

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**SCOTT RAGUCCI**

Appellant,

**v.**

**TOWN OF SAUGUS,**

Respondent

**CASE NO: G1-10-200**

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Scott Ragucci, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.31, §2(b), claiming that he was unlawfully bypassed for original appointment to the position of permanent Firefighter with the Town of Saugus Fire Department (SFD). The Commission held an evidentiary hearing on April 5, 2011, which was stenographically recorded and transcribed. The Commission received proposed decisions from the parties on June 6, 2011.

## **FINDINGS OF FACT**

Giving appropriate weight to the documents in evidence (Exhibits 1 through 11) , the testimony of the witnesses (SFD Fire Chief James Blanchard, Stoneham Fire Chief Joseph Rolli, Saugus Town Manager Andrew Bisignani, and the Appellant), and inferences reasonably drawn from the evidence I find credible, I make the findings of fact stated below.

### **The Appellant**

1. The Appellant, Scott Ragucci, is a long-time Saugus resident. He graduated from Saugus High School in 1990. He is married and has one young son. (*Exh.5; Tr. 160-161[Ragucci]*)

2. Mr. Ragucci's wife teaches in the Saugus public schools. His brother, Richard Ragucci, is a SFD firefighter, his sister is a paramedic and several other relatives work as firefighters. (*Tr. 113[Blanchard]; Tr. 161-170 [Ragucci]*)

3. Mr. Ragucci enlisted in the U.S. Army, serving as a radio operator, and attained the rank of Private First Class (E-3). He received an Honorable Discharge in April 1994. While in the Army, he was trained in CPR and first aid. (*Ex.5; Tr.162-164 [Ragucci]*)

4. After leaving the military, Mr. Ragucci attended Salem State College, from which he received a Bachelor of Science degree in 1995, with a major in sports medicine and a minor in biology. His course of study included training as a first responder in handling medical trauma on the athletic field. (*Ex.5; Tr.163-166 [Ragucci]*)

5. Since 2002, Mr. Ragucci has owned and operated a business engaged in home construction and remodeling. He holds a Massachusetts state license as a construction supervisor and home improvement contractor. (*Exh.5;Tr.166-169 [Ragucci]*)

6. In 2003, Mr. Ragucci applied for appointment to the roster of permanent intermittent firefighter established by the SFD. His civil service test score and veteran's preference placed him fifth on the certification, and subsequent roster, from which such appointments were made. (*Exh.2 [Decision on Cross-Motions for Summary Decision, Ragucci v. Town of Saugus, CSC No. G1-05-27,21 MCSR 667 (2008)[Ragucci I]*)

7. After successfully interviewing with then Fire Chief Walter Newbury, passing a background check, a drug screening and a Physical Abilities Test, Mr. Ragucci was selected as one of nine (9) candidates placed on the roster of SFD intermittent firefighters. The only purpose for which Saugus used this roster was to make future permanent appointments to the SFD fire force. (*Exhs. 2 & 3; Tr.171-172 [Ragucci]*)

8. Under applicable civil service law and rules, when a vacancy for permanent firefighter arises in a community which maintains a roster of permanent intermittent firefighters, the vacancy must be filled from the names on that roster "in the order of their civil service appointment to such intermittent . . . fire force". (*Exh.2 [Ragucci I]; Administrative Notice [G.L.c.31,§60]*)

9. In September 2004, on the recommendation of the current SFD Fire Chief, James Blanchard, Saugus Town Manager Andrew Bisignani appointed a candidate from the permanent intermittent roster as a permanent firefighter who was ranked lower on the roster than Mr. Ragucci. (*Exh.2 [Ragucci I]; Tr.172-176 [Ragucci]*)

10. Mr. Ragucci asked Chief Blanchard why he was skipped over. Chief Blanchard told Mr. Ragucci that he had given a very poor interview which left the impression that Mr. Ragucci's "heart wasn't in it" to be a firefighter. Mr. Ragucci told Chief Blanchard: "You made a big mistake." (*Tr. 156-158 [Blanchard]; Tr.172-176 [Ragucci]*)

11. Mr. Ragucci appealed his non-selection for appointment to the Commission. (*Exh.2 [Ragucci I]; Tr. 173 [Ragucci]*)

12. While Mr. Ragucci's appeal from his 2004 non-selection was pending, Saugus abolished its intermittent firefighters' roster. This action prompted another appeal to the Commission by Mr. Ragucci, in which he contended, in effect, that the decision to abolish the roster was retaliatory toward him, as the only person left on the roster from which future appointment otherwise would have to be made. Saugus contended that it had abolished the list for other reasons. (*Exh. 2; Administrative Notice, Ragucci v. Town of Saugus, CSC Case No. D-08-220 [Ragucci II]*)

