Mr. Peters took and passed the civil service examination for Police Officer and his name was placed on the Police Officer eligible list established by the state's Human Resources Division [HRD] on October 15, 2013. (Administrative Notice [HRD letter to CSC dated May 7, 2014])
7. On or about October 23, 2014, the City requested a Certification for the appointment of eighteen (18) police officers from the new eligible list. Mr. Peters's name appeared in a tie for the twenty-fourth (24) position on Certification 01446 dated December 13, 2013, issued to the City. (Exhibits 1a through 1e)
8. Mr. Peters signed Certification 01446 as willing to accept the appointment and completed an application form. (Exhibits 1e & 3)
9. The application contained a Personal History Questionnaire which had many yes or no questions regarding education, criminal history, military history and employment history. Mr. Peters indicated he did not serve in the military. Mr. Peters answered "yes" to the following questions:
  - While in school were you ever the subject of school sanctioned discipline?
  - Have you ever pretended to be a police officer or public servant when you were not?
  - Have you ever broken into another person's home or other facility?
  - Have you withheld information or lied on a job application or during an employment interview?

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<sup>4</sup> Appointments to the Cadet program are not subject to Civil Service Law.

On other parts of the application, Mr. Peters indicated that he was a member of the JRTOC at New Bedford High School and received weapons training as part of that organization. (Exhibit 3)

10. On April 15, 2014, on the recommendation of the NBPD's command staff, New Bedford Mayor Jon Mitchell, the appointing authority, requested HRD's approval to bypass Mr. Peters for a position as a police officer. The reasons stated for the bypass were based on "false information the applicant submitted...in an employment application in 2011, coupled with the fact the applicant falsely portrayed himself as both a United States Marine and a New Bedford Police Officer on social media. Members of the Police Department Command Staff believe that the applicant lacks the Maturity, Character and Discipline to be a Police Officer at this time. (Exhibit 3; Testimony of Officer Lawless; Testimony of Lt. Rezendes)
11. Mr. Peters acknowledged that he made mistakes in posting incorrect information to social media but claimed that he has matured and learned from those mistakes. (Testimony Mr. Peters)
12. According to Lt. Rezendes, the Appellant's prior mistakes do not represent a "forever" reason for disqualifying him. The NBPD has appointed candidates who had been bypassed in their initial consideration. Should Mr. Peters demonstrate through subsequent conduct in the future that he has, indeed, matured sufficiently, he will be given a fresh look and will not be precluded from appointment solely for his conduct in 2011 or earlier. (Testimony of Lt. Rezendes)

13. On April 14, 2014 Mr. Peters filed this appeal, having learned informally that the NBPB had appointed other candidates and he was not among them.<sup>5</sup>

### **Legal Standard**

Upon a bypass appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 241 (2006) Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Comm’rs of Civil Serv. v. Mun. Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. See City of Beverly v. Civil Serv. Comm’n, 78 Mass.App.Ct. 182, 189 (2010). “In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” Id. at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, rev. den., 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous decision of the appointing authority, but rather decides whether there was reasonable justification for the

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<sup>5</sup> New Bedford is a “Consent Decree Community” under the so-called Castro Decree, for appointment of Police Officers which requires that preference in hiring be given to certain minority candidates and also requires that HRD must review and approve bypass decision of all candidates. Through some administrative complication, HRD did not act on Mayor Mitchell’s bypass request until many months after the appointment of the selected candidates. Mr. Peters learned indirectly that he was not one of the selected candidates and, thus, brought this appeal prior to actually receiving a notice of bypass. Neither party contests the procedural issues, and the Commission will not address the procedural irregularities in this appeal and treats the appeal as timely. HRD, however, should take care in the future to assure that, in the future, the appointment and bypass decisions are processed in a more timely manner and in compliance with the requirement of civil service law and the Castro Decree.

action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” Id. at 824 (quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334, rev. den., 390 Mass. 1102 (1983)).

In deciding an appeal, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was reasonable justification” shown. Beverly, at 188. An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone as a new... [employee] than in disciplining an existing tenured one.” See City of Attleboro v. Mass. Civil Serv. Comm’n, C.A. BRCV2011-00734 (MacDonald, J.), (citing Beverly at 191). The appointing authority does not have to prove its valid justification is correct so long as it is supported by credible evidence. Beverly, at 187. The Commission is charged with ensuring that the system operates on “[b]asic merit principles.” Mass. Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, at 259 (2001). “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Id. (citing Sch. Comm’n of Salem v. Civil Serv. Comm’n, 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm’n of Health & Hosps. of Bos. v. Civil Serv. Comm’n, 23 Mass.App.Ct. 410, 413 (1987)).

Especially when it comes to an applicant for a sensitive public safety position, “the Commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown...Absent proof that the [appointing authority] acted unreasonably...the commission is bound to defer to the [appointing authority’s] exercise of its judgment that ‘it was unwilling to bear the risk’ of hiring the candidate for such a sensitive position”. Id., 78 Mass.App.Ct. at 190-91. See also, Reading v.

Civil Service Comm'n, 78 Mass.App.Ct. 1106 (2010) (Rule 1:28 opinion); Burlington v. McCarthy, 60 Mass.App.Ct. 914, (2004) (rescript opinion); Cambridge v. Civil Serv. Comm'n, 43 Mass.App.Ct. 300, 303-305 (1997); Massachusetts Dep't of Corrections v. Anderson, Suffolk Sup. Ct., No2009-0290 (Memorandum of Decision dated February 10, 2010) reversing Anderson v. Department of Correction, 21 MCRS 647, 688 (2008).

The Commission is also mindful of the standard of conduct expected of officers of the law. "An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion." McIsaac v. Civil Serv. Comm'n, 38 Mass.App.Ct. 473, 474 (1995). "[P]olice officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens." Attorney General v. McHatton, 428 Mass. 790, 793 (1999).

### **Analysis**

Applying the foregoing principles to the case at hand, the New Bedford Police Department's bypass of Mr. Peters for appointment as a police officer was reasonably justified. Mr. Peters demonstrated a strong and sincere aspiration to serve in the military and to become a police officer. He acknowledges that his prior actions in embellishing his record were wholly inappropriate. He presented at the Commission hearing as a person who has learned from his mistakes and would, indeed, possess many good qualities that would serve him well in public service. It is not the Commission's place, however, to substitute its judgment for that of the appointing authority. Rather, the Commission must determine if the reasons given for the bypass is reasonably justified bypass. As Lt. Rezendes indicated, when Mr. Peters applied in 2014, he showed no continuing pattern of the transgressions that surfaced in the 2011 Police Cadet application process. Nevertheless, in his judgment, the behavior was still sufficiently close in time to remain a serious and disqualifying concern. Based on the facts here, I cannot say that the

NBPD's judgment to bypass Mr. Peters in 2014 for his self-acknowledged poor judgment as recently as 2011 was not reasonably justified.

There is no indication that the NBPD had any personal animus or bias toward Mr. Peters. Lt. Rezendes stated that there is no "forever" ban against Mr. Peters and the he would give Mr. Peters a fresh look with the passage of time. If Mr. Peters were to maintain a stable personal and employment history, he may well be found suitable for appointment to the NBPD should he decide to reapply in the future.

### **Conclusion**

Accordingly, for the above stated reasons, Vincent R. Peters's appeal, filed under Docket No. G1-14-92 is hereby *denied*.

Civil Service Commission

/s/ Paul M. Stein  
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on July 23, 2015

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice:  
Vincent R. Peters. (Appellant)  
Jane Medeiros Friedman, Esq. (for Respondent)