13. On December 11, 2008, the Commission issued two decisions on Mr. Ragucci's pending appeals. The Commission allowed Mr. Ragucci's appeal from his 2004 non-selection, and ordered that he be placed at the top of the applicable list so that he received at least one further consideration for permanent appointment as an SFD firefighter. The Commission dismissed as moot Mr. Ragucci's second appeal concerning the abolishment of the intermittent roster and did not reach the merits of his claim that such action was retaliatory. (*Exh. 2 [Ragucci I]; Exh. 3 [Decision on Motion to Dismiss, Ragucci II]*)

#### The Saugus Fire Department

14. The SFD employs a fire force of approximately 43 firefighters. (*Tr.57 [Blanchard]*)

15. In addition to fire suppression, SFD firefighters are dispatched to medical calls and are trained to act as first responders until the ambulance arrives. Medical calls (as opposed to fire scenes) represent more than 60% of the calls to which the SFD responds. (*Tr. 120-122, 133-134 [Blanchard]*)

16. Saugus is not licensed by the Massachusetts Office of Emergency Medical Services (OEMS) to run an ambulance service. Saugus contracts with an outside vendor to provide basic and advanced life support emergency medical services to the town. Most SFD firefighters are certified as Emergency Medical Technicians (EMTs) but it is not a job requirement. Most SFD firefighters obtain their EMT certification after being hired and on their own time and at their own expense. (*Tr. 120-121, 153, 155-156 [Blanchard]*)

17. The Saugus Town Manager is the Appointing Authority for SFD firefighters. The current Town Manager, Andrew Bisignani, has held the position since January 2003. He plays a minor role in hiring firefighters and has limited recollection of the hiring process. He relies on the recommendations of others more familiar with the duties of firefighters, particularly the SFD Fire Chief. He has never rejected a candidate recommended by the Fire Chief. (*Tr. 57 [Blanchard]; Tr. 92-110[Bisignani]*)

18. James Blanchard became SFD Fire Chief in 2004, having worked his way through the ranks during his 40 year career with the SFD. He is responsible for the day-to-day management of the SFD. As Fire Chief, he has participated in hiring approximately four or five firefighters. He sees his role in the hiring of firefighters to make a recommendation to the Town Manager. (*Tr. 57 [Blanchard]; Tr. 92-95 [Bisignani]*)

19. Chief Blanchard recalls several chance encounters with Scott Ragucci over the years around town and at SFD dinner dances which Mr. Ragucci attended with his brother Richard, all of which he described as “very pleasant.” (*Tr.112-113 [Blanchard]; Tr.179-180 [Ragucci]*)

### The 2010 Hiring Process

20. On April 14, 2010, Town Manager Bisignani submitted to the Massachusetts Human Resources Division (HRD) a requisition for a civil service certification from which to hire two (2) permanent full-time firefighters for the SFD. (*Exhs 1 & 4*)

21. On April 27, 2010, HRD issued Certification No. 207379 containing the names of nine candidates, all veterans. Six of these candidates indicated their willingness to accept the appointment and completed the application packets. (*Exhs 4 through 10; Tr. 62-63 [Blanchard]*)

22. By virtue of the Commission's Decision in Ragucci I, Mr. Ragucci was ranked first on the list. In second and third position, respectively, were two candidates with disabled veteran's preferences, followed by Alex Watton, and then two candidates with tied scores (Veteran A and Veteran B). (*Exh.s 1 & 4*)

23. The application packet contains a 42 page questionnaire containing 148 separate questions requiring information about the candidate's personal history, education, employment, military service, court and driving records and other subjects, as well as authorizations for disclosure to SFD of information by third parties. The application notified the candidate that "the Saugus Fire Department **SHALL** be conducting a complete and **UNEDITED** CORI check on all applicants. (*Exhs. 4 through 10*)

24. Each candidate was required to certify that the statements provided in the application "are true and complete, to the best of my knowledge" and that "false or misleading information given herein or during interview(s) may result in my being disqualified." (*Exhs. 4 through 10*)

25. Chief Blanchard gave each applicant a letter that emphasized the importance of being truthful and complete: “Any statements or omissions, either written or verbal, given by an applicant, which prove to be false or misleading, will result in the applicant being disqualified . . . There is no substitute for the truth.” (*Exh. 4; Tr. 59-60 [Blanchard]*)

26. Each candidate was subjected to a thorough background investigation conducted by a Detective of the Saugus Police Department. (*Exhs. 5 through 10*)

27. The background investigation of Mr. Ragucci was conducted by Saugus Detective Sergeant Gecoya, who noted Mr. Ragucci’s “small and old criminal record and below average driving record” (listed in Finding No. 45 below) as well as his self-disclosed experimentation with marihuana and cocaine, also as a youth. Overall, the investigator found that Mr. Ragucci’s application “was complete, and appears to be truthful.” (*Exh.5*)

#### Candidate Interviews

28. A panel selected by Chief Blanchard conducted interviews of the six candidates. The panel included Chief Blanchard, Town Manager Bisignani and Stoneham Fire Chief Joseph Rolli. (*Exh. 4; Tr. 20 [Rolli]; Tr.63-64 [Blanchard]; Tr.96 [Bisignani]*)

29. Chief Blanchard previously had not used anyone outside the SFD to sit on an interview panel. He recently had served as an outside member of an interview panel, however, along with Chief Rolli, for the Wakefield Fire Department, and decided it was a good idea to add an outsider to the process who had no prior knowledge of any of the candidates. (*Tr. 36-37 [Rolli]; Tr. 64-65 [Blanchard]*)

30. No substantive interaction about the candidates occurred between Chief Rolli or Town Manager Bisignani and Chief Blanchard prior to the interviews. (*Tr. 20-21 [Rolli]; Tr. 64-66, 124-125 [Blanchard]; Tr. 96 [Bisignani]*)

31. The interviews lasted approximately 20 minutes each and were conducted over two days on June 30, 2010 and July 1, 2010. Each candidate was asked the same series of questions designed by Chief Blanchard. The overall performance was graded separately by Chief Blanchard and Chief Rolli on a scale of 1 (low) to 5 (high) in five categories. Town Manager Bisignani did not grade the candidates and, if he kept notes, which he did not recall, he did not keep them. (*Exhs. 4 & 11; Tr.20-23, 43-44 [Rolli]; Tr. 67-70 [Blanchard]; Tr. 96-97, 104-105 [Bisignani]*)

32. Chief Blanchard and Chief Rolli ranked the interview performance of the six candidates in exactly the same order:

<u>Candidate</u>	<u>Chief Blanchard' Score</u>	<u>Chief Rolli's Sccore</u>
Watton	23	24
Veteran A	22	19
Veteran B	16	16
Disabled Vet #1	13	14
Disabled Vet #2	13	13
Ragucci	12	12

(*Exh. 11*)

#### Initial Selection of Mr. Watton and Veteran A

33. At the conclusion of the hiring process, offers of employment were made to Mr. Walton and Veteran A. (*Exhs. 1 & 4*)

34. Mr. Watton was selected for one of the two positions because he is a decorated military veteran with extensive experience as a firefighter team leader and fire investigator with the United States Coast Guard, and has a clean criminal and driving record and an impeccable credit score. He had received training on some of the same apparatus used by the SFD. Mr. Watton was “by far the most qualified candidate that [Chief Blanchard] ever interviewed.” Chief Rolli was equally impressed with Mr.



Walton's qualifications as someone "who seemed to have it all". (Exhs 4 & 6; Tr. 24-25 [Rolli]; Tr. 72-73 [Blanchard])

35. Veteran A was honorably discharged from the U.S. Air Force in 2007, where he had attained the rank of Senior Airman (E-4). He served as a military police officer and was trained as a first responder. The reasons stated for offering him an appointment included this recent military experience, along with the high recommendations received from his former colleagues and supervisors, as well as a "good driving record and has never been in trouble." (Exhs. 4 & 10; Tr. 74-76 [Blanchard])

36. Disabled Veteran #1 was disqualified. In addition to the positive reasons given for hiring two "better candidates", (i.e., Mr. Watton and Veteran A), Disabled Veteran #1 was disqualified because of a poor interview ("not sure what type of skills you needed to be a Firefighter") and a poor driving record, which included eight motor vehicle accidents since 2003, including one major and one minor at-fault accidents, and the failure to disclose two citations for operating with improper equipment and speeding. (Exhs. 4 & 7)

37. Disabled Veteran #2 was disqualified. In addition to the positive reasons given for hiring two "better candidates" (i.e., Mr. Watton and Veteran A), Disabled Veteran #2 was disqualified because he was a convicted felon, he had been disciplined in the military for selling drugs, and had a poor driving record containing three pages of violations "too numerous to mention." (Exhs 4 & 8)

38. Mr. Ragucci was disqualified. In addition to hiring two "better candidates" (i.e., Mr. Watton and Veteran B), Mr. Ragucci was disqualified because:

It also became apparent in the interview process and in the application packet that you withheld information pertaining to your driving record. In the interview . . . you said that you had an operating under the influence of liquor as a minor, one speeding ticket and one motor vehicle accident which you were found not at

fault. In your application packet, page 23, Driving Record, question 91 asks[:]  
Has your driving License ever been suspended . . . You checked off yes..  
Question 92 asks, Have you ever received a citation from a police officer to  
include a written warning? You checked off yes. . . . [Y]ou are told . . . write  
your version of the incident . . . Be sure to list the city town or court jurisdiction  
and amounts owed. For Question 91 [you]. . .gave your version of the incident  
as this. "I was charged with OUI when I was 17 years of age, therefore my  
license was suspended for 180 days". Question 92 . You . . . gave your version of  
the incident as this. "I was cited for speeding in 1996."

You did not list the city or town or court jurisdiction or amounts owed. You also  
did not mention that you have several other driving violations.

(Exhs 4 & 5)

#### Attempted Offer to Veteran B

39. Initially, Saugus informed Veteran B that he was not selected. The sole reasons stated for Veteran B's non-selection were the positive reasons for selection of Mr. Watton and Veteran A as candidates with "strong backgrounds that relate directly to firefighting." (Exhs. 4 & 9)

40. Subsequently, Veteran A was disqualified for failing the drug screen, one of the subsequent pre-employment testing requirements. (Exh. 4 & 10; Tr. 90 [Blanchard])

41. After Veteran A was disqualified, Chief Blanchard attempted to reach Veteran B who was the "next best candidate" with the intention of offering him the position. The stated reasons for choosing Veteran B included his military record with the Marine Corps, in which achieved the rank of Lance Corporal (E-3). He served with distinction in Iraq in 2008 and 2009, and received CPR and first aid training, which "lends itself well to the type of situation faced on the fire ground and at medical aids" and "provides him with a firm grasp on the chain of command which is also a vital tool in the successful operation of a fire department." (Exhs. 4 & 9)

42. After several unsuccessful attempts to reach Veteran B to determine whether he would accept the position, Saugus abandoned efforts to hire him. At that point, Saugus decided to process just one new firefighter for employment, namely, Mr. Watton, because Chief Blanchard “didn’t feel that we had a[other] candidate that was worthy of the position.” (*Exhs. 4 & 9; Tr. 90-92 [Blanchard]*)

43. This timely appeal then ensued. (*Claim of Appeal; Exh. 1*)

Appellant’s Driving Record and Self-Disclosures

44. Mr. Ragucci’s RMV record contains no surchargeable accidents. It does contain entries on seven (7) dates, comprising a total of 14 citations, all but three of which were issued while he was a teenager. These entries include:

(a) <u>8/31/88</u>	Saugus	Operator Unlicensed Unregistered/Improper Equipment	Responsible
(b) <u>11/21/89</u>	Topsfield	No Inspection Sticker	Responsible
(c) <u>12/15/89</u>	Lynnfield	DWI Alcohol Program Driving to Endanger Refuse Obey Police Keep Right No View Speeding	Guilty CWOFF CWOFF Responsible Responsible
(d) <u>7/16/91</u>	Lynnfield	Speeding No Reg/Lic in Possession Driving to Endanger	Responsible Not Responsible Dismissed
(e) <u>4/02/92</u>	Chelsea	Fail to use safety [belt]	Not Responsible
(f) <u>9/13/94</u>	Saugus	Speeding	Responsible
(g) <u>11/06/95</u>	Peabody	Speeding	Responsible

(*Exh.5*)

45. Since 1995, Mr. Ragucci has maintained a clean driving record, with no citations, criminal charges or surchargeable accidents. (*Exh. 5; Tr, 207 [Ragucci]*)

46. Mr. Ragucci had previously obtained, or authorized Saugus to obtain, a copy of his RMV driving record on or about November 29, 2002, in connection with his

application for appointment as a SFD intermittent firefighter. (*Exh. 5; Tr. 209-211 [Ragucci]*)

47. Mr. Ragucci admits that he disclosed only the 1989 DWI offense and the 1995 recent speeding offense. It is not disputed that he failed to identify the city or town, or the court, associated with any of the citations. (*Exh. 5; Tr.204-205, 213 [Ragucci]*)

48. Mr. Ragucci explained these omissions were due to his faulty memory of the events from his youth. He said he had forgotten many of them and did not remember the details of others, and only recalled them when he was shown a copy of his RMV driving record the day of the Commission hearing. He said he completed his SFD application packet truthfully to the best of his knowledge. (*Tr.176-179,194-207, 213 [Ragucci]*)

49. At the Commission hearing, Mr. Ragucci was able to recount specific details of most, but not all, of the incidents that he had omitted from his application packet.

- (a) 8/31/88 – Mr. Ragucci was cited in Saugus for operating a dirt bike without a license. He was sixteen years old at the time. (*Tr. 177-178, 194-196 [Ragucci]*)
- (b) 11/29/89 – Mr. Ragucci had stopped in Topsfield to help a disabled motorist jump start his car. When the police arrived, they noticed his inspection sticker had expired the previous month. (*Tr.178, 196-199 [Ragucci]*)
- (c) 12/15/89 – This was the OUI incident that Mr. Ragucci disclosed in his application packet for which he received a 180-day license suspension. He said he still did not recall the court where his case was heard. (*Tr. 178, 213 [Ragucci]*)
- (d) 7/16/91 – Mr. Ragucci said he still had no recollection of this speeding ticket. (*Tr. 178-179 [Ragucci]*)
- (e) 4/2/92 – Mr. Ragucci was cited for failing to wear a seat belt and found not responsible. He was not asked if he recalled this incident. (*Exh. 5; Tr. 179, 200-201 [Ragucci]*)
- (f) 9/13/94 - On direct examination, Mr. Ragucci recalled getting the 1994 speeding ticket in Saugus one day after work, but on cross-examination, he said he was pulled over in Saugus more than once but could only recall once getting one “warning” (*Tr. 179, 201-203 [Ragucci]*)
- (g) 11/06/95 – This incident was the “1996” speeding ticket Mr. Ragucci disclosed in his application packet. (The court date was in 1996). (*Tr. 179 [Ragucci]*)

### Driving Records and Self-Disclosures Of The Successful Candidates

50. Mr. Watton had been cited for two moving violations, in 2004 and 2005, which he disclosed on his application. (*Exh. 4*)

(a) Veteran A was involved in a two-car motor vehicle accident in August 2008 for which he was ultimately found at-fault. He had moved back to Massachusetts seven months earlier but had failed to replace his out-of-state license with a valid Massachusetts driver's license. He was cited for Unlicensed Operation and Failure to Yield the Right of Way. In his application, Veteran A disclosed this incident, but omitted the fact that he was also cited for driving seven months since his military discharge without a valid Massachusetts driver's license. (*Exh. 10*)

(b) Veteran B had a record of three at-fault motor vehicle accidents (two in 2005 and one in 2008) and had been stopped in Saugus for speeding in May 2010. He had also been arrested for underage drinking in New Hampshire in 2008. Veteran B made full disclosure of all of these incidents in his application packet. (*Exh. 9*)

51. Neither Mr. Ragucci's driving record, per se, nor the driving records of the successful candidates were sufficiently problematic to disqualify them from appointment. Chief Blanchard was not overly concerned about isolated incidents, especially those that were attributable to youthful indiscretion that happened many years ago. Chief Rolli echoed this view. (*Tr. 48-52 [Rolli]; Tr. 146-147 [Blanchard]*)

### Evidence of Bias or Predisposition Against Mr. Ragucci

52. Mr. Ragucci knew nothing about the positive characteristics of the successful candidates ranked below him. He did not offer evidence that any of them were chosen because of favoritism, bias or improper influence. (*Tr. 189-190 [Ragucci]*)

53. At the time of the 2010 hiring process, both Chief Blanchard and Town Manager Bisignani knew of Mr. Ragucci's prior successful appeals to the Commission. Chief Rolli, however, did not know of them. (*Tr.30, 33-34, 52 [Rolli]; Tr.80-82, 87-88 [Blanchard]; Tr.99-100 [Bisignani]*)

54. Chief Blanchard had participated in the earlier hiring process from the intermittent list that precipitated Mr. Ragucci's 2005 appeal to the Commission. That process led Chief Blanchard to conclude that Mr. Ragucci "interviews poorly" and had not shown that he was prepared to become a full-time firefighter. He told Mr. Ragucci it seemed that he was more interested in the job because of the fringe benefits it offered, rather than a keen interest in performing the duties required of a firefighter. (*Tr.86-87, 130-131, 157-158 [Blanchard]; Tr. 172-175 [Ragucci]*)

55. These themes recurred in the 2010 interview process. Both Chief Blanchard and Chief Rolli scored Mr. Ragucci below average in Communications (2 out of 5 points – "Poor Speaker, unclear thoughts"), Motivation/Interest (2 points – "doubtful interest in position") and Interpersonal Skills (2 points – "Slightly objectionable, many have trouble with others"). (*Exh. 11; Tr. 28-30 [Rolli]; 79-86, 128-131[Blanchard]*)

56. The only successful candidate who received a below average score in any category was Veteran B, who Chief Rolli and Chief Blanchard both scored "2" in Motivation/Interest ("doubtful interest in position"). (*Exh. 11; Tr.27[Rolli]; Tr.78-79 [Blanchard]*)<sup>1</sup>

57. Chief Blanchard believed that he did not let Mr. Ragucci's prior interview process influence his decision in 2010, but his testimony did not support this conclusion. Chief Blanchard is a firm believer in the precept: "You never get a second chance to make a

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<sup>1</sup> Subsequent events ultimately proved this assessment true. See Finding Nos. 41 & 42 above.

first impression.” He clearly brought his prior experience with Mr. Ragucci to the evaluation of Mr. Ragucci’s 2010 interview and “expected a lot more” from him the second time around. He was disappointed to see no material changes in how Mr. Ragucci presented himself. (*Exh.11;Tr.72-73,83-88,123,129-131[Blanchard];Tr.185 [Ragucci]*)

## **CONCLUSION**

### **Summary**

Saugus met its burden of proof to establish reasonable justification for deciding not to employ the Appellant as a permanent full-time firefighter. The preponderance of the evidence established that the two candidates to whom Saugus actually chose to offer employment had significantly stronger relevant experience and credentials than the Appellant. Also, none of the candidates that Saugus deemed worthy of hire had neglected to make the required disclosures in their application packets that formed the primary negative reason for disqualifying the Appellant.

### **Applicable Civil Service Law**

This appeal involves a bypass for original appointment to a permanent civil service position. This process is governed by G.L.c.31, Section 27, which provides:

“If an appointing authority makes an original or promotional appointment from certification of any qualified person other than the qualified person whose name appears highest [on the certification], and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file . . . a written statement of his reasons for appointing the person whose name was not highest.”

Rule PAR.08(3) of the Personnel Administration Rules, promulgated by HRD to implement this statutory requirement, provides:

“A bypass will not be permitted [without] . . . a “complete statement . . .that shall indicate all reasons for selection or bypass. . . . No reasons . . . that have not been

disclosed . . . shall later be admissible as reason for selection or bypass in any proceedings before . . . the Civil Service Commission.”

Ordinarily, candidates are considered in the order of their place on the certification, which creates a ranking based on their scores on the competitive qualifying examination administered by HRD, along with certain statutory preferences. In order to deviate from this paradigm, an appointing authority must show specific reasons – either positive or negative, or both – consistent with basic merit principles, that affirmatively justify picking a lower ranked candidate. G.L.c. 31, §1, §27. See, e.g., Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), *citing* Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991). See also MacHenry v. Civil Service Comm’n 40 Mass.App.Ct. 632, 635(1995),rev.den.,423 Mass.1106(1996)(noting that personnel administrator [then, DPA, now HRD] (and Commission oversight) in bypass cases is to “review, and not merely formally to receive bypass reasons” and evaluate them “in accordance with [all] basic merit principles”).

Candidates are entitled to be adequately, fairly and equivalently considered. Evidence of undue political influence is one relevant factor, but it is not the only measure of unjustified decision-making by an appointing authority. The Commission has construed its obligation to prohibit the bypass of an appellant where it finds that “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988). See Tuohey v. Massachusetts Bay Transp. Auth., 19 MCSR 53 (2006) (“An Appointing Authority must proffer objectively legitimate reasons for the bypass”)



The task of the Commission hearing a bypass appeal is “to determine . . . whether the appointing authority sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification for the action taken by the appointing authority. . . . Reasonable justification in this context 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.’ ” E.g., Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006) and cases cited. In performing this function:

“[T]he commission does not view a snapshot of what was before the appointing authority . . . the commission hears evidence and finds facts anew. . . . [after conducting] ‘a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer’ . . . For the commission, the question is . . . ‘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.’ ”

Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003) (affirming Commission’s decision to reject appointing authority’s proof of appellant’s failed polygraph test and prior domestic abuse orders and crediting appellant’s exculpatory testimony rebutting that evidence) (*emphasis added*). cf. Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (inconsequential differences in facts found were insufficient to find appointing authority’s justification unreasonable); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (same). See generally Villare v. Town of North Reading, 8 MCSR 44, reconsid’d, 8 MCSR 53 (1995) (discussing need for de novo fact finding before a “disinterested” Commissioner in context of procedural due process); Bielawski v. Personnel Admin’r, 422 Mass. 459, 466 (1996) (same)

The “preponderance of the evidence test” requires the Commission to conclude that an appointing authority established, through substantial, credible evidence presented to the Commission, 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); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (*emphasis added*) The Commission must take account of all credible evidence in the record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65 (2001)

An appointing authority may rely on information it has obtained through an impartial and reasonably thorough independent review, including allegations of misconduct obtained from third-party sources, as the basis for bypassing a candidate. See City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189 (2010). There must be a “credible basis for the allegations” that present a “legitimate doubt” about a candidate’s suitability, but the appointing authority is not required “to prove to the commission’s satisfaction that the applicant in fact engaged in the serious alleged misconduct. . . .” Id., 78 Mass.App.Ct. at 189-90. Especially when it comes to hiring 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 Town of 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); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305 (1997); Massachusetts Dep’t of Corrections v. Anderson, Suffolk Sup. Ct. No. 2009SUCV0290 (Memorandum of Decision dated 2/10/10), reversing Anderson v. Department of Correction, 21 MCSR 647, 688 (2008).

It is the purview of the hearing officer to determine the credibility of the testimony presented through the witnesses who appear before the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003); (In cases where live witnesses giving different versions do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing)

#### The Positive Reasons for Hiring Other Candidates

The preponderance of the evidence established that Saugus was reasonably justified to conclude that the two candidates to whom Saugus made offers of employment both had significantly stronger credentials for the job of firefighter than did Mr. Ragucci.

Mr. Watton had actually served in the job of firefighter and fire inspector in the military and had been trained in some of the same fire suppression techniques and on the

same equipment used by the SFD. Also, his clean driving and criminal history record and impeccable credit history clearly justified his selection over Mr. Ragucci on merit.

Although Veteran A's credentials were not as stellar as Mr. Watton, Veteran A, too, had a strong military record that Saugus reasonably could assess to place him ahead of Mr. Ragucci. As a military police officer, Veteran A had attained a higher rank (E-4) than Mr. Ragucci, and had extensive relevant, recent experience as a first responder handling medical trauma cases as recently as 2007. Although Mr. Ragucci had earned a college degree in sports medicine in 1994, and had some training in treating injured athletes as part of that degree program, Saugus was reasonably justified to discount that experience, as it was performed under supervision and took place nearly fifteen years earlier.

The positive reasons provided for finding Veteran B "worthy of hire" are harder to justify as clearly distinguishable from those of Mr. Ragucci. Both candidates had comparable military experience and had attained the same rank (E-3) which gave them both the "firm grasp on the chain of command which is also a vital tool in the successful operation of the fire department" that supposedly distinguished Veteran B over Mr. Ragucci. The only other distinguishing reason for choosing Veteran B was his overseas deployment in Iraq which demonstrated an "ability to perform in stressful situations" and "maintain his concentration and resolve in a chaotic environment", and Mr. Ragucci did not have that experience. Veteran B was never actually offered employment, however, and no claim of disparate treatment on this point has been presented in this appeal.

In sum, the evidence established that positive reasons provided by Saugus for bypassing Mr. Ragucci in favor of other candidates ranked lower on the certification, standing alone, provided reasonable justification for their selection over Mr. Ragucci.<sup>2</sup>

#### The Negative Reasons for Disqualifying Mr. Ragucci

Saugus made clear that it was not Mr. Ragucci's prior criminal or driving record that disqualified him, but his neglect in properly disclosing the details of that record as required by the application packet he submitted. Thus, while it is true that neither Veteran A nor Veteran B could claim clean records, neither of them had made the errors of omission that Saugus found problematic with Mr. Ragucci.

Veteran B was fully forthcoming and complete in the disclosures he provided about his less than stellar record of multiple surchargeable accidents. Veteran A was somewhat less than forthcoming in how he described his one brush with the law, describing it as a minor accident caused by his failure to yield, but omitting the fact that he had also had been cited for driving without a proper Massachusetts driver's license at the time.

In one respect, Mr. Ragucci's omissions parallel those of Veteran A. As did Veteran A, Mr. Ragucci's "version" of the 1989 incident in which he was found guilty of OUI and placed on a year's probation, mentioned the OUI guilty plea and the penalty, omitting the other related charges lodged against him at the same time, some of which were later dismissed. Had this been the only omission, a legitimate question of disparate treatment could have been raised.

Mr. Ragucci's neglect, however, went beyond simply providing a short-hand version of one incident. Mr. Ragucci totally omitted any reference to five other citations,

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<sup>2</sup> Since Mr. Ragucci was placed at the top of the certification by Order of the Commission and entitled to preference over all other candidates, no inference can be drawn as to the relative civil service exam scores of the other candidates compared to Mr. Ragucci, as they could actually be higher, lower or the same as his.

including speeding tickets in 1991 and 1994. He also failed to identify the towns or courts involved in the two incidents that he did disclose, as the application instructions clearly required.

All other things being equal, it might be plausible to accept Mr. Ragucci's assertion that he had forgotten about the 1988 dirt bike incident or being cited in 1989 for an expired inspection sticker (both while in high school), or getting stopped in 1992 for not wearing a seat belt. His selective lack of memory about his multiple speeding tickets, however, does not ring true. It is not credible that he would have forgotten these episodes (even to this day), one of which occurred in July 1991, just six months after he had completed his probation period from his 1989 offense, and especially after being prompted by the application packet to provide complete answers to the questions. In sum, Saugus is reasonably justified to disqualify a candidate who provided responses to key questions in the application process that he knew or should have known were incomplete and erroneous.

#### Evidence of Unlawful Bias or Predisposition

Saugus accurately points to the dearth of evidence that patronage or other favoritism gave any of the successful candidates an undue advantage, a point that Mr. Ragucci, himself, conceded. Mr. Ragucci's contends, however, that Chief Blanchard had a predisposition against hiring him, which was formed years earlier at the time of his first bypass, and that Chief Blanchard did not come to the 2010 process with a truly open mind. Mr. Ragucci also asks the Commission to infer that his successful appeal of the earlier bypass was held against him. These arguments are not persuasive.

First, Chief Blanchard surely did come to the 2010 selection process with certain expectations about Mr. Ragucci attributable to his poor performance in the 2004 hiring process. In particular, Chief Blanchard expected that Mr. Ragucci would take the criticism from his first unsuccessful attempt constructively and would know he needed to come better prepared for the second opportunity. Such an expectation is clearly reasonable and appropriate and does not support an inference that it unfairly prejudiced Mr. Ragucci's future chances. Rather, it was Mr. Ragucci's specific lack of candor he demonstrated in the 2010 application process (as well as the relatively superior credentials of other candidates) that knocked him out of contention. Mr. Ragucci's past performance may have reinforced the perception that his continuing failure to grasp the need to take the application process seriously was not an isolated concern. Such an inference, however, does not rise to the level of proving bias or predisposition that violates basic merit principles of the Civil Service Law.

Second, Mr. Ragucci suggests that the successful pursuit of his 2005 appeal to the Commission influenced the decision to bypass him in 2010. If true, such retaliation clearly would be intolerable under basic merit principles. Here, however, Chief Blanchard denied any such motivation and Mr. Ragucci provided no persuasive evidence that discredited his testimony.

Third, although the parties devoted considerable attention at the Commission hearing to the interview process, in stating the basis for selecting the successful candidates or for disqualifying Mr. Ragucci, Saugus did not specifically assert interview performance, per se, as a reason. Thus, the appeal does not turn on any assessment of the procedural fairness or relative evaluation of the candidates' interview performances. The fact,

however, that Chief Rolli arrived at comparably equivalent and independent evaluations of the various candidates with no prior knowledge of the candidates, does provide additional credible support for the conclusion that Chief Blanchard's bias or predisposition against Mr. Ragucci, if any, was not the determining factor in the decision-making process.

Finally, there is cause for concern about the way that Saugus handled the issue of Mr. Ragucci's lack of full disclosure of his driving record. Mr. Ragucci was not afforded any opportunity during the hiring process to address the omissions in his application. All of the omissions relate to infractions that occurred fifteen or more years earlier, and many were minor in nature. On the substance, none of them, individually or in the aggregate, were disqualifying infractions. Mr. Ragucci credibly testified that, as to some of the infractions, he may well have forgotten about them. The Saugus police detective sergeant who performed the background investigation on Mr. Ragucci seemed to discount the discrepancy between the statements in the application and the actual record the sergeant obtained from the RMV, and reported that the application seemed "complete" and "truthful". Given this context, a plausible inference could be drawn that, by giving Mr. Ragucci no advance indication that these omissions would disqualify him, Saugus was playing a "gotcha" game that smacks of unfairness and ulterior motivation.

Had Mr. Ragucci been confronted with his omissions earlier in the application process or during his interview, he would have had the opportunity to offer a satisfactory explanation that may well have given comfort, or not, that the omissions were an inadvertent oversight. Among other things, by keeping this information to himself, Chief



Blanchard missed the opportunity for Chief Rolli's input on this issue, which turned out to be a critical factor in the evaluation of Mr. Ragucci.

This final issue is a close call. After carefully reviewing all of the evidence in the record, the apparent misstep by Saugus in this case does not warrant the conclusion that Mr. Ragucci's non-selection was tainted by bias or pre-disposition or other abuse of discretion. The fact that Saugus has presented credible positive justification for selecting other candidates is significant here. However, it would behoove Saugus, or any other appointing authority faced with similar circumstances, to consider taking a different course in the future so as to avoid any such appearances of impropriety in the future, especially when seeking to justify a bypass principally on the grounds of non-disclosures of the sort of stale driving infractions involved in this case.

In sum, for the reasons stated above, the appeal of the Appellant, Scott Ragucci, is hereby, *dismissed*.

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell & Stein, Commissioners) on November 1, 2012.

A True Record. Attest:

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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)(I), 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 does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of a Civil Service Commission's final decision.

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.

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Notice to:

